



LEGAL TOOL KIT

FOR

**HEADQUARTERS AIR FORCE
MILITARY ASSISTANTS AND
EXECUTIVE OFFICERS**

[DECEMBER 2014 EDITION]

LEGAL TOOL KIT FOR HEADQUARTERS AIR FORCE MILITARY ASSISTANTS AND EXECUTIVE OFFICERS

This booklet addresses key areas likely to be the subject of questions by Air Force senior leaders (political appointees, members of the Senior Executive Service and general officers). While generally addressed to the senior leader, it also includes lessons learned, tips and other guidance that may be helpful to their support staffs. In many cases, common sense, and not a particular law or regulation, may be the best guide.

Updates to prior versions of this guide are highlighted in **yellow**.

This guide is intended to serve as a general introduction and is not a substitute for specific legal advice when issues arise. Please contact SAF/GCA (703-697-7430) or the servicing legal office for further guidance if needed.

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ETHICS

GUIDING ETHICS PRINCIPLES

- Public service is a public trust
- Public office shall not be used for private gain
- Appearance matters

SENIOR LEADER ETHICS REQUIREMENTS

Covered parties include:

- Political appointees
- Senior Executive Service
- General Officers

Covered parties **must**:

- File Public Financial Disclosure Report (OGE Form 278.) If not completed during the nomination process, due within 30 days of assuming the new position.
- Complete ethics training within 90 days of assuming position.
- Ensure compliance with all laws, regulations, and policies related to the Standards of Conduct for Executive Branch Employees and enforce appropriate action for noncompliance of subordinates.
- Comply with the more stringent ethics rules of the Ethics Pledge (established by Executive Order 13490) – **only** full-time political appointees must sign.

Covered parties must **avoid appearance** of:

- Seeking private gain from public office;
- Taking unauthorized actions purporting to bind DoD resulting in misuse of Government property;
- Failing to act impartially.

REVOLVING DOOR BAN FOR INCOMING POLITICAL APPOINTEES

Political appointees subject to the Ethics Pledge (instituted in 2009) **may not**, for two (2) years from the date of appointment, participate in any particular matter involving a specific party that includes a former employer or a former client. This does not include performing perfunctory or administrative duties, or social interactions with former employers or clients.

Additionally, political appointees who served as a registered lobbyist within two (2) years prior to their appointment may not, for two (2) years after appointment:

- Participate in any particular matter on which they lobbied within two (2) years before their appointment date;
- Participate in the specific issue area in which that particular matter falls; or

- Seek or accept employment with any executive agency that they lobbied within two (2) years prior to their appointment date.

FINANCIAL CONFLICTS OF INTEREST

18 U.S.C. § 208(a) is a criminal statute that prohibits personal and substantial participation, in an official capacity, in any “particular matter” which, to the individual’s knowledge, will have a direct and predictable effect on one’s financial interests, or those of one’s spouse, minor children, general partner or an organization in which the individual serves as an employee, director, officer, trustee or partner. **Please contact the SAF/GCA Ethics Office or servicing legal office with questions on possible financial conflicts of interest. This office can advise whether a conflict issue exists and whether an individual may need to disqualify him or herself, in writing.**

OUTSIDE ACTIVITIES

Personnel may engage in outside employment or activities that do not conflict with their official duties. There may be restrictions on an individual’s receipt of compensation for outside activities.

- Full-time Presidential appointees may not receive any outside earned income, no matter what the source. [White House and SASC policy – 5 CFR 2635.805 and EO 12674 as modified by EO 12731]
- An activity conflicts with one’s official duties if it either is prohibited by statute/regulation or would require disqualification from matters so central and critical to the performance of one’s official duties that the individual’s ability to perform the duties of his or her position would be materially impaired. **For example, personnel are encouraged to participate in professional associations so long as their participation does not create a conflict with their assigned duties and responsibilities as a federal government employee, e.g. they cannot participate in contracts or other particular matters related to the activities of the outside organization for which they are a member.**

MISUSE OF ONE’S POSITION

DoD personnel must not use public office for their own private gain or the private gain of another. Opportunities will be presented to senior leaders or requests will be made of them which can raise questions about use of their positions. If in doubt, contact SAF/GC or the servicing legal office for advice.

Examples:

- Using business or premium class accommodations for official travel without clear justification. (See “Travel” section below)
- Accepting free corporate box seats at a sports event from a contractor.
- Using one’s Government title or official position to imply Government endorsement of any personal activities, products or services. This limitation includes (with very limited exceptions) officially endorsing activities by non-

Federal entities (private organizations, businesses, etc.). If in doubt, contact a legal advisor before allowing use of one's official title or position (including official photograph) by a non-Federal entity.

- Using a Government vehicle to transport a dependent to a recreational facility on the way to a duty location.
- Steering Government business to personal acquaintances.
- Allowing the use of one's official title in a professional association's marketing brochures.

Use of Staff and Subordinates

A particular "gray area" involving use of one's position is requests or expectations that the staff/subordinates perform a senior leader's personal business/errands.

- No explicit guidance governs this area, so each circumstance should be evaluated individually. Requests of this nature can easily create perception issues and be the subject of a complaint or an inquiry.
- Except for positions specifically designated as "aides" (for general officers), the staffs assigned to organizations or offices headed by senior leaders are not there to serve as "aides" in the historic sense of that term. Senior leaders must be sensitive to the discomfort requests to perform personal tasks can create (it may be difficult for a subordinate to say "no"). Also, those new to Government service will likely find they cannot ask personal staff to perform support tasks/errands that may have been accomplished by their staffs in the civilian world.

As a general matter, senior leaders must not task subordinates to perform personal errands.

- **Examples of personal errands:** doing personal shopping, dropping personal mail in the mail box, drafting personal correspondence, picking up/dropping off laundry or dry cleaning or meals (other than for official working lunch-type meetings), watering plants, scheduling travel/lodging for unofficial travel or other activities that are generally "personal" in nature.
- Subordinates must not be asked to use their personal time or resources for the senior leader's personal benefit, e.g., subordinates should not be tasked to use their personal vehicles (either during or outside duty hours) to transport a senior leader for official or personal purposes. Often troublesome are requests that subordinates babysit, housesit or "pet sit"/walk the dog for the senior leader.
- On occasion, and as part of taking care of his/her own personal business (e.g., mail drop), a subordinate/staff member may offer to take care of a minor errand for a senior leader. **NOTE: The DOD/IG has disagreed with this view in some cases.** Before agreeing to such offers, senior leaders should weigh the following:
 - The nature of the task.
 - Whether the idea to perform the task originated with the subordinate and whether s/he truly voluntarily offered to do so.
 - How much the task will cause the subordinate to alter his or her ordinary routine or plans?
 - How others are likely to perceive the situation?

USE OF LETTERHEAD / LETTERS OF RECOMMENDATION

Use of AF Letterhead: AF employees may write a personal recommendation on official letterhead **if** the letter meets the criteria outlined below for use of official title.

Use of Official Title: AF employees may use their official titles on letters of recommendation **only** when:

- Responding to a request for an employment recommendation or character reference, AND
- The author has personal knowledge of the applicant's ability or character, AND Either: (1) The letter will be used as an employment recommendation or character reference by an individual with whom the author has dealt in the course of Federal employment, or; (2) the letter will be used as an employment recommendation or character reference by the applicant in the pursuit of Federal employment.

IMPARTIALITY IN PERFORMING OFFICIAL DUTIES

Personnel must avoid taking any official action that would lead a reasonable person with all the relevant facts to question the individual's impartiality.

Personnel must disqualify themselves and consult with an ethics counselor if they believe they cannot act impartially in any given matter. Regulations promulgated by the Office of Government Ethics prohibit Government personnel from taking official action in a "particular matter involving specific parties" where that action will affect the financial interest of a person with whom the Government decisionmaker has a "covered relationship." "Covered relationship" includes:

- Any organization or person with whom an individual has or is seeking a business or other financial relationship;
- Any member of an individual's household or a relative with whom he or she has a close personal relationship;
- Those with whom one's spouse, parent or dependent child has or is seeking to establish certain employment or business relationships;
- Any person with whom an individual has been employed or had certain business relationships in the past year; or
- Any organization, other than a political party, in which an individual is actively involved.

MISUSE OF GOVERNMENT RESOURCES

Remember that the taxpayers pay for Government resources. Since these resources are funded by DoD appropriations, ethics rules strictly limit the use of government resources to official or authorized purposes only. Common categories of government resources include phones, computers, office supplies, and subordinates' time.

“Government resources” include real and personal property, as well as intangible interests and services. For example, office supplies, mail support, computer and communication resources, vehicles and aircraft, time, support staff, and cell phones all are considered Government resources.

Official Time – DoD personnel are expected to put forth an honest effort in performing their duties; therefore, official time should be used to perform official duties. For example, it is generally inappropriate for personnel who are members of a non-Federal entity (NFE) in their personal capacity to use government resources, including official time, to help prepare for a NFE event.

