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A Primer: Army Conference Planning

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Introduction

Army organizations annually spend appropriated funds on countless meetings, retreats, seminars, symposiums, and other events that involve attendee travel. The Joint Federal Travel Regulation (JFTR) and the Joint Travel Regulation (JTR) define these activities as “conferences” and regulate their planning and implementation.¹ This primer summarizes these regulations and provides additional legal guidance pertinent to conference planning.²

Can We Hold the Conference?

The first question a commander or other decision-making authority (DMA) must ask is, “Can we do it?” Prior to making the decision to fund a conference, the DMA must determine if the conference meets a particular statutory purpose (e.g., Congress directs that a conference be held); or if it is necessary and incident to the proper execution of the general purpose of the appropriation.³ “An expenditure is permissible if it is reasonably necessary in carrying out an authorized function or will

contribute materially to the effective accomplishment of that function”⁴

Congress annually authorizes the Department of the Army (DA) to obligate and expend funds by passing appropriation acts. The Army receives the majority of its funds from the Department of Defense (DOD) Appropriations Act and the Military Construction Appropriations Act.⁵ These Acts include numerous appropriations that grant DA specific authority to incur obligations and make payments out of the federal Treasury.⁶ Each appropriation contains rules on how and when funds may be expended, for what purposes, and in what amounts.⁷ After Congress passes these acts, the DA, in turn, authorizes its major organizations to incur obligations and make payments from the Treasury.⁸ Major organizations then authorize their subordinate organizations to expend funds.⁹ The initial congressional rules apply to DA expenditures at any organizational level.¹⁰ Additionally, Congress regulates the Army’s ability to expend funds by placing directions and restrictions within stand alone statutes and annual authorization acts.¹¹ The DOD and DA then provide guidance through means of administrative issuances (e.g., memoranda, directives, instructions, and regulations).¹²

1. I JOINT FED. TRAVEL REGS., PU2550C-D (1 Dec. 2002) (conferences), available at <http://www.dtic.mil/perdiem/jftr.pdf> (last visited Dec. 8, 2003) [hereinafter JFTR]. The JFTR contains basic regulations concerning official travel and transportation of members of the active and reserve components of the uniformed services. *Id.* PU1000 (1 Feb. 2003); II JOINT TRAVEL REGS. PC4950C.D (1 Apr. 2002) (conferences), available at <http://www.dtic.mil/perdiem/trvregs.html> (last visited Dec. 11, 2003) [hereinafter JTR]. The JTR applies to Department of Defense (DOD) civilian employees. *Id.* PC1001 (1 Feb. 2003).

2. This article does not address religious retreats. *Army Regulation (AR) 165-1* outlines this area. See U.S. DEP’T OF ARMY, REG. 165-1, CHAPLAIN ACTIVITIES IN THE U.S. ARMY ch. 14 (26 May 2000).

3. See Secretary of the Interior, B-120676, 1954 U.S. Comp. Gen. LEXIS 263, at *4 (Oct. 25, 1954).

4. Internal Revenue Serv., B-226065, 1987 U.S. Comp. Gen. LEXIS 1378, at *9 (Mar. 23, 1987).

5. CONTRACT & FISCAL L. DEP’T, THE JUDGE ADVOCATE GENERAL’S SCHOOL, U.S. ARMY, 149TH CONTRACT ATTORNEY’S COURSE DESKBOOK para. II.F. 2, at 4-3 (July/Aug. 2002) [hereinafter CFDB].

6. See 31 U.S.C. § 1301(a) (2000).

7. *Id.*

8. See *id.* § 1514.

9. *Id.*

10. See *id.* § 1301(a).

11. See CONTRACT & FISCAL L. DEP’T, THE JUDGE ADVOCATE GENERAL’S SCHOOL, U.S. ARMY, 51ST GRADUATE COURSE FISCAL LAW DESKBOOK para. IVB.4.b., at 4-11 (Spring, 2003) [hereinafter 51ST GRADUATE COURSE FISCAL LAW DESKBOOK]. Stand-alone statutes containing fiscal law guidance are normally found in Title 10 or 5 of the United States Code. See generally 5, 10 U.S.C. (2000).

12. See U.S. DEP’T OF DEFENSE, DIR. 7000.14-R, DOD Financial Management Regulation (Aug. 1998) [hereinafter DFMR] (containing fiscal law guidance;) 51st Graduate Course Fiscal Law Deskbook, supra note 11, para. V.B.3., at 2-16.

