

ETHICS FLASH THE NEW YEAR'S MIX TAPE

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A MEDLEY OF ETHICS TOPICS

Happy New Year! We hope you enjoyed your holidays and time with family and friends. To start the new year, we wanted to highlight four areas of ethics where we saw recurring issues in 2024. This medley of topics ranges from gifts to financial conflicts of interest. The purpose is to bring these to your attention now so you start the new year on solid ethical footing.

While the topics are a mixed bag of issues, the one thing they have in common is money. With that in mind, we once again partnered with our fiscal law colleagues to bring you this conglomeration of dos and don'ts. Wondering about whether landing fees are permissible and how to avoid being personally responsible for catering fees? Then this is the Flash for you! Always wondered about attending a widely attended gathering (WAG) and using a gift of travel to attend? Then you really need to read this Ethics Flash! For those of you



Public service is a public trust.

that are authorized officials for official representation funds (ORF), ever wonder what to do with "leftovers"? Keep reading to find out! Last, if you're a new employee or a hiring official, there's a provision of the National Defense Authorization Act (NDAA) for Fiscal Year 2022 (FY22) you really need to know about. Before we get into this smorgasbord of topics, our usual

disclaimer: This is an overview of the laws and regulations and is not a substitute for legal advice. It is also not all inclusive. If you have any questions, please contact an ethics official. That being said, let's get into this fusion Ethics Flash, opening with ethics guidance and closing out with important information from our fiscal team.

THE WAG AND OFFICIAL TRAVEL

It's become more and more common to see invitations from non-federal entities (NFEs) stating their event was designed to comply with the federal WAG rules—or even that they deemed their event a WAG. And although that can be helpful to us ethics officials, there's a lot more to it than the NFE using the term "WAG" on its website. **First,**

generally, we may not accept a gift from a prohibited source or offered because of our official position. There are several exclusions or exceptions to the general prohibition. One is the WAG. **Second,** a WAG determination must be made **in writing by an ethics official.** That's us! There are factors the event must meet for it to qualify as a WAG.

Third, your agency designee, which is either your **ethics official or supervisor**, must make a determination that there is an agency interest in your attendance, also **in writing.** That determination must be made in consultation with an ethics official and also meet several factors.

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THE WAG AND OFFICIAL TRAVEL

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So, what does this have to do with official travel? Remember our ah-mazing Ethics Flash on Gifts of Travel? To accept a gift of travel, you must be on official, funded orders. Attendance at a WAG is on your own time without use of government resources. So, you may not go on official

travel solely to attend a WAG. And this is why we are talking about this issue. If you use government resources solely to attend a WAG, you will be required to reimburse the government for all expenses and there may be other consequences.

However, if you are already going on official travel for

another purpose and you receive an invitation of free attendance to attend an event, it may be possible to WAG that event. There is one other key factor — **all** WAGS must be done **in advance** of the event.

A cautionary note: should you receive an invitation to an event requiring travel, and

only the WAG gift exclusion allows acceptance, you cannot then arrange official travel at the Government's expense so you can attend the event.

Last, and before you ask, see our definitions section on page 3 for information about agency designees.

AVOIDING CONFLICTS OF INTEREST IN HIRING

On December 21, 2021, new "enhanced" recusal requirements went into effect for all Department of Defense (DoD) personnel. **Section 1117 of the FY22 NDAA** provides two parts to the recusal requirement. We are going to cover the first part related to new DAF employees. Part II of Section 1117 covers recusal requirements for departing DAF employees and can be found in our PGE Ethics Flash series.

The Requirement: Section 1117 prohibits new personnel

from participating personally and substantially in a particular matter involving specific parties where any of the following organizations is a party or represents a party to the matter: (1) any organization, including a trade organization, for which the DoD officer or employee has served as an employee, officer, director, trustee, or gen-



eral partner in the past two years; and (2) any organization with which the DoD officer or employee is seeking employment.

This is a "former employer" recusal requirement for new employees to the DoD and the services. **Example:** Jack left his job at Company A on January 3, 2025 and started a new job with the DAF on January 6, 2025. For two years, Jack may not participate in particular matters where Company A is, or represents, a party until January 3, 2027.

Impact: While Departments may, of course, continue to

hire from industry, they may no longer specifically hire an individual from a specific company to work on matters involving that company on behalf of the Government.

Inevitably, we get the question, "Is there a waiver?" Section 1117 does allow an agency designee to authorize an employee to participate but there is absolutely no guarantee that an authorization would be appropriate under the circumstances. Hiring officials should consult with ethics officials prior to hiring an individual from industry if the purpose is for them to interact with their industry employer.

THE LANDING FEE—WE DON'T MEAN PLANES!