Subordinate’s Time – DoD personnel should not encourage, direct, coerce, or request a subordinate to use official time to perform non-official activities. For examples see generally the discussion in “Misuse of One’s Position” above – personal time and resources of subordinates are also addressed.

“Authorized purposes” may include **limited** personal use. The test for permitting personal use of a government resource includes a determination that the use:

- Will not adversely affect official duties,
- Will be of reasonable duration and frequency,
- Will ordinarily be used during the individual’s personal time,
- Serves a legitimate public interest,
- Does not adversely affect DoD interests or discredit DoD or the Service, AND
- Creates no significant additional cost to the Government.

Copiers – Copiers are a type of government resource. Any unofficial (personal) use of a copier must meet the criteria listed above for limited personal use in order to be an “authorized” purpose or use. There is no categorical maximum number of pages or copies that an individual may make, but use should be appropriately limited (infrequent) and reasonable (number of pages copied). Providing your own paper does not permit excessive use of government copiers and does not change the application of the limited personal use criteria. [See JER Section 2-301]

Computer Equipment – Use of such systems is not anonymous. Each time an individual uses the Internet, the employee’s name, computer address, and location searched are recorded by the Government. DoD personnel may use their computers during personal time (e.g., lunch break) as long as using it: (1) does not overburden the system or cost the Government additional expense, and (2) does not discredit the Air Force. [AFMAN 33-152; JER Section 2-301; 5 CFR 2635.704; 5 CFR 2635.101(b)]

Printers – The same guidelines for copier and computer use apply to printing equipment. Like copiers, personal use of printers is limited to authorized personal use (as discussed above), even where the user provides the paper. [See JER Section 2-301]

Office Phone – Personnel may use toll-free numbers or place collect calls on office phones. DoD personnel may also use office phones for personal calls when the general criteria for “authorized purposes” mentioned above are met **AND** the call:

- Does not overburden the communication system.
- Is of a reasonable duration and frequency, and, whenever possible, is made after duty hours or during one's lunch break.
- Is local and does not incur additional cost to the Government or is charged to the individual's credit or calling card (in the case of long distance calls).

Cell Phone – Government issued cell phones are to be used only for official and authorized calls, such as short and infrequent personal calls and emergency calls. (See AFMAN 33-152, *User Responsibilities and Guidance for Information Systems*, for Air Force guidance on cell phone use.)

Other Government Communications and Information Systems – The Air Force has promulgated extensive guidance on authorized and unauthorized uses of various Government systems in AFMAN 33-152 – including electronic messaging, cell phones, office phones, Internet access (for example, subscription services).

GIFTS TO INDIVIDUALS

As a general rule personnel may not solicit or accept a gift given either (a) because of their official position or (b) by a prohibited source.

- **A “gift”** is anything of monetary value. The definition of “gift” excludes certain items such as modest food and refreshments, prizes open to the public, items with little intrinsic value, and commercial discounts open to the public or all Government civilian or military personnel.
- **A “prohibited source”** is any person who is or any organization a majority of whose members seek official action by DoD, do or seek to do business with the DoD, are regulated by the DoD, or have interests that are substantially affected by the performance of employee’s official duties.

Exceptions to the Gift Rule:

There are a limited number of exceptions to the general prohibition that allow acceptance of an otherwise prohibited gift. Personnel who are offered a gift by an outside source are advised to consult with an ethics counselor regarding the applicability of an exception. Even where acceptance of a gift may be permissible, appearances and prudence may dictate against doing so.

- **\$20.00/\$50.00 Exception** – Government personnel may accept an otherwise prohibited gift if the fair market value of the gift for that occasion is \$20.00 or less per source AND the aggregate value of all gifts received from a single source during a calendar year does not exceed \$50.00. In applying this rule, gifts to one’s spouse must be included in value determinations. **This exception does not apply to gifts from registered lobbyists to those who have signed the Ethics Pledge.**
- **Widely Attended Gathering (WAG) Exception** – Senior leaders may be invited as guests at an event where the cost of attendance far exceeds the gift limits. Free attendance (not travel) may be accepted ***in one’s personal capacity*** from the sponsor of a WAG, provided that the employee’s supervisor determines that attendance is in the AF’s interest. When free attendance is provided by someone other than the sponsor of a WAG, the gift may be accepted if the market value is \$350 or less and more than 100 persons are expected to attend, and the employee’s supervisor determines that attendance is in the AF’s interest. **This exception does not apply to gifts from registered lobbyists to those who have signed the Ethics Pledge**, so staff personnel should be sure to inquire fully into who is actually paying for an event. Questions about whether a senior leader may attend an event should be referred to the SAF/GC Ethics Office for a determination. Also, travel to and from a WAG under this exception must be at personal expense (not official orders or travel) unless other official duties require presence in the area of the event since attendance is in a *personal capacity*.

Gifts Between Employees (Gifts from Individuals)

The general rule is that supervisors may not accept gifts from subordinates or Federal personnel who receive less pay. Except for very limited circumstances noted below, donations for a gift to a superior cannot be solicited.

There are some exceptions to the general prohibition on gifts between subordinates and superiors:

- If there is a personal relationship between two employees that would justify the gift and there is no subordinate-superior relationship;
- The gift is a personal hospitality, provided at a residence and of a type and value customarily provided to personal friends;
- The gift is given in connection with the receipt of personal hospitality, of a type and value customarily given on such occasions;
- The gift has an aggregate market value of \$10.00 or less per occasion and the occasion is such that gifts are normally exchanged. (e.g. the holidays);
- The gift is in recognition of a special and infrequently occurring occasion of personal significance. (e.g. marriage); OR
- The gift is given on an occasion that terminates a superior-subordinate relationship. (e.g. retirement, transfer)

Bona Fide Personal Relationship Exception: An employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.

Gifts from Groups that Include a Subordinate: Group gifts on special infrequent occasions are limited to a fair market value of \$300.00 per donating group regardless of the number of DoD employees contributing to a gift or gifts when that group includes at least one subordinate to the recipient.

Soliciting Donations for a Gift: Government employees may only solicit other government employees for **voluntary** contributions, and may ask for no more than \$10.00 donations. An individual may voluntarily donate more than \$10.00 to a group gift; however, doing so does not alter the \$300.00 cap on the gift from that donating group. Government employees may not solicit contributions from prohibited sources such as DoD contractors and their employees.

Gifts from Foreign Governments: A gift offered by a foreign government may be accepted and retained by the individual recipient if the retail value in the United States at the time of acceptance is **\$375.00** or less. (This figure changes, so consult an ethics counselor about the current threshold or appraising the gift.) This exception does not apply to a personal gift from a foreign official which is given in his or her personal capacity (still subject to the \$20.00/\$50.00 rule). Recipients should document the receipt of such gifts (date, location, source, value). [See the attached "decision logic charts" on gift acceptance or disposition.]

Gifts in Excess of Exceptions: Where a gift is offered that clearly exceeds the limitations on acceptance, recipients may either: (1) politely decline the gift indicating that while generous it exceeds acceptance limits; (2) offer to pay the giver the fair market value of the gift; or (3) accept the gift on behalf of the Air Force and contact the SAF/GCA Ethics Office (for HAF personnel) or local AF legal office for guidance on appropriate documentation and disposition. [See the attached “decision logic charts” on gift acceptance or disposition.]

Retention of Gifts upon Departure from AF Service: Some senior leaders who receive gifts during their tenure in Government service may want to retain some items after they leave. Any gifts under \$20.00 in value may be retained with no further action. For gifts over this amount (or over \$375.00 if from a foreign government) or which otherwise do not meet an exception under the gift rules, the recipient may reimburse the original donor by paying the fair market value for the item(s) and keep the gift. Items to be retained should be identified and documented along with a copy of the check to the donor for reimbursement.

Lobbyist Gift Ban – Political Appointees: Political appointees subject to the Ethics Pledge (which began in 2009) may not accept gifts from registered lobbyists or lobbying organizations for the duration of their Government appointment. A very limited category of items are not considered gifts under the Lobbyist Gift Ban: modest refreshments (e.g. coffee and doughnuts); items of little intrinsic value intended solely for presentation (e.g. greeting card, plaque); or benefits available to all Government employees or all uniformed military personnel. The gift ban covers many situations where other AF personnel not subject to the pledge might be able to accept a gift under one of the exceptions discussed above. The only gift exceptions available to Ethics Pledge signers are: gifts based on personal relationship; discounts and similar benefits; gifts resulting from a spouse’s business or employment; customary gifts/gratuities provided by a prospective employer; gifts to the President or Vice President; gifts authorized by an OGE-approved agency supplemental regulation; and gifts accepted under specific statutory authority. **When in doubt ask the SAF/GCA Ethics Office or your ethics counselor!**

GIFTS TO THE AIR FORCE

The AF benefits from many generous gifts each year. Only particular individuals are authorized to accept gifts on behalf of the AF. The General Counsel has been designated by the Secretary as the AF’s gift acceptance authority and can accept gifts of any value to the AF. Gifts involving real property are accepted by SAF/IEI. A written offer and acceptance are used to document gifts to the AF.