The following scenario serves to demonstrate this process. During fiscal year 2004, Congress passes the DOD Appropriations Act. In that Act, the Congress authorizes DA to expend two billion dollars on operation and maintenance (O & M). As an example, the *First Armored Division (1st AD)* is authorized to expend seventy million of that two billion dollar appropriation. The *Commanding General (CG)* of the *1st AD* then decides to use ten thousand of that seventy million dollar authorization to pay for a command and staff off-site. The *CG* may expend funds for the off-site so long as its purpose fits within the purpose of the O & M authorization. An off-site to review the division mission essential task list (METL) is permissible. An off-site to research global warming, on the other hand, is not permissible because the *1st AD* has no authority to research that topic.

Should We Hold the Conference?

The second question the DMA must ask is whether a conference is the appropriate means for providing necessary training or instruction. Under the JFTR and JTR, the DMA must formally consider alternative means of achieving conference objectives, for example, teleconferencing or web-conferencing.¹³ The DMA has to consider overall convenience and maintain a written record of this consideration as well as other criteria used to select a conference as the means of accomplishing the desired objective.¹⁴

What Should We Consider When Selecting a Conference Location?

The JFTR and JTR require the DMA to exercise strict fiscal responsibility by seeking to minimize attendee travel, time costs, and overall conference administrative costs when deciding whether and when to host a conference.¹⁵ To meet this requirement, the DMA must compare the cost, size (e.g., number of attendees, length), scope (e.g., agenda), and locations

(e.g., city or area and building(s)) of the proposed conference and determine whether it would be cheaper to use government owned or provided facilities.¹⁶ If government facilities are cheaper, the DMA must use them to the maximum extent possible.¹⁷ Normally, the DMA will delegate research responsibilities noted above to an individual (conference planner) or committee, provide guidance as necessary, review research findings, and make final decisions.

How Much Will the Conference Cost?

Prior to deciding where to hold a conference, the DMA must know how much the event will cost the sponsoring organization. The DMA needs this information to ensure that the organization has adequate funds to pay for the event. Additionally, the JFTR and JTR require the DMA to consider all direct and indirect costs that the government pays, whether the sponsoring organization pays directly or indirectly by other federal government organizations sending personnel to the conference.¹⁸ The responsibility for finding answers to these questions normally rests with the conference planner. Therefore, a conference planner must track the following costs associated with the conference: (1) costs to the sponsoring organization; (2) costs to other federal organizations sending personnel to the conference; and (3) total costs. Additionally, the conference planner must provide the DMA with recommended means of reducing conference costs (e.g., the availability of lower rates during the off-season at a site with seasonal rates).¹⁹

Initially, the conference planner should identify and prepare a list of all the goods and services the agency will need for the conference.²⁰ This list should include, but not necessarily be limited to, expenses listed below.²¹ Once the list is complete, the conference planner should consult with the organization's contracting officer. The degree of contracting officer involvement in the conference planning process will depend on the type and cost of required goods and services.²² After the contracting officer reviews the requirements, the conference plan-

13. JFTR, *supra* note 1, PU2550E1.d (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950E.1.d. (1 Apr. 2002) (conference planning).

14. JFTR, *supra* note 1, PU2550E1.e (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950E.1.e (1 Apr. 2002) (conference planning).

15. JFTR, *supra* note 1, PU2550E (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950E (1 Apr. 2002) (conference planning).

16. JFTR, *supra* note 1, PU2550E (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950E (1 Apr. 2002) (conference planning).

17. JFTR, *supra* note 1, PU2550E (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950E (1 Apr. 2002) (conference planning).

18. JFTR, *supra* note 1, PU2550F (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950F (1 Apr. 2002) (conference planning).

19. JFTR, *supra* note 1, PU2550E.6 (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950E.6 (1 Apr. 2002) (conference planning).

20. See GENERAL SERVS. ADMIN. ET AL., FEDERAL ACQUISITION REG. para. 11.002(a)(2) (Feb. 2002) [hereinafter FAR]; see generally *id.* para. 11.1 (selecting and developing requirements documents); *id.* para. 11.4 (containing delivery or performance schedules).

21. JFTR, *supra* note 1, PU2550F (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950F (1 Apr. 2002) (conference planning).

22. See generally FAR, *supra* note 20, pts. 5, 6, 13.

ner should work with the contracting officer to compile estimates of conference costs (incurred by the sponsoring organization and other federal agencies, as well as the total cost incurred by the federal government) for each proposed conference.