It happens with disturbing frequency. A civilian employee or military member incurs a personal expense to enhance an official event. The idea is to have that personal expense reimbursed through "landing fees." Yet, when the music stops and the last flight for participants takes off, turns out the landing fees failed to stick to their landing. Instead, the cost of these nice-to-haves landed on the event planner. While we love our mandatory fun and snacks (Geedunk? Lickey-Chewies?), appropriated funds can rarely, if ever, pay for goodies. Yet, snacks seem to be an expectation at DAF events. When

food and drinks are not funded directly by the DAF (e.g., under the Government Employees Training Act), there is likely an employee personally fronting the cost. Like splitting a pizza between friends, except it's thousands of dollars in catering fees split among 200 people you've never met and not all of them paid the landing fee. At the end of the day, the employee is stuck paying the tab...a \$10,000 tab. True story.

If you must have snacks, is

contracting with a caterer the best option? A contract makes the signatory personally liable for payment. Perhaps discuss with the caterer/vendor a consumption based agreement. But, and this is important, **attendees should sign up and pay for snacks in advance.** This allows for a final count to a vendor and you pay for exactly the number that opted in and paid.

Another important point—**landing fees are optional.** A landing fee is separate from a

registration fee, is completely voluntary, and paid from personal funds of the attendees. For those traveling, you cannot claim a landing fee as a separate expense. It comes out of your per diem if you elect to "opt in." Local attendees are not eligible for reimbursement of landing fees.

Leaders — be mindful of what you are asking your team to do if coffee and breakfast is a must-have at your next event. Event organizers, remember any shortfall will be your responsibility — don't get caught holding the snack bag!



ORF AND THE LEFTOVERS DILEMMA

While the title sounds like a 90s grunge band, it's actually a reality we often see with events funded by ORF. Only certain senior officials are eligible to extend ORF courtesies. DAF regulation identifies these individuals as well as a process to request permission to utilize ORF if not one of these individuals. ORF may be used for a number of things but one key aspect is that ORF courtesies are only for the eligible individuals outlined in the regulation. One of the most common utilizations of ORF is to entertain foreign dignitaries at dinner parties, receptions, or business meetings with light refreshments. At the end of an event, and despite best efforts, inevita-

bly, there are "leftovers". And here is the dilemma — current law, GSA regulation, and DAF regulation do not provide clear guidance on how to dispose of "leftovers" purchased with ORF.

Here is what we do know: (1) Unopened bottles of alcohol that cannot be returned must be stored separately for use at other ORF events; (2) unopened shelf stable foods must also be stored separately for use at other ORF events; (3) opened bottles of alcohol



A "doggy bag" for a foreign dignitary?

(such as wine or liquor) may be stored until expiration for future use at ORF events. Upon expiration, said items must be destroyed; and (4) unopened perishable items that cannot be returned should be destroyed if they

cannot be used before their expiration date.

This leaves leftovers or unused prepared food, and, quite frankly, those perishable items that can't be returned. Do you dispose? Take home? Send it home with your guests (imagine bidding a General from the British Air Force farewell with a "doggy bag")? Or, bring it into the office to share with DAF employees? The answer is.....no one knows!

All joking aside, we are working with SAF/AM on a policy memo that will provide disposal guidance. Until then, we recommend you err on the side of caution.

THE AGENCY DESIGNEE CONUNDRUM

If we were to make an album (spoken word...no singing in this office!), we would pick the heading of this section as the name. Navigating the definition of agency designee has been a true learning experience!

In May of 2024, the DoD Standards of Conduct Office published an update to the Joint Ethics Regulation (JER). Among the updates was the definition of agency designee.

The definition: (1) For any military officer in grade O-7 or above **who is in command**, the Chairman of the Joint Chiefs of Staff, the Military Service Chiefs, the Military

Service Vice Chiefs, staff principals in the grade of **O-9 or higher in a service headquarters organization**, any head of a Defense agency or DoD field activity (defined by DoDD 5100.01), and any Presidential appointee requiring Senate confirmation, the Agency Designee is their Ethics Official. (2) For **all other** DoD personnel, the agency designee is a commissioned military officer in the grade of O-4 or above, or a civilian employee in or above the grade of GS-13 or equivalent, who has been designated as a supervisor in the chain of command or supervision of the DoD personnel concerned. This

responsibility may not be further delegated. These agency designees must act in consultation with an ethics official.

It's the second that leads to some confusion and frustration. If you are a SES, yes, you are asking your supervisor permission to attend, even if that supervisor is a presidential appointee. If you are an O-8 not in command, yes, you are going to your supervisor, even if that supervisor is the Chief of Staff or Chief of Space Operations. And if your supervisor is the Secretary? Yes, you are asking the Secretary for permission.

This authority may not be delegated. However, if a member of the agency designee's staff is formally **designated** a supervisor for administrative matters (e.g., leave approval, travel, personnel matters other than discipline, etc.) that person, provided they are in the grade of O-4 or above, or a civilian employee in or above the grade of GS-13 or equivalent, may act as the agency designee.

Super simple, right? No, we get it, but we are here to help you, so when in doubt, reach out!

The Air Force Ethics Office directs the daily activities of the Department of the Air Force ethics program. We serve as legal counsel to the Secretariat, Air, and Space Staff. While we are always happy to assist with any ethics issues, individuals outside of Headquarters should consult with their local ethics counselor.

Should you have any questions, please contact us at SAF.GCA.Ethics.Workflow@us.af.mil