Gifts to the AF or AF organizations cannot be solicited. Congress appropriates funds for AF operations, and asking for additional funds or property improperly augments that amount and has legal implications. This limitation does not mean we cannot discuss and clarify a possible gift with someone who has first expressed a desire (albeit semi-specific) to provide support of some kind. However, inappropriate solicitation can block or severely hinder the AF’s ability to accept an otherwise bona fide gift.

POST-GOVERNMENT EMPLOYMENT

Criminal statutes impact activities related to seeking employment once an individual's Government service ends. Personnel should get an ethics briefing before they begin seeking post-Government employment. The SAF/GCA Ethics Office (for HAF personnel) or the local AF legal office should be consulted for information about what qualifies as "officially seeking employment" from an organization, triggering the disqualification letter requirement. If necessary, once an individual begins seeking post-government employment, a disqualification letter should be completed and delivered to the appropriate supervisor, with a copy to the supporting Ethics Office, so as to avoid conflicts of interest. Remember: Final OGE 278 Financial Disclosure forms must be filed within 30 days after you leave Government service.

POLITICAL ACTIVITIES

When analyzing questions involving political activities by government personnel, it is good to start with an understanding that certain personnel are subject to "further restriction" than the general category of employees. This group includes career members of the Senior Executive Service (SES), Administrative Law Judges, members of Contracts Appeals Boards, and Administrative Appeals Judges.

Civilian Federal employees (except those subject to "further restriction") MAY:

- Be candidates for public office in nonpartisan elections.
- Register and vote as they choose.
- Assist in voter registration drives, drive voters to a polling place, and act as a recorder, watcher, or challenger at a polling place.
- Serve as an election judge or clerk.
- Display a political sign, sticker, or button – but not while on duty, in a Government office, or using a Government vehicle.
- Contribute money to political organizations in a personal capacity.
- Attend political fundraising functions in a personal capacity.
- Distribute campaign literature.

All Civilian Federal employees SHOULD AVOID:

- Using their official authority to influence or interfere with an election.
- Soliciting, accepting or receiving political contributions unless both individuals are members of the same Federal labor organization or employee organization, and the one solicited is not a subordinate.
- Knowingly soliciting or discouraging the political activity of any person who has business before the agency.
- Engaging in political activity while on duty, **even if conducted on a personal device.**
- Engaging in political activity in any government office, **even if conducted on a personal device.**

- Engaging in political activity while wearing an official uniform.
- Engaging in political activity while using a government vehicle.
- Becoming a candidate for public office in partisan elections.
- Wearing political buttons while on duty.
- Hosting or sponsoring a political fundraiser (although they may attend such events, and the employee's spouse may host the fundraiser).

Employees subject to "further restriction" MAY NOT:

- Volunteer for a partisan political campaign.
- Make campaign speeches.
- Distribute campaign literature.
- Organize a political rally, meeting or fundraiser.
- Hold a political party office, a political club office or be a party delegate.
- Participate in partisan voter registration drives.
- Circulate nominating petitions.

Members of the Armed Forces are encouraged to carry out the obligations of a citizen but are subject to certain restrictions on their political activities.

Military personnel MAY:

- Register, vote, and express their opinions on political candidates and issues (but **not** as a representative of the Armed Forces).
- Make monetary contributions to a political organization.
- Attend partisan and non-partisan political meetings or rallies as a spectator **but not in uniform**.
- Promote and encourage other military members to exercise their voting rights, if such action does not attempt to influence or interfere with the outcome of an election.
- Join a political club and attend its meetings **but not in uniform**.
- Serve as an election official, if such service is not as a representative of a partisan political party, does not interfere with military duties, is performed while out of uniform, and has the prior approval of the Secretary of the Air Force.
- Sign a petition for specific legislative action or a petition to place a candidate's name on an official election ballot, but not as a representative of the Armed Forces.
- Write a letter to the editor of a newspaper expressing his personal views on public issues or political candidates, if such action is not part of an organized letter-writing campaign.
- Display a political sticker on a private vehicle.

Military members MAY NOT:

- Use their official authority or influence to interfere with an election, affect the course or outcome of an election, solicit votes for a particular candidate or issue, or solicit political contributions from others.
- Be candidates for or hold a civil office, except as authorized below.
- Participate in partisan political management, campaigns, or conventions.

- Make campaign contributions to another member of the Armed Forces or an employee of the Federal Government
- Solicit or receive a campaign contribution from another member of the Armed Forces, a civilian officer, or an employee of the U.S. for promoting a political objective or cause.
- Allow publication of partisan political articles that solicit votes for or against a partisan political party or candidate that has been signed or written by the Air Force member.
- Serve in any official capacity or be listed as a sponsor of a partisan political club.
- Speak before a partisan political gathering of any kind for promoting a partisan political party, candidate, or cause.
- Participate in any radio, television, or other program or group discussion as an advocate of a partisan political party, candidate or cause.
- Conduct a political opinion survey under the auspices of a partisan political group or distribute partisan political literature.
- Perform clerical or other duties for a partisan political committee during a campaign or on Election Day.
- Solicit or fundraise in Federal offices, facilities, or military reservations for a political cause or candidate.
- March or ride in a partisan political parade.
- Display a large political sign, banner, or poster (as distinguished from a bumper sticker) on a private vehicle.
- Participate in any organized effort to provide voters with transportation to the polls if the effort is organized by or associated with a partisan political party or candidate.
- Sell tickets for, or otherwise actively promote, political dinners and similar fundraising events.
- Attend partisan political events as an official representative of the Armed Forces.

TRAVEL

NOTE: Current HAF budget guidance must be considered/applied to all official travel – it “overlays” historical travel guidance

MISC. GOVERNMENT TRAVEL PRINCIPLES

“Each Service shall authorize only travel necessary to accomplish the mission of the Government effectively and economically, and will establish internal controls to ensure that only travel essential to the needs of the Government is authorized.”

Temporary duty travel (TDY) is to be conducted prudently and to meet mission requirements only.

The AF should follow these guidelines:

- Keep travel to the minimum necessary to carry out the command or unit mission.
- A member must exercise the same care and regard for incurring expenses to be paid by the Government as would a prudent person traveling at personal expense.
- Do not permit travel when a letter, telephone call, e-mail, or other less expensive means will do.
- Keep the number of people who must travel to a minimum: for example, never allow two or more persons to travel when one person can do the job.
- Before authorizing travel, determine if personnel near the temporary duty station can do the job.
- When practical, combine missions to accomplish multiple taskings in a single trip.
- Keep personal participation at conferences, meetings, and seminars to a minimum when travel is at government expense (including non-appropriated funds) and does not relate directly to the accomplishment of the mission.
- Receipt of an invitation to an event alone does not justify officially-funded travel – all pertinent factors surrounding the proposed travel must be evaluated when determining whether travel is appropriate.

The Orders Approving Official (AO) determines the need for an official travel and a travel order, requests its publication, justifies special authorizations, and approves claims for reimbursement. NOTE: With few exceptions, the AO cannot be the traveler.

PLANNING AND PAYING FOR OFFICIAL TRAVEL

DoD policy (see the Joint Travel Regulations and Joint Federal Travel Regulations) requires that, when available, (contracted) Commercial Travel Office/Travel Management Center (CTO/TMC) services will be used to arrange official travel, including transportation and rental cars. Failure to follow this requirement can result in

disciplinary action and, in some cases, a refusal to reimburse for the travel (for example, where the traveler does not follow the regulations for non-U.S.-certificated carriers).

Travel by DoD personnel should be by the most expeditious practicable transportation mode that meets mission requirements. The AO is responsible for the transportation mode selected. Personnel are not required to travel via a particular transportation mode if there is a valid reason for excluding that mode (e.g., travel by air (ocean ferry or Chunnel) if travel by that mode is precluded for medical reasons.) Where a travel mode that may otherwise appear to be to the Government's advantage is not used, the travel authorization or order should include a statement of the reason for not using that particular transportation mode. This statement will justify travel reimbursement based on the transportation mode authorized on the travel authorization/order and actually used instead of the constructed cost of the mode which otherwise appears to be to the Government's advantage.

"City-Pairs" – Use of discount airfares, offered by contract air carriers between certain cities (city-pairs), is to the Government's advantage. These airfares should be used for official air travel between those cities. These fares are not available to Government contractors.

Rental Vehicle Selection – It is mandatory that travelers obtain rental vehicles through the CTO/TMC, when available. NOTE: It is not mandatory to use a CTO/TMC when renting an airplane or bus. In selecting a vehicle size or style, travelers and AOs must keep in mind the policy that "the lowest cost rental service that meets the mission requirements must be selected when selecting commercially rented vehicles."