*Travel Costs*²³

A conference planner should request travel expense estimates from the sponsoring organization's contracted travel office (CTO). The DOD personnel are required to use CTOs when arranging official travel.²⁴

*Air Transportation*²⁵

Commercial Air Transportation

The JFTR and JTR normally require conference attendees to fly in coach class on commercial airlines.²⁶ All first and premium class air travel must be pre-approved.²⁷ When a flight has only two classes of service, the higher class of service, regardless of the term used, is "first class."²⁸ Premium class is everything between coach and first class.²⁹

Government personnel traveling on official business within the United States must fly on commercial air carriers who offer city-pair airfares whenever possible.³⁰ The conference planner should distinguish between federal employees or service members and government contractors when asking the CTO for cost estimates because contractors may not use the discounted city-pair airfares.³¹

23. JFTR, *supra* note 1, PU2550F.1 (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950F.1 (1 Apr. 2002) (conference planning).

24. JFTR, *supra* note 1, PU3120A (1 Jan. 2003) (arranging travel); JTR, *supra* note 1, PC2207A (1 Aug. 2001) (CTO use). *But see* John W. Eastham—Reimbursement of Cost of Airline Ticket Purchased from Travel Agent, GAO B-19489, 1986 U.S. Comp. Gen. LEXIS 577, at *4 (Sept. 8, 1986). Non-CTOs may reimburse federal employees for airline tickets who are unaware of the requirement to use CTOs and have acted reasonably. *Id.* It is not mandatory to use CTOs when renting buses or airplanes. JFTR, *supra* note 1, PU3415B.1.a (1 Mar. 2002) (travel by special conveyance); JTR, *supra* note 1, PU3415B.1.a. (1 Nov. 2002) (travel by special conveyance).

25. JFTR, *supra* note 1, PU3415B.1.a (1 Mar. 2002) (travel by special conveyance); JTR, *supra* note 1, PU3415B.1.a. (1 Nov. 2002) (travel by special conveyance).

26. JFTR, *supra* note 1, PU3125B.1.a (1 Sept. 2003) (commercial air transportation); JTR, *supra* note 1, PC2204A.1 (commercial air transportation) (1 Aug. 2003); *see* U.S. DEP'T OF DEFENSE, DIR. 4500.56, DOD POLICY ON THE USE OF GOVERNMENT AIRCRAFT AND AIR TRAVEL para. E2.2.2 (2 Mar. 1997) [hereinafter DOD DIR. 4500.56]; Policy Letter, U.S. Dep't of Army, Secretary of Army, subject: Policy for Travel for the Dep't of the Army para. 3b. (26 Mar. 2003) (C1, Aug. 2003) [hereinafter SecArmy Policy]; *see also* Federal Travel Regulation; Using Promotional Materials; Conference Planning, 68 Fed. Reg. 27,396 (May 22, 2003) (to be codified at 41 C.F.R. pts. 301-53 & 301-74) (issuing new regulatory provision that states that if a government employee schedules a government conference or official travel for government employees, any frequent flyer miles or promotional benefits belong to the government); SecArmy Policy, as modified by Memorandum, Administrative Assistant to SecArmy, to Headquarters Dep't of Army Principal Officials, subject: Use of Official Travel Frequent Flyer Miles (11 Jan. 2000) [hereinafter SecArmy Policy Changes]. With the exception of the conference planner exception to the frequent flyer mile policy, federal civilian and military personnel may use frequent flyer miles earned in an official or personal capacity for ticket upgrades. National Defense Authorization Act, for Fiscal Year 2002, Pub. L. No. 107-107, § 1116; Federal Travel Regulation; Using Promotional Materials; Conference Planning, 68 Fed. Reg. at 27,396; SecArmy Policy Changes, *infra* note 26, para. 4.

27. JFTR, *supra* note 1, PU3125B.1.e-g (1 Sept. 2003) (commercial air transportation); JTR, *supra* note 1, PC2204A.1-2 (1 Aug. 2003) (commercial air transportation). The Secretary of the Army (SA) is the sole approval authority for first-class air travel within the DA. SecArmy Policy, *supra* note 26, para. 3f. The approval authority for premium-class (less than first class) travel is as follows:

In accordance with DOD Directive 4500.9 the SA and the CSA, or their designees, are the approving authorities for requests for premium-class (less than first-class) travel for those officials within the Secretariat and ARSTAF, respectively. . . *Four-star MACOM Commanders and their three-star Deputy Commanders or Chief of Staff, and the three-star USARPAC Commander, are authorized to approve their own premium-class (less than first-class) travel, and requests by their subordinates. This authorization for approval cannot be redelegated.* All other MACOM Commanders and their subordinates will process requests through appropriate Command channels to the Director of the Army Staff, (DACS-ZDV-AVN).