Government Travel Credit Card (GTCC) – It is the general policy of DoD that all personnel use their GTCC to pay for all costs incidental to official business travel, including travel advances, lodging, transportation, rental cars, meals and other incidental expenses, unless otherwise specified. The fact that the traveler may prefer to use a personal credit card (in order to obtain favorable incentive benefits) is irrelevant to this requirement.

Example: A traveler who has a personal credit card that would generate more desirable travel benefits in conjunction with an official trip may not use that personal card in lieu of the GTCC.

PREMIUM CLASS TRAVEL

Unless otherwise approved, commercial airline travel by DoD personnel should be via economy or coach class.

When approval for upgraded travel is requested, various details regarding the itinerary and costs over the legs of travel (both coach and premium class) are required since there is a reporting requirement (to DoD and beyond) for all premium class travel – and it does get scrutinized. Use of premium class travel requires justification (bases for approval may be found in the Joint Federal Travel Regulations [military] and the Joint

Travel Regulations [civilian]) and advance approval. In the HAF, SAF/AA is the business class approval authority for civilian personnel and AF/CV is the business class approval authority for military personnel.

SPOUSE TRAVEL

NOTE: Current HAF budget guidance must be considered/applied to all official spouse travel – it “overlays” historical travel guidance.

On 4 December 2014 the AF guidance on official (“nonreimbursed”) spouse travel changed, adopting recent changes to DoD guidance. The general rule did not change - that spouses of DoD personnel are generally not allowed to travel with them on official travel at Government expense. See AFI 24-101 (*Passenger Movement*), paragraph 2.8. The revised AF guidance adopted three exceptions to the general rule which may loosen the restriction on official spouse travel. The revisions to DoD and AF guidance did not go so far as to adopt a “command team” approach whereby the spouse of a senior leader would be automatically approved to accompany the senior leader on any official travel. Under DoD policy, invitational travel authorizations for spouses and even “unofficial travel” by spouses should be “the rare exception, not the rule.” We expect implementation will result in further refinement of AF policy.

Where family member travel is authorized participation ordinarily is limited to spouses and is representational in nature. The fact that an official’s spouse may be invited to an event is not alone basis for approval of officially funded travel. Also, there can be no “blanket” approvals for spouse travel; each case must be assessed and approved on its own facts – and the criteria for approval must be met for each stop on the trip or that stop must be considered an unofficial stop.

Individuals seeking approval of official spouse travel must first certify, in advance, that in his or her judgment the spouse’s presence would further the interest of DoD, the AF or the command. The travel approval authority must then determine whether that travel meets one of the three exceptions and is of appropriate benefit to the AF. Those exceptions are when the spouse travels to:

- “Attend a function in which the DoD sponsor is participating in his or her official capacity and in which the spouse is to address those assembled or otherwise play an active role or visible part;”
- Attend a function (with or without the DoD Sponsor) attended by spouses of community leaders, government officials, foreign dignitaries, or foreign military officers with who the Sponsor is meeting in his or her official capacity; OR
- Attend a function (with or without the DoD Sponsor) where a substantial portion of those present are military families or where the focus is on matters of particular concern to military families.”

DoD guidance is couched in terms of travel on MilAir. It also cautions regarding the need for “good judgment in application” and that DoD Sponsors “should be mindful of

the need to withstand public scrutiny and avoid the appearance that nonreimbursable travel on government aircraft is being abused” (the “*Washington Post* test”).

The authors of DoD guidance advise they only attempted to rephrase prior guidance, not promulgate new guidance. As noted, we believe a more liberal application will result. Nevertheless, it may be helpful to remember that the prior standard allowed approval of spouse travel by proper authority in the following situations:

- Official Participation – The spouse may be approved for officially funded travel where he or she actually participates in an official capacity in an unquestionably official function. This means the spouse will “actually confer with DoD officials on official DoD matters in a manner directly benefitting the AF through an exchange of substantive information, advice or other guidance.”
- Public Relations or Diplomatic Benefit – The spouse may be approved for officially funded travel where he or she will be participating in a representational role which is of public relations or diplomatic benefit **to the nation**. The benefit must transcend or be beyond AF or DoD interests. Most often this exception is used when foreign dignitaries and their spouses are involved in the event.

Unofficial Travel – The rules on unofficial travel remain unchanged. That is where none of the exceptions justifying official travel are met for an entire trip or for one or more legs of a trip otherwise involving official spouse travel, the traveler may seek approval of “unofficial travel” by his or her spouse to accompany him or her when traveling on DoD official business on military aircraft for that portion of the trip. This mode requires the traveler to repay the U.S. the equivalent of a “full coach fare” for the travel over the same route on the same time frame (payment should be made via a check to the U.S. Treasury filed with one’s travel voucher.) The amount to be reimbursed can be established by obtaining a printed copy of a commercial air fare available to the public via the Internet for the same route (or as similar as reasonably possible given the direct routing of MilAir) route at the same time as the anticipated official travel. By traveling in this mode, the spouse becomes a member of the official party.

Spouse travel must be supported with invitational travel authorizations that ordinarily authorize reimbursement of only transportation costs. In very limited situations, the Chief of Staff of the Air Force may approve lodging and/or per diem for the spouse.

SAF/GCA and AF/A4LE are available to help evaluate possible spouse travel situations.

Tips:

- Get an Internet price quote as soon as possible for coach travel for the anticipated travel legs and save it in case unofficial travel becomes an option. This can save on the amount of reimbursement required.
- Develop a detailed itinerary for the proposed official spouse travel indicating all factors that document the benefit of the travel to the AF and nation: e.g., who will be involved in meetings; subjects to be covered; opportunities for the traveling spouse to address military and civilian audiences (and likely topics); subjects of special interest on which the traveling spouse will focus; and whether a trip report of those inquiries will be prepared and circulated.

OFFICIAL VEHICLES AND DRIVERS

The Pentagon Executive Motor Pool (for the very senior leaders) and the AFDW motor pool may support HAF personnel in limited circumstances for official activities, subject to the availability of resources. SAF/AA serves as the point of contact for the Pentagon Executive Motor Pool support and maintains a list of AF personnel authorized transportation via the Pentagon Executive Motor Pool (which can be reached at (703) 604-0600/0611/0612). The Andrews Protocol and Transportation staffs provide limited transportation support to general officers (and civilian equivalents) and distinguished visitors in the NCR. They can be reached at (240) 612-6458. See AFDW Supplement to AFI 24-301 for guidance on the support available. NOTE: Despite language in the current version of the AFDW Supplement, this service will only transport personnel from and to duty locations, not domiciles. Also, DoD has issued special guidance for government vehicle use in the National Capital Region [NCR] [See DODI 4515.14, *Washington Local Commuting Area*, 28 Jun 13, and Administrative Instruction 109, *Use of Motor Transportation and Scheduled DoD Shuttle Service in the Pentagon Area*, 31 Mar 11]. This guidance, along with Motor Pool rules, governs the availability and use of vehicles from motor pools for official purposes.

Organizations with an assigned official vehicle must ensure personnel are familiar with and comply with the use limitations found in the various guidance documents. A separately assigned vehicle does not mean “carte blanche” to use as desired.

Domicile-To-Duty Transportation – A very small group of the top leaders (SECAF and CSAF) have been approved for government vehicle transportation from their domiciles to the Pentagon. This transportation is closely tracked and reported, including to Congress and to the IRS (for tax purposes). All other personnel are not authorized domicile-to-duty transportation unless specifically approved and appropriately reported.

Transportation to NCR Area Air Terminals – DoD policy is that “Public and commercial transportation to commercial transportation terminals in the Pentagon area is considered adequate for all but emergency situations, security requirements, and other unusual circumstances. If public and commercial transportation is not routinely available, a DoD vehicle may be used on official business involving these commercial terminals.” DoD has changed its prior view that public transportation to and from JB Andrews or Davison Army Airfield (Ft. Belvoir) was not routinely available. The transportation services available from Andrews may be able to provide support from a duty location to Andrews or Ft. Belvoir and back – but not from or to one’s domicile.

Spouse Travel in Government Vehicles – Spouses may accompany DoD personnel in a Government vehicle to and from an official event where the spouse has no official role, provided such travel is on a “space available” basis (i.e., it does not displace or interfere with the travel of other official travelers), the vehicle size is no larger than required for the performance of the member’s official business, and no unofficial stops are made en route.

OFFICIAL TRAVEL TO CEREMONIES AND OTHER EVENTS

NOTE: Current **HAF** budget guidance must be considered/applied to all official travel – it “overlays” historical travel guidance and currently restricts travel by HAF personnel to most of the types of events listed below (both official travel and spouse travel). Also, keep in mind that the receipt of an invitation alone does not justify official travel.