Id. para. 3d (emphasis added); *see* JFTR, *supra* note 1, PU3125B.1.e (1 Sept. 2003) (commercial air transportation); JTR, *supra* note 1, PC2204A.2 (commercial air transportation) (1 Aug. 2003). Use of premium class may be authorized when fully justified under the JTR and JFTR. JFTR *supra* note 1, PU3145B.1.d, PU3125B4 (1 Sept. 2003) (commercial air transportation); JTR *supra* note 1, PC2204A.1, PC2204A.5.d (1 Aug. 2003) (commercial air transportation).

28. JFTR, *supra* note 1, PU3125B.1.g (1 Sept. 2003) (commercial air transportation); JTR, *supra* note 1, PC2204A.1 (1 Aug. 2003) (commercial air transportation).

29. JFTR, *supra* note 1, PU3125B.1.e (1 Sept. 2003) (commercial air transportation); JTR, *supra* note 1, PC2204A.2 (1 Aug. 2003) (commercial air transportation).

30. *See* U.S. DEP'T OF DEFENSE, DEFENSE TRANSPORTATION REG. 4500.9-R, pt. 1, ch. 103, para. A.2.b (July 2002) [hereinafter DTR]; JFTR, *supra* note 1, PU3145B.1 (1 May 2003) (city-pair program); JTR, *supra* note 1, PC2002A (1 Apr. 2003) (city-pair program). Contract air service between city-pairs must be used for all domestic travel, and for international travel when AMC Category B or Patriot Express is not available and does not meet the mission requirement. DTR, *infra* note 30, ch. 103, para. B.1; U.S. General Services Administration, *Travel on Government Business*, available at <http://www.gsa.gov/Portal/home.jsp> (last visited Sept. 25, 2003) (containing city pair air fares). Users reimburse AMC for Category B or Patriot Express travel at the DOD Airlift common user rate. *Id.* para. B.2.

Military Air Transportation (MILAIR)

The DOD policy is that conference attendees may not use military aircraft unless one of the following criteria apply: (1) commercial airline or aircraft (including charter) service is not reasonably available; (2) highly unusual circumstances present a clear and present danger; (3) an emergency exists; (4) the use of MILAIR is more cost-effective than commercial air; (5) the traveler can be added to a previously planned flight; (6) compelling operational considerations make commercial transport unacceptable; or (7) the traveler is a "required user."³²

Family Members

The general rule is that a family member may not be reimbursed for accompanying a DOD sponsor who is traveling on official business.³³ This general rule applies to conferences, as well. Invitational travel orders (ITOs), however, may be issued to a spouse under very limited circumstances. The authorizing or order-issuing official may issue ITOs to a dependent if the dependent will be attending an unquestionably official function in which the dependent participates in an official capacity, or the dependent travel is of national interest because of a diplomatic or public relations benefit to the United States.³⁴

The following scenario illustrates how this exception works. *The Supreme General of the Kingdom of Sandistan* invites the *U.S. Forces Sandistan (USFS) CG's* wife to participate in a traditional flower exchange with *Mrs. Supreme General*. The flower exchange will take place immediately before and in conjunction with the *King of Sandistan's* address to *Sandistan* forces. The *USFS CG* will also address *Sandistan* forces. In *Sandistan*, the exchange of flowers from one female spouse to another is a well-known tradition that signifies deep trust and friendship. The authorizing official may issue ITOs to *Mrs. CG*

that cover her travel expenses (but not per diem) because *Mrs. CG* is participating in an official capacity at an unquestionably official function, or because her presence confers a public relations benefit to the United States, or because her presence confers a diplomatic benefit to the United States. Participation in such events is usually limited to spouses of senior level officials and is usually representational in nature.³⁵ Travel is allowed on a mission noninterference basis only, and ITOs may only authorize reimbursement for transportation costs.³⁶

The authorizing order-issuing official may approve per diem or other actual expense allowances when the dependent's travel is mission essential and the dependent does more than fulfill a representational role.³⁷ The following scenario illustrates this exception. *Colonel Hardluk* is traveling to the country of *Badizezes* to attend a joint combined conference on *Badizezes* diseases. His spouse, *Dr. Hardluk*, specializes in *Badizezes* diseases. The command would like to issue ITOs to *Dr. Hardluk* to enable her to teach conference attendees about health risks in *Badizezes*. The ITO approval or issuing authority may issue ITOs because *Dr. Hardluk* will be providing necessary medical expertise and her presence is therefore mission essential. Her marital status is irrelevant.