Change of Command Ceremonies

- **A formal change of command ceremony, including those occasioned by a retirement, supports TDY travel only for those who must be present to satisfy change of command protocol requirements (i.e., officiating officer and others with clearly official role.)**
- AF guidance on permissive TDY and leave indicates that mere attendance at a change of command ceremony does not support permissive TDY. This is a good indication that mere attendance also does not support official TDY.
- **Spouse Travel:** The recent change to AFI 24-101 incorporated limited guidance on spouse attendance at change of command ceremonies. The change may allow for approval of official spouse travel depending on the facts of each case, that is whether one of the three exceptions is established. Official spouse travel must be justified by more than greeting the incoming spouse or thanking the outgoing spouse. See IC-1 to AFI 24-101.

Retirement Ceremonies

- **Recent changes in AF guidance allow official TDY travel by military personnel currently on active duty or current Federal civilian employees who will officiate or have some other substantial role at a military retirement ceremony.**
- This change is based on the unique nature of retirement ceremonies which permits the use of appropriated funds to pay for travel to retirement ceremonies where the individual traveler will actively participate in the retirement ceremony (e.g., the presiding official.)
- Recognition of retirement is a long-standing tradition of military service. Each commander makes sure members leave the service with a tangible expression of appreciation for their contribution to the AF. As a courtesy, the retiring member should be offered a formal ceremony in keeping with the customs and traditions of the Service. A general officer conducts the ceremony, if possible. Officials are encouraged to hold the retirement ceremony as part of formal military formations when possible.
 - Note that AFI 36-3203 (*Service Retirements*) suggests that retirement ceremonies be held in connection with an official function (i.e., retreat or parade, official conference or meeting, change of command, or another official activity). Doing so will optimize those who can attend on official travel (the official function being the justification for official travel.)
- Merely attending a retirement ceremony does not support official travel or permissive TDY for AF personnel.
- **Spouse Travel:** The recent change to AFI 24-101 incorporated limited guidance on spouse attendance at retirement ceremonies. The change may allow for approval of official spouse travel depending on the facts of each case, that is

whether one of the three exceptions is established. Limits on the number of spouses that may be authorized to attend are established by IC-1 to AFI 24-101.

Promotion Ceremonies

- **There is no equivalent guidance for travel solely to officiate at a promotion ceremony like there is for retirement ceremonies. The distinction is based on the fact that retirement ceremonies occur once in a career, while promotion ceremonies normally take place on more than one occasion in the career of a member or employee.**
- Merely attending a promotion ceremony does not support official travel or permissive TDY for AF personnel.
- **Spouse Travel:** The recent change to AFI 24-101 incorporated limited guidance on spouse attendance at promotion ceremonies. The change may allow for approval of official spouse travel depending on the facts of each case, that is whether one of the three exceptions is established. Limits on the number of spouses that may be authorized to attend are established by IC-1 to AFI 24-101.

Professional Military Education Graduations

- Professional Military Education (PME) is an important part of a military member's career and the ceremony associated with PME graduation is accordingly a significant event. **It is considered part of a Commander's, First Sergeant's, and Command CMSgt's duty to represent the squadron or the Command at PME Graduations; thus, funded TDYs are authorized for them or their designated representative.**
- An official speaker at a PME graduation ceremony would also qualify for TDY travel if the appropriate AO determines the speaker participation in the ceremony meets normal TDY criteria.
- The immediate supervisor of a graduate, or his/her designated representative, may attend the subordinate's graduation in a PTDY status (i.e., not at Government expense) for up to 5 days.
- Neither official TDY nor PTDY is authorized for co-workers, friends or family members to attend graduation ceremonies.

Funerals

- Attendance at a funeral at Government expense must be approved on a case-by-case basis, after examining the facts and circumstances regarding the need for travel. Only when there is a clear official purpose to be served by the member's attendance may officially-funded TDY orders be authorized.
- The agency head or delegee, in his or her discretion may consider that an agency representative at a funeral would serve the governmental purposes of sustaining employee morale and reinforcing to the agency's employees and others the significance of the deceased to the agency. Command authority to send a representative from the decedent's unit to a funeral (in addition to the designated escort for the deceased) is found in AFI 34-242 (*Mortuary Affairs*). Sending unit or agency representatives should be appropriately limited. Therefore, commanders and supervisors should contact other involved

headquarters to coordinate the dispatch of unit representatives. For example, only SECAF and CSAF can designate a HAF or AF representative.

- Where interest in attendance runs high, AFI 36-3003 (*Military Leave Program*) authorizes commanders to approve up to five days of permissive temporary duty to allow funeral attendance by personnel from the unit to which the deceased was currently assigned or temporarily attached.
- Ordinary leave, emergency leave, and/or a military pass may be appropriate for attendance at funerals for DoD personnel, at the commander's/supervisor's discretion, depending upon the facts.
- **Spouse Travel:** The recent change to AFI 24-101 incorporated limited guidance on spouse attendance at funerals and dignified transfer ceremonies. The change may allow for approval of official spouse travel depending on the facts of each case, that is whether one of the three exceptions is established. Limits on the number of spouses that may be authorized to attend are established by IC-1 to AFI 24-101.

Social Events

- Air Force officials normally attend social and entertainment events in a personal capacity and at their own expense. With very rare exception, social events do not support official duty or official travel. There may be occasions when officials are authorized to present an official speech or otherwise make an official appearance at a social event, but this is clearly not the norm.
- **For purposes of a gift exception, do not confuse a widely-attended gathering with official attendance at a social event; they are two different situations.**
 - The widely-attended gathering exception permits an Air Force official, and spouse, to accept free attendance at certain social gatherings as the guest of another person or entity. This provision, however, is based on participation in a *personal* capacity – a key point. In addition, the widely-attended gathering exception does not permit acceptance of travel expenses or officially-funded travel to attend.
 - When an Air Force official participates in an official capacity at a social event that would otherwise be considered a widely attended gathering (i.e., to give a speech or make an official presentation), free attendance is incidental to carrying out his or her duties and thus does not constitute a gift. Official travel is authorized in these cases.

Government Award Ceremonies – Military members and AF civilians selected for the awards listed in AFI 36-2805 (*Special Trophies and Awards*) may be authorized to attend the related award ceremonies at government expense. When a unit is selected to receive an award, the unit commander may attend the presentation ceremony at government expense to accept the award on behalf of the unit. Both the JTR and AFI 24-101 include provisions for spouse or family member travel to certain award ceremonies.

Non-DoD Award Winners – When individuals who are not employed by DoD are selected to receive Air Force awards, invitational travel may be authorized for their

attendance at the presentation ceremony. Refer to the JTR, Appendix E, for instructions and limitations on travel reimbursements for non-DoD civilians.

Non-Government Award Ceremonies – Members may be authorized Government-funded travel and transportation to accept a non-Federally sponsored award if the award is closely related to the member’s official duties and the functions and activities of the member’s Service. Both the JTR and AFI 24-101 include provisions for spouse or family member travel to certain award ceremonies.

When attendance at a meeting or convention has been authorized for another official reason, no further authorization is required for the traveler to accept an award.

FREQUENT FLYER MILES AND PROMOTIONAL ITEMS

Frequent flyer miles, airline and hotel promotions, rewards, etc. earned as a result of Government-funded travel generally belong to the traveler if: (1) The same promotional items are available to the public under the same terms, and; (2) the benefits can be accepted at no additional cost to the Government.

However, the Government still owns the benefits in the following situation (also known as the “the involuntary bump rule”): A traveler who is involuntarily bumped from a seat is considered to be “awaiting transportation” for per diem reimbursement. Therefore, the Government is responsible for reimbursing the traveler’s expenses and any additional compensation or benefits from the carrier as a result of the delay belong to the Government.

Personnel may retain benefits resulting from a “voluntary bump” where the change to travel plans will not impact the mission or cost the Government additional expenses. If accepting the “bump” will affect the performance of one’s duties, it (or the benefits resulting from it) may not be accepted.

Personnel may retain on-the-spot upgrades when such upgrades are available to the public—or at least to a class of all Federal Government employees or all military members (regardless of rank or grade). Items that may be retained by the traveler (subject to notes herein) include:

- Upgrade certificates provided by travel companies as a promotional offer. Government travelers may also use their own (i.e., personal) frequent flyer miles to upgrade to business or first class. However, even when an upgrade is based on personal miles, military personnel may not wear their military uniform in first class—this rule helps to avoid the public perception of the misuse of government travel resources.
- “Gold Card” or similar memberships offered by certain airlines when earned by accumulating a large number of travel miles throughout the year.
- Prizes from contests offered by travel companies and that are open to the general public, so that no one must perform the official travel to win. However, if the prize is only given to people using travel accommodations that are paid by the Government, the prize belongs to the Government.

GIFTS OF TRAVEL FROM NON-FEDERAL ENTITIES

Generally, official travel must be paid for with appropriated funds. However, under certain circumstances, the Air Force may be reimbursed for some or all of an official traveler's expenses by a non-Federal source. **Current HAF budget guidance must be considered/applied to situations involving travel reimbursement from a non-Federal source – again any restrictions imposed by this guidance “overlay” normal travel rules.**

Payment for official travel may be accepted if all of the following prerequisites are met:

- If the travel is performed for attendance at a meeting, conference, seminar, or similar events, related to official duties. Acceptance is not permitted for events where the primary purpose is marketing the non-Federal source's products or events required to carry out an agency's regulatory functions (e.g., inspections, site visits, audits, investigations, etc.).
- The travel is primarily for the benefit of the Government, not the organization paying for it.
- The travel approving authority (with the advice of an ethics counselor) determines that accepting travel reimbursement will not create a conflict of interest, or the appearance of a conflict of interest, between the “gift” of travel reimbursement and the employee's reason for traveling and official duties. This determination may not be made by the traveler.

Those seeking reimbursement of official travel expenses by a non-Federal sources must adhere to the following rules:

- Acceptance of the travel reimbursement must be approved in advance by the travel approving authority, with the advice of the servicing Ethics Counselor.
- The traveler may not accept cash or check for reimbursement of expenses; instead, travel benefits must be provided “in-kind” (e.g., a prepaid ticket) or paid by check made payable to the Air Force (not to the employee).
- Employees may not claim any government reimbursement on their travel voucher for expenses paid by the non-Federal source.
- **When the offer is to fund only part of the official travel, official travel funds must be approved for the expenses not covered prior to accepting the offer (note: the additional official travel expenses may not be covered with personal funds).**
- If travel reimbursement exceeds \$250, the traveler must submit a report (SF 326, *Semiannual Report of Payments Accepted from a Non-Federal Source*) to his/her Ethics Counselor upon completion of the travel.
- If the traveler files a financial disclosure report (OGE 278 [public form] or OGE 450 [confidential form]), this type of reimbursement need not be recorded in that report since it is a gift to the AF and not the individual.

FISCAL AND FINANCIAL MATTERS

OFFICIAL REPRESENTATION FUNDS (ORF)

ORF are a limited availability source of official funds made available through SECAF for expenses appropriate to “upholding the standing and prestige of the U.S. and DoD by extending official courtesies to certain officials and dignitaries of the U.S. and foreign countries.” In the Headquarters Air Force (HAF), SECAF, USECAF, CSAF and AF/CV have access to ORF. Other senior leaders may be granted limited access to ORF only with advance permission in special cases (e.g., when hosting on behalf or in place of SECAF or CSAF). SAF/AA manages and approves the use of ORF in the HAF. The use of ORF for officially hosted functions in connection with official events should be modest, and comply with socially acceptable mores of American society while jointly serving the policy objectives of the U.S. and the taxpayer. Other ORF expenditures, such as gifts, mementos and non-perishable items purchased for approved events, may be made within specified monetary limits.

Hosting in the Pentagon – SECAF (through SAF/AA) has approved limited use of ORF by the political appointees in SAF/AQ, SAF/FM, SAF/GC, SAF/IE and SAF/MR to host, in the Pentagon, individuals or small groups of their non-DoD counterparts or others whose rank or position justify official entertainment. This authority may not be delegated below these specific political appointees and is subject to specific limitations, including a dollar ceiling. Contact SAF/AA or SAF/GCA for details.

GIFTS, MEMENTOS AND SIMILAR ITEMS

Other than ORF (which is only available in very limited circumstances), official funds are generally not available to pay for items that would be classified as gifts, mementos, souvenirs or tokens of appreciation, for either DoD or non-DoD personnel. Similarly, official funds may not be used to purchase or mail holiday greeting cards. (See AFI 34-201, Table 12.1 for those limited occasions when special morale and welfare funds might be used for a memento).

COINS

As a general rule the purchase of coins and their use (who can receive coins purchased with a particular type of funds) is governed by the type of funds available for their purchase – keep the funding source in mind when determining whether a coin is authorized. In limited circumstances, Air Force activities may use appropriated (O&M) funds to purchase organizational coins for distribution as awards (an award for mission accomplishment must be established by an existing AFI 36-series instruction). Such coins may also be presented to members who reenlist. Be sure an appropriate Air Force instruction or supplement can be cited before coins are purchased. AF guidance also prohibits presentation of coins purchased with appropriated funds to non-appropriated fund personnel or non-DoD personnel, including DoD contractors.

Separately, a very limited number of senior officials may be authorized to purchase coins with ORF for presentation to non-DoD individuals (e.g., officials and dignitaries) who meet the criteria of AFI 65-603 (these coins are not for presentation to active, Guard, Reserve or DoD civilian personnel). ORF-funded coins are also not to be authorized to be presented to contractors and unaffiliated individuals or non-Federal government agencies (say as a proposed means of creating goodwill).

Coins may not be purchased with official funds for use as gifts, mementos, souvenirs, or tokens of appreciation - an exception would be the limited use of ORF-funded coins as gifts or mementoes IAW AFI 65-603.

Care must be taken in designing, procuring and monitoring the use of coins purchased with official funds. AF guidance places some specific limits on wording that can be included on coins purchased with official funds.

Care must also be taken to ensure that coins purchased with different sources of funds are segregated for accountability purposes and not used/distributed interchangeably. A record should be kept of the particulars of coin presentations, especially ORF-funded coins.

TIP: If a senior official purchases coins with his/her own funds (the "OWN account"), then he/she can generally give them to whomever he/she chooses.

MISC. AREAS OF INTEREST

TIME AND ATTENDANCE

Political appointees who are confirmed by the Senate (PAS) operate under a different time and attendance system than other DoD civilian personnel in that they do not “earn” a set amount of leave which they are authorized to take. Their absences should be coordinated with senior AF leadership and coverage of the office/position should be well-coordinated in advance.

Non-PAS political employees (whether SES or Schedule C employees) must follow the same time and attendance rules as career civilian employees, including requesting leave in advance and taking it only if approved. They must be at work, on the job at an approved location (an off-site meeting for instance) or on leave. Unless approved for alternate schedules, these employees work eight (8) hour days. Telecommuting can be recorded as official time only when specifically authorized in advance, for example pursuant to a telework agreement. Being “on the blackberry” or on the phone during the commute to and from the office does not constitute official time “on the clock” for time and attendance purposes. SES employees, career or non-career, cannot earn overtime pay, compensatory time or credit hours.

INCLEMENT WEATHER CLOSURE RULES

The Office of Personnel Management (OPM) publishes information regarding dismissal and closure procedures during inclement weather for offices within the National Capital Region (NCR). See generally “Washington, DC Area Dismissal or Closure Procedures” at OPM’s website <http://www.opm.gov/oca/compmemo/dismissal.pdf>.

Hazardous weather, natural disasters or other emergency situations such as disruption of power and/or water systems or interruption of public transportation may require agencies to close or prevent significant numbers of Federal employees in the NCR from reporting to work. When such emergencies occur, OPM is the lead agency for decisions concerning the operating status of the Federal government inside the beltway. OPM coordinates any decisions to dismiss Federal employees from work with officials in local and Federal agencies, transportation authorities, and the media so as to minimize disruption of the highway and transit systems, reduce traffic congestion, and ensure that affected employees are treated as equitably as possible.

When hazardous conditions exist, OPM uses the media to disseminate information concerning the Federal Government’s operating status. Information is also posted on OPM’s website at www.opm.gov. The meaning of “open” or “closed” is obvious. Federal offices may, however, also operate under an “unscheduled leave,” “delayed arrival,” or “early dismissal” policy. “Unscheduled leave” means non-emergency employees may request unscheduled annual leave, leave without pay and/or the use of previously earned compensatory time, time off awards, or earned credit hours – which supervisors are encouraged to approve where possible. Under “delayed arrival” or

“early dismissal,” an absence is authorized for a certain number of hours after the beginning or before the end of the employee’s regularly scheduled workday.

Employees who telework are required to continue to work during emergency situations when the agency is closed (on both their normal telework days and other regularly scheduled workdays) unless the emergency condition affects their alternate worksite. An additional source of local conditions in the NCR can be found at the site maintained by the Metropolitan Washington Council of Governments.

CIVILIAN OVERTIME

NOTE: Current HAF budget guidance must be considered/applied to the granting of overtime and/or compensatory time – it “overlays” historical overtime and/or compensatory time guidance.

Management must ensure employees are not performing work outside their regular shifts unless appropriate authority has ordered/authorized the work to be done at that particular time. This responsibility includes all necessary follow-up to ensure that the supervisor’s instructions regarding overtime work are carried out. Supervisors may not direct, expect, or allow employees to work without compensation. Compensated work outside regular shifts is normally applicable when there are special projects or peak workload periods--it is not normally applicable for doing normal day-to-day routine assignments.

Generally, overtime is each hour of work in excess of 8 hours in a duty day (unless an alternate work schedule has been approved which requires a longer duty day) or in excess of 40 hours in an administrative work week that is officially ordered, management-approved, and performed by an employee. This work is not part of an employee’s regularly scheduled work week and work for which the employee may be compensated.