The authorizing order issuing official may also authorize or approve ITOs to a spouse for travel to attend a service-endorsed training course or briefing and subsequent voluntary service incident to such training or briefing.³⁸ "It is generally DA policy that spouses traveling to participate in discussions on Army Family Programs and/or Quality of Life issues shall travel in an accompanying spouse status . . ."³⁹ Accompanying spouses are reimbursed for transportation expenses but are not paid per diem.⁴⁰ When not issued ITOs, a family member may accompany a senior DOD official traveling on official business by military aircraft.⁴¹ The official traveler, however, must reim-

31. DTR, *supra* note 30, ch. 103, para. B.2.b.

32. *Id.* para. H.2.a; SecArmy Policy, *supra* note 26, para. 5. Commercial airline service is available if it meets either a traveler's departure or arrival requirements within a twenty-four hour period. The Chairman of the Joint Chiefs of Staff, Joint Forces Command, and Combatant Commander, Europe (when acting as Supreme Allied Commanders) Deputy Secretary of Defense, Secretaries of the Military Departments, Vice Chairman of the Joint Chiefs of Staff, Commanders of the Combatant Commands, and active four-star general and or flag officers must always utilize military aircraft for official travel. *Id.* para. 1.A; DOD DIR. 4500.56, *supra* note 26, para. E2.2.

33. DOD DIR. 4500.56, *supra* note 26, para. E2.5.1; *see* SecArmy Policy, *supra* note 26, para. 10.A.

34. DOD DIR. 4500.56, *supra* note 26, para. E2.5.1; *see* SecArmy Policy, *supra* note 26, para. 10.A.

35. DOD DIR. 4500.56, *supra* note 26, para. E2.5.1; *see* SecArmy Policy, *supra* note 26, para. 10.A.; *see also* U. S. DEP'T OF ARMY, REG. 95-1, FLIGHT REGULATIONS para. 3-12h(1) (1 Sept. 1997) [hereinafter AR 95-1].

36. DOD DIR. 4500.56, *supra* note 26, para. E2.5.1; *see* SecArmy Policy, *supra* note 26, para. 10.A.; *see also* AR 95-1, *supra* note 35.

37. SecArmy Policy, *supra* note 26, para. 12.

38. *Id.* para. 11.A. The SecArmy Policy contains specific guidance for this exception. *See generally id.* para. 12a.

39. *Id.*

40. *Id.* para. 9.A. Spouses may be authorized per diem under very limited circumstances. *See id.* para. 11B.

burse the government the full coach fare for the dependent traveler.⁴²

*Ground Transportation*⁴³

When conducting research on conference site locations, the conference planner should ask whether potential conference meeting or lodging facilities offer courtesy transportation services (e.g., shuttle to airport or locations offering food service).⁴⁴ If so, the conference planner may be able to reduce the overall federal government costs by informing the organizations sponsoring attendee travel about the availability of these services. The DOD travelers may not use individual motor vehicles or commercial rentals when an adequate DOD or commercial bus system is available.⁴⁵

Government Vehicles

Department of Defense civilian employees must use government furnished automobiles, if available, for official travel when common carrier transportation is not advantageous to the government.⁴⁶ A government non-tactical vehicle (NTV) “may be operated between places of business or lodging and eating establishments, drugstores, barber shops, places of worship,

and similar places required for the comfort or health of the member, and which foster the continued efficient performance of Army business.”⁴⁷ Non-tactical vehicles, however, may not be used for travel to or from commercial entertainment facilities (that is, professional sports, concerts).⁴⁸

Rental Cars

Conference attendees authorized to rent commercial vehicles must select the lowest cost rental service that meets the member’s official requirements.⁴⁹ The Army will only reimburse its personnel for costs associated with the official use of rental vehicles. Army personnel must pay for unofficial use expenses such as gasoline, insurance, and mileage fees.⁵⁰

Rental Buses

Conference planners, who contemplate a need for charter bus service, should contact the organizational contracting officer for assistance. They may only use DOD-approved carriers for charter bus service.⁵¹ The *Defense Management Travel Regulation* prescribes standards for bus service within the continental United States (CONUS).⁵² Theater commands set standards for service outside the continental United States.⁵³

41. DOD DIR. 4500.56, *supra* note 26, para. E2.2.3; *see* SecArmy Policy, *supra* note 26, para. 13.

42. DOD DIR. 4500.56, *supra* note 26, para. E2.2.3. Spousal unofficial travel is authorized if it meets the following criteria: (1) the aircraft is already scheduled for an official purpose; (2) a larger aircraft is not needed to accommodate spousal travel; official travelers are not displaced; (3) spousal travel results in negligible additional cost to the government; and the government is reimbursed at the full coach. *Id.*

43. JFTR, *supra* note 1, PU2550F.8 (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950F.8 (1 Apr. 2002) (conference planning).

44. *See* JFTR, *supra* note 1, PU3430 (1 Nov. 2002) (courtesy transportation); JTR, *supra* note 1, PC2105 (1 May 2002) (courtesy transportation).

45. U.S. DEP’T OF DEFENSE, REG. 4500.36-R, MANAGEMENT ACQUISITION AND USE OF MOTOR VEHICLES para. C2.5.4.1. (30 Sept. 1996).

46. JFTR, *supra* note 1, PC2050A.1 (1 Nov. 2002) (government automobile). The JFTR does not contain this restriction. On the contrary, the JFTR encourages approval or authorization of privately owned conveyances for official travel if acceptable to the member and advantageous to the government. JFTR, *supra* note 1, PU3300A (1 May 2002) (TDY POC).

47. U.S. DEP’T OF ARMY, REG. 58-1, MANAGEMENT, ACQUISITION AND USE OF MOTOR VEHICLES para. 2-3i(3) (28 Jan. 2000).

48. *Id.*

49. *See* DTR, *supra* note 30, ch. 106, para. B.2.; JFTR, *supra* note 1, PU3415B.1.b. (1 Mar. 2002) (special conveyance use); JTR, *supra* note 1, PC2102B.1.b. (1 Nov. 2002) (special conveyance use). Conference planners should use rental companies that have negotiated agreements with Military Traffic Mobility Command (MTMC) unless another rental company can provide better service at a lower cost and abides by the same rules or guidance contained in the MTMC-negotiated car and truck rental agreement. Conference planners are encouraged to use companies and rental car locations participating in the MTMC agreement because their government rates include full liability and vehicle loss and damage insurance coverage for the traveler and the government. DTR, *supra* note 30, ch. 106, para. A; JFTR, *supra* note 1, PU3415B.2 (1 Mar. 2002) (special conveyance use); JTR, *supra* note 1, PC2102B.2 (1 Nov. 2002) (special conveyance use); MTMC, *Truck Rental Agreement*, available at <https://www.mtmc.army.mil/frontDoor/0,1099,OID=3--215-217--217,00.html> (last visited Dec. 9, 2003) (listing approved vendors and providing rates updates).

50. *See* U.S. Navy Finance Center, B-156536, 1965 U.S. Comp. Gen. LEXIS 2713 (May 6, 1965).

51. *See* DTR, *supra* note 30, ch. 104, para. C.1; MTMC, *Bus Carriers’ Agreement*, available at <https://www.mtmc.army.mil/frontDoor/0,1099,OID=3--215-217--217,00.html> (last visited Dec. 9, 2003) (containing separate agreements for bus companies that are parties to MTMC’s military bus agreement). Theater combatant commanders are responsible for establishing bus agreements outside CONUS. DTR, *supra* note 30, ch. 104, para. C.1.

52. *Id.* fig. 104-1.

Conference planners are authorized to use rail transportation when it meets mission requirements and is the most cost effective mode of transportation. Cost effectiveness determinations must take into consideration travel time, per diem, and miscellaneous expenses.⁵⁴ Generally, conference attendees must travel in coach class.⁵⁵

Per Diem Expenses⁵⁶

Initially, the DMA must consider and compare the established per diem rate of localities being considered for the conference location.⁵⁷ Therefore, the conference planner must conduct comparisons of the number of rooms available at Federal Emergency Management Agency (FEMA) approved places of public accommodation at the established per diem rate for each locality and provide this information to the DMA for consideration.⁵⁸

Lodging facilities may require an organization sponsoring a conference to guarantee that conference attendees will rent a minimum number of hotel rooms. Normally, only a contracting officer may sign this agreement.⁵⁹ The potential cost of the guarantee is a legally permissible administrative expense in furtherance of the purpose of the official business conducted during the conference.⁶⁰ Because the Army has no authority to deposit attendee funds collected for room payments into the federal Treasury for later disbursement, contracting officers should negotiate guarantee agreements that place the responsibility to collect lodging bills on the lodging facility rather than the contracting officer.⁶¹ When the sponsoring organization directly pays for rooms, in lieu of reimbursing attendees for their lodging expenses, this contract specification is not necessary.⁶² The sponsoring organization, however, may not expend more per person, per room than the amount that the JFTR and JTR authorize.⁶³ Stricter rules apply when the government seeks to rent lodging rooms within the District of Columbia (DC).⁶⁴

53. *Id.* ch. 104, para. A.2.

54. *Id.* ch. 105, para. A.2. Standards for rail service must comply with the Military Rail Agreement (MRA) on file at MTMC. *Id.* para. A.1; MTMC, *Rail Agreement*, available at <https://www.mtmc.army.mil/frontDoor/0,1099,OID=3--215-217--217,00.html> (last visited Dec. 9, 2003). Theater commanders in overseas areas have established standards IAW host country agreements and conventions. MTMC, *Rail Agreement*.