Overtime and/or compensatory time work should be requested, approved and documented in advance of the time the work is to be performed. The new ATAAPS allows folks to do so electronically or the AF Form 428 (*Request for Overtime, Holiday Premium Pay and Compensatory Time*) may be used. Expenditures in the overtime account of the organization’s human resource budget are reported and scrutinized. Since the need for overtime or compensatory time often arises in response to unplanned emergencies (e.g., in the midst of meeting filing deadlines), appropriate authority may give a verbal approval in advance as long as the extra time is documented the next business day (or on Monday if it occurs over a weekend).

As a general matter, it is preferable to reward the employee with compensatory time rather than overtime. This will lessen the impact on the organization’s civilian pay pool and provide a greater after-tax benefit to the employee. However, the accumulation of compensatory time may place some hardworking administrative employees in jeopardy of using or losing their end-of-year annual leave. Under those circumstances, compensatory time would not adequately address the needs of the employee.

Keep in mind, employees may be entitled to accrue compensatory time while traveling.

Since overtime, and in some cases compensatory time, will impact the civilian pay pool, the organization's Pay Pool Manager should be routinely notified of approved compensatory time or overtime for tracking purposes – there should be an internal process (weekly e-mail) to ensure this notification is made.

A civilian employee/position is either exempt or nonexempt from the Fair Labor Standards Act (FLSA). It is important to know which category subordinate employees fall under because it impacts on whether they are entitled to receive overtime compensation and/or compensatory time off.

- Employees who are nonexempt under the FLSA who are suffered and permitted to work overtime (management is aware and allows though the overtime is not approved in advance) are entitled to overtime compensation. Nonexempt employees under the FLSA must receive overtime pay unless they request compensatory time off in lieu of payment.
- Employees who are FLSA-exempt may work overtime without compensation if they so desire; however, they may not be directed or expected to work overtime without compensation. Employees under the Federal Wage System (WG, WL, & WS) are eligible for compensatory time off at their request. Exempt employees paid at the rate of GS-10 step 10, and below, receive overtime compensation or compensatory time off by choice. Those paid at the rate that exceeds the maximum rate of GS-10 step 10 may receive overtime compensation or compensatory time off; however, management makes the determination to pay overtime or compensatory time off. [See 5 CFR 550.114(c)]

DEALING WITH CONTRACTORS

Government employees need to understand the implications of their relationship with a given contractor and that contractor's employees. Personnel must appreciate the potential risks imposed on all parties if special treatment is allowed. Remember, AF employees are subject to Federal laws and regulations; contractor personnel are the employees of a contractor and are subject to the laws that apply to all individuals, as well as those terms and conditions in their contract. Large numbers of contractor employees now work in the Pentagon and often so closely with DoD personnel it becomes hard to distinguish contractors and DoD civilian employees. Also, when important distinctions are forgotten and contractor employees are treated the same as Government personnel, problems result.

Contractors should be asked to identify their status on email traffic, in meetings they attend, and in telephone conversations. Neglecting to do so can cause issues and concerns, including the advance release of procurement information (which might include details of a procurement before public announcement giving unfair advantage to one or more contractors); the conversion to improper personal services contracts where contractor personnel are managed as though they are government employees; or the unauthorized direction of work or work outside the terms of the contract.

When it comes to time and attendance management, Government supervisors need to keep in mind that the contractor-employee's employer, not Government personnel, set and approve work schedules. Inadvertent grants of time off or inclusion of contractor-employees in off-site or out-of-office events can impact their work schedules, their entitlement to pay, or even generate unintended overtime charges for the AF.

Before tendering gifts to contractor personnel, keep in mind the contractor may have a code of ethics similar to that of DoD which may limit or preclude the acceptance of gifts. DoD personnel may accept a gift from contractors, subject to the \$20.00/\$50.00 limitation discussed above. **Note:** this limit also applies during the holidays.

FUNDRAISING / UNOFFICIAL FUNDS / SALES IN THE WORKPLACE **[Pentagon Focused]**

Definition of Fundraising: "Fundraising" is solicitation (asking for money) or sale of items benefitting an organization/cause OR active participation in the promotion or production of an event in support of such an organization/cause. There is no consolidated guidance on fundraising. Rather, the rules on fundraising are found in a number of separate, overlapping regulations, and those regulations require that DoD personnel observe the following general principles [See 5 CFR § 2635.101]:

- Employees shall not use public office for private gain.
- Employees shall not give preferential treatment to any private organization or individual.
- Employees shall not use Government property for anything other than authorized purposes.

Fundraising in an Official Capacity

- DoD personnel may participate in fundraising in an official capacity if authorized to do so by statute, Executive Order, or agency regulation (e.g., CFC or AF Assistance Fund drives).
- Personnel may generally, in an official capacity, give speeches at fundraising events if (1) the subject matter related to official duties and (2) the forum is appropriate as determined by the head of the DoD Agency.
- Personnel **may not**, in an official capacity, solicit funds or endorse the sponsoring/beneficiary organization (except as allowed in the JER).

Fundraising in a Personal Capacity

- DoD personnel may fundraise in their personal capacities (including active/visible participation in fundraising events, attending, making unofficial speeches)
- While fundraising in a personal capacity, personnel **may not**:
 - Use or allow use of their official titles, positions, or authority of their offices in the fundraising effort;
 - Solicit money or in-kind contributions from subordinates or prohibited sources (DoD contractors) while fundraising; or
 - Solicit or otherwise support fundraising in the Federal workplace.

Partisan Political Parties or Events Involving Fundraising

- **Official Capacity:** DoD personnel may not officially support, endorse, or participate in political fundraising efforts on behalf of candidates or parties.
- **Personal Capacity:** DoD personnel acting in their personal capacities are limited in fundraising on behalf of candidates or parties depending on their status (Service member, career civilian, non-career appointee, career SES) and locality; however, military personnel and DoD civilians may never solicit, accept, or receive funds for partisan political activities.

Evaluating the nature of Fundraising Activity

DoD personnel should use the following five questions as a general guide when evaluating a particular activity that may involve fundraising:

- Is the activity within the definition of “fundraising”? (Soliciting money or other “in kind” donations.)
- For what/whom is the activity being conducted?
- Where will the fundraising activity occur? (Federal workspace or other?)
- Are DoD personnel or DoD organizations being asked to endorse or support a fundraising effort in an **official** capacity?
- Are DoD personnel or DoD organizations being asked to endorse or support a fundraising effort in a **personal** capacity?

What is the status of unofficial funds maintained by Pentagon offices or organizations that are used to help fund unofficial events (organizational picnics, holiday parties, etc.)?

- AFI 34-223, *Private Organizations Program*, defines “small unofficial activities” to include “coffee funds, flower funds, sunshine funds or other small operations” and provides guidance on unofficial activity operations.
- If a proposed fundraiser is for an organization’s “unofficial fund,” AF guidance on management of private organizations (PO) / unofficial funds applies.
- Depending on the fund balance that is maintained, an unofficial fund may have to formally charter as a PO. Paragraph 2.2 of AFI 34-223 notes that “unofficial activities” with current assets that exceed a monthly average of \$1,000.00 over a 3-month period must formally become a PO, discontinue operations, or reduce assets below \$1,000.00.
- Unofficial activities in the Pentagon engaged in fundraising to support organizational events need to be aware of this cap on assets and may need to formally organize as a PO.

Is fundraising in the workplace for unit or organizational events allowed in the Pentagon?

- Workplace solicitation and fundraising is generally prohibited -- very few exceptions are allowed (e.g., formal campaigns like CFC or military relief societies like AF Assistance Fund).
- The Office of Personnel Management (OPM) may also authorize other general fundraising drives in the Federal workplace on a case-by-case basis. [See 5 CFR §950.102]

- A narrow exception allows purely “internal” fundraisers at the workplace. [See AFI 36-3101, *Fundraising Within the Air Force*, Table 1, Rule 3] This exception allows an organization made up of DOD employees or their dependents to raise funds from among their members for the benefit of welfare funds for their own members or dependents (“by our own, from our own, for our own”).
- Pentagon Reservation guidance is found in 32 CFR §234.13. “Commercial or political soliciting, vending of all kinds, displaying or distributing commercial advertising, collecting private debts or soliciting alms (money) upon the Pentagon Reservation is prohibited.” This restriction does not apply to “solicitation conducted by organizations composed of civilian employees of the Department of Defense or members of the uniformed services among their own members for organizational support or for the benefit of welfare funds for their members, after compliance with the requirements of §234.3(d).” NOTE: Section 234.3(d) sets out requirements for obtaining permits from the Building Management Office.
- Limited “internal” fundraising must not compete with the CFC or be held during the CFC drive (normally Sep 1 – Dec 15). [See 5 CFR §950.102; AFI 36-3101, Table 1, Rule 3]

Who is the approval authority for internal fundraising within the Pentagon?