55. JFTR, *supra* note 1, PU3135A (1 Nov. 2002) (train transportation); JTR *supra* note 1, PC2203A (1 Jan. 2003) (accommodation on train). When traveling overnight, travelers must use slumber coach sleeping accommodations, or, when not available, the lowest class of sleeping accommodations available. JFTR, *supra* note 1, PU3135A (1 Nov. 2002) (train transportation); JTR *supra* note 1, PC2203A (1 Jan. 2003) (accommodation on train). The transportation officer may authorize first class travel under the circumstances specified in the JFTR or JTR. JFTR, *supra* note 1, PU3135B (1 Nov. 2002) (train transportation); JTR, *supra* note 1, PC2203B (1 Jan. 2003) (accommodation on train).

56. JFTR, *supra* note 1, PU2550F.1 (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950F.1 (1 Apr. 2002) (conference planning).

57. JFTR, *supra* note 1, PU2550H.2 (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950H.2 (1 Apr. 2002) (conference planning).

58. JFTR, *supra* note 1, PU2550H2 and J (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950H2 and J (1 Apr. 2002) (conference planning). The Hotel and Motel Fire Safety Act of 1990 requires federal travelers to use FEMA-approved lodging facilities unless the official designated through the secretarial process for authorizing or funding the conference makes a written determination that waiver is necessary and in the public interest for that conference. JFTR, *supra* note 1, PU2550L.3 (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950L.3 (1 Apr. 2002) (conference planning). The U.S. Fire Administration (USFA) has been charged with carrying out FEMA's responsibilities with respect to the Hotel and Motel Fire Safety Act of 1990. See Hotel and Motel Fire Safety Act of 1990, Pub. L. No. 101-391, § 5a, 104 Stat. 750; FEMA, *National Master List of Approved Facilities*, available at <http://www.usfa.fema.gov/applications/hotel/search.cfm> (last visited Nov. 22, 2003).

59. FAR, *supra* note 20, para. 1.601 (Sept. 2001); U.S. DEP'T OF ARMY, ARMY FEDERAL ACQUISITION REG. SUPP. para. 5101.602, 5101.603, 5101.603-1-90 (Oct. 2001) [hereinafter AFARS].

60. See Dep't of the Army—Claim of the Hyatt Regency Hotel, B-230382, 1989 U.S. Comp. Gen. LEXIS 1494, at *8 (Dec. 22, 1989) (finding that a guarantee is an administrative expense of holding a function and is not related to the provision of food or entertainment).

61. The contracting officer may add a contract specification that requires the lodging facility to collect room charges from attendees as they check into or out of the conference hotel or conference facility.

62. The contracting officer and lodging facility do not need to collect funds from attendees because the contracting officer pays all lodging costs directly to the lodging facility.

63. Lieutenant Commander William J. Harrigan, et al., B-209191, U.S. Comp. Gen. LEXIS 1343, at *3 (Apr. 13, 1983) (finding that appropriated funds are not available to pay per diem or actual expenses of employees or members of the uniformed services in excess of that allowed by statute or regulation, whether by direct reimbursement or indirectly by furnishing meals and or rooms by contract).

Conference Allowance

The conference planner may not always be able to obtain lodging facilities within the established lodging portion of the per diem rate for the chosen locality. To provide Army organizations flexibility in the selection of an appropriate lodging facility at the most advantageous location, they may exceed the lodging portion of the established per diem rate by twenty-five percent, if necessary.⁶⁵ For example, if the established lodging portion of the per diem rate is \$100, then the DMA may consider facilities with lodging rates up to \$125 when selecting the conference location if a conference lodging allowance is authorized. Conference attendees may be reimbursed the actual amount incurred for lodging up to the conference lodging allowance (that is, per diem plus twenty-five percent). Only a designated senior official of the sponsoring agency may determine that a conference lodging allowance is necessary, and the conference lodging allowance rate.⁶⁶ All agencies must use that rate in reimbursing their attendees' lodging expenses.⁶⁷

Opportunity to Decrease Costs

An Army organization sponsoring a conference may be able to reduce lodging expenses by directly paying such expenses rather than reimbursing attendees for lodging bills. State and local governments may not tax the Army when it directly pays lodging expenses.⁶⁸ Army personnel, however, may be taxed when they pay their lodging expenses directly.⁶⁹ The Army incurs greater costs when the latter method is used because it reimburses its personnel for their payment of the taxes.⁷⁰ The

conference planner should determine whether state and local taxes apply to lodging procured by federal travelers. If so, the conference planner should ensure these taxes are captured as a separate item for the DMA review. In addition, a contracting officer may be able to negotiate reduced fees for authorized conference expenses when the sponsoring organization either pays for hotel rooms directly or guarantees that attendees will rent a minimum number of rooms.⁷¹