- In common areas:
 - Before unit/organization leadership approves an internal (within the organization) fundraiser that will be conducted in whole or in part in Pentagon common areas, approval for use of the common area must be obtained from Washington Headquarters Services (WHS). WHS operates the Pentagon Reservation on behalf of the Director of Administration and Management. WHS provides facility and security management and serves as the final approval authority for fundraisers at the Pentagon through the Pentagon Building Management Office (PBMO). Permits are required for fundraisers in common areas at the Pentagon. [See 32 CFR §234.3(d)]
 - A permit is **not required** if all of the following factors are met:
 - All the potential attendees work in the Pentagon building;
 - Event occurs exclusively in office spaces (not corridors/public areas);
 - It is not expected that the office spaces will exceed safe capacity; and
 - The event is not likely to spill into the corridor.
- In work areas (not outside in common areas): If the unit or organization desires to hold a fundraiser in work areas (e.g., offices), but **not** in Pentagon common areas (including hallways), then IAW AFI 34-223, the “installation commander” may allow “occasional events for fundraising purposes” by POs or unofficial activities/organizations.
 - The appropriate HAF two-letter can serve as the “installation commander” for purposes of approval of internal organizational fundraising events limited to workplaces in the Pentagon. **This approval authority does not extend to fundraisers for particular NFEs (say a local soup kitchen); it only extends to “by our own, from our own, for our own” type activities.**
 - “Occasional” is defined by AFI as “not more than two per calendar quarter.”

Can the fundraising be conducted on official time?

- Fundraising for internal or unofficial purposes cannot be part of one's official duties.
- Individuals can participate in authorized internal fundraising during their personal time (outside the scope of their official position and duties).
- Avoid official endorsement unofficial fundraising events; however, a neutral informative memo about an informal event can be shared. [See AFI 34-223]

What other limitations on use of official resources impact fundraising in the Pentagon?

- Unofficial groups must furnish their own equipment and supplies [See AFI 34-223]

What are the limits on advertising an unofficial internal fundraising event?

- Advertising for internal fundraisers cannot be posted in common areas of the Pentagon. Posting on the Pentagon Reservation is prohibited, unless as part of activities approved by the Building Management Office. [See 32 CFR §234.14]
- A degree of flexibility has developed regarding the use of official e-mail such that infrequent neutral e-mail notices within the office or organization may be allowed by appropriate supervisory authority.
- If fundraising by an unofficial activity reaches the 3 month/\$1000 threshold and a PO is formed, then the use of government equipment/resources is more limited. AFI 34-223, provides that "The use of Government equipment and systems for other than official purposes is extremely limited. Government systems (daily bulletin boards and or electronic public folders) may be used to provide notice of unofficial off-installation fundraising campaigns and volunteer requests if approved by the Installation Commander. In no event should official e-mail, mail, computers, copiers, BITS, etc., be used to provide notice of these types of activities."

What other issues may arise from internal fundraising efforts in the Pentagon?

- No solicitation of subordinates. 5 CFR §2635.808(c) prohibits soliciting funds or other support from subordinates when fundraising in a personal capacity.
- No soliciting outside the unit/organization. Those conducting internal fundraisers cannot solicit sales to or donations by Pentagon personnel from outside the organization doing the fundraising. [See AFI 34-223]
- Gambling.
 - Internal fundraising on the Pentagon Reservation cannot involve gambling. Gambling in any form is prohibited on the Pentagon Reservation (except for limited situations involving sales by licensed blind operators) IAW 32 CFR §234.16. AFI 34-223, paragraph 10.16.4 specifically prohibits raffles on the Pentagon reservation, and AFI 34-223, paragraph 10.16.4 generally prohibits conducting raffles in the workplace.
 - Gambling involves: 1) consideration (betting something of value, usually money); 2) a game of chance; and 3) a prize. Events must include all three to be considered gambling.
- Food sales. WHS Memo, dated 1 Aug 98, notes that "preparation and selling of food in office spaces poses potential, health, safety and fire risks and is not

permitted on the Pentagon Reservation.” The memo further notes that activities of this type will not be approved; however, the sale of prepared [prepared outside the Pentagon] food, as a fund-raiser, inside the occupants’ space may be permitted, for example, a sale of baked goods.

- Donation vs. Sale. To minimize the appearance of commercial activity or competition with licensed Pentagon vendors, some internal fundraisers do not set prices on items offered but ask for a “donation” instead. Per AFI 34-223, Section 10.15.1.3, POs and unofficial activities cannot solicit for donations on base, which would include in the Pentagon.

SPEAKER REQUESTS / CONFERENCE ATTENDANCE

NOTE: Current HAF budget guidance must be considered / applied to all speaker requests and requests to host or attend a conference.

Speaker Requests may involve different types of approval depending on the circumstances of the presentation. Details are vital to prompt resolution of speaker requests, especially where multiple approvals are required. Reviews may include

- SAF/GCA Ethics Office Speaker Engagement Review (completed in coordination with SAF/PAY). This review is required for all AF personnel wanting to speak to a “non-Federal” group (that is to any group other than a Federal agency).
- SAF/PAY Security and Policy Review of proposed remarks. [See AFI 35-102]
- Conference Attendance Review – Where a speaker will be addressing a conference (whether or not AF or DoD-hosted), the particular speaker’s involvement must be included as part of the overall request to host or attend a conference. In the HAF that approval must be obtained from the SAF/AA or USECAF (except for certain AF/SG events). Route requests through HAF/ES to SAF/AA for action.
 - Exception exists for speakers to events in the local area of the installation of assignment when there is “no cost to the AF” [interpreted and applied by SAF/AA to include situations where only “minor” or “modest” expense involved (e.g., cost of metro fee for local area transportation – in the \$20 range per person)].
- Travel Approval – Where a speaking engagement involves official travel, the speaker must also obtain travel approval from his or her travel approval authority, even if the event sponsor will pay all or a portion of the speaker’s travel expenses. See the comments on pages 21-22 above regarding gifts of travel as speakers may be tendered partial or total travel reimbursement by the hosting organization. **NOTE:** Federal government personnel may not solicit a NFE event sponsor to pay travel expenses.

Conference Attendance and Hosting

- DoD and AF policy guidance on conferences must be complied with, in addition to both budget and “normal” travel guidance. DoD guidance does allow for approval of an “exemption” from the conference approval process (e.g., clear internal agency business or appropriate formal training) – exemption requests and their approval should be documented. For the HAF USECAF and SAF/AA

serve as approval authorities for exemptions. **Contact SAF/AA or SAF/GCA with questions about application of current conference policy.**

- **Hosting Conferences:** The USECAF or SAF/AA serve as approval authority for **conference hosting** by HAF personnel – and organizations AF-wide where total estimated cost to the AF of hosting/attending exceeds delegated levels (\$100,000 to MAJCOMs). IAW DoD guidance, the USECAF delegated limited approval authority to the MAJCOM CCs and three other organizations (AF Research Lab, AF/SG and USAF Academy).
 - AF offices or organizations must submit request to host or co-host a conference to HAF/ES or SAF/AA at least 60 days prior to the event using the prescribed format. The process also allows for “preliminary approval” in some cases.
 - Co-sponsorship of conferences with a NFE requires a formal MOA. The event must retain the character of an AF event. Contact SAF/AA or SAF/GCA ASAP to discuss particulars of a proposed co-sponsorship.
- **Attending Conferences:** The USECAF or SAF/AA also serve as approval authority for **conference attendance** by HAF personnel – and personnel AF-wide where total estimated cost to the AF of attendance exceeds delegated levels (\$100,000 to MAJCOMs). IAW DoD guidance, the USECAF delegated limited approval authority to the MAJCOM CCs and three other organizations (AF Research Lab, AF/SG and USAF Academy).
 - AF personnel must submit conference attendance requests to HAF/ES or SAF/AA at least 60 days prior to the event using the prescribed format.
 - Where possible organizations seeking approval of conference attendance should try to include information on proposed attendance by other AF organizations (so as to facilitate required reporting to DoD and Congress and to minimize the number of packages to be reviewed).
- Where AF funds will not be required to cover the costs to attend a conference (other than man-hour cost which is not counted for conference cost purposes), approval is not required. USECAF has adopted the position that if a NFE offers to pay all travel-related expenses for an AF member to participate in a NFE-hosted conference (as a speaker or an attendee), participation by that individual in the event may be approved by the appropriate travel approval authority and approval through the SECAF conference approval process is not required.
 - IAW HAF budget guidance HAF travel approval authorities must still assess the need and purpose for any "gifted" TDY travel using a "mission critical" standard - since the man-hour cost to the AF remains a factor for travel approval purposes.
 - **NOTE:** SAF/AA has determined that this policy of not requiring approval through the SECAF conference approval process also covers situations where the only cost to the Air Force of participation is minor travel expense (e.g., a local area metro fare - \$20 or less per attendee).
 - This policy does not cover situations where a NFE offers to pay only part of the costs of AF attendance at their event. In those cases approval is required so as to ensure capture of data on AF costs.
 - Send a copy of the ethics determination documenting the gifted travel to SAF/AA.