Meals

Restaurants, catering services, and hotels may require an organization sponsoring a conference to guarantee that conference attendees will purchase a minimum number of meals or expend a minimum amount of money on meals. A contracting officer may sign a guarantee contract when it covers authorized meals, as discussed below.⁷² The potential cost of the guarantee is a legally permissible administrative expense in furtherance of the purpose of the official business conducted during the meal.⁷³ Similar to lodging expenses, the Army has no authority to deposit attendee funds collected for meal payments into the federal Treasury for later disbursement. Therefore, contracting officers should negotiate guarantee agreements that place the responsibility for collecting funds from the conference attendees on the contractor rather than the contracting officer.⁷⁴ When the sponsoring organization directly pays for meals, in lieu of reimbursing attendees for their meal expenses, this specification is not necessary.⁷⁵

64. 40 U.S.C. § 34 (2000). An organization sponsoring a conference may not rent hotel rooms in the District of Columbia without a specific appropriation from Congress. *Id.*

65. JFTR, *supra* note 1, PU2550M (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950M (1 Apr. 2002) (conference planning).

66. JFTR, *supra* note 1, PU2550N.1 (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950N.1 (1 Apr. 2002) (conference planning).

67. JFTR, *supra* note 1, PU2550N.1 (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950N.1 (1 Apr. 2002) (conference planning).

68. *McCulloch v. Maryland*, 17 U.S. 316, 435-6 (1819).

69. *Alabama v. King & Boozer*, 314 U.S. 1 (1941).

70. See JFTR, *supra* note 1, PU4520A5 (1 Mar. 2003) (misc. expenses); JTR, *supra* note 1, PC4720A5 (1 Dec. 2002) (misc. expenses). Taxes for lodging in locations outside the United States are not reimbursable. JFTR, *supra* note 1, PU4520A5 (1 Mar. 2003) (misc. expenses); JTR, *supra* note 1, PC4720A5 (1 Dec. 2002) (misc. expenses).

71. 18 U.S.C. § 201(c)(1)(B) (2000). A lodging facility may offer auditorium, meeting room, hotel room, and conference services fees that decrease as the number of hotel rooms increase that are guaranteed by the sponsoring organization or occupied by conference attendees. The contracting officer may not use a hotel room guarantee or purchase order to negotiate agreements that benefit individuals rather than the government, *e.g.*, light refreshments; mementoes for conference attendees; and hotel room upgrades. See also Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. § 2635.202 (2003).

72. Dep't of the Army—Claim of the Hyatt Regency Hotel, B-230382, 1989 U.S. Comp. Gen. LEXIS 1494, at *8 (Dec. 22, 1989).

73. *Id.*

74. The contracting officer may add a specification to the contract that states that the contractor (restaurant, caterer, hotel) is responsible for collecting meal charges from attendees as they check into or out of the conference hotel or conference facility.

75. The contracting officer and the contractor do not need to collect funds from attendees because the contracting officer pays all attendee meal costs directly.

Official Duty Station

Generally, the Army may not use appropriated funds to pay for food or refreshments for government employees at their official duty station.⁷⁶ The Army may pay, under limited circumstances, a facility rental fee that includes the cost of food.⁷⁷ The provision of food must be non-negotiable and non-separable from the room rental fee and the overall price must be competitive with prices offered by facilities that will not provide food.⁷⁸ The DMA may not consider whether a conference facility provides food when making a determination as to what facility to select.⁷⁹

The Army may reimburse service members for occasional meals when they are required to procure meals at personal expense outside the limits of their permanent duty station (PDS) but within its local area.⁸⁰ For example, the *Army Desert Tortoise Institute*, located at *Fort Gloindedark*, will host a conference at the *Sandpit Hotel* located in the city of *Podunk*. *Podunk* is located fifteen miles from *Fort Gloindedark*. The school commandant, *Lieutenant Colonel (LTC) Pasdovr*, has ordered two sergeants to work rotating twelve-hour shifts at the hotel conference information desk during the three-day conference. *Podunk* is within the local area of *Fort Gloindedark*. Because the sergeants will be on temporary duty outside their PDS but within its local area, the order issuing authority may reimburse the sergeants for the cost of the occasional meals they consume during their shifts at the *Sandpit Hotel*.

The Army may also provide meals to service members and civilian employees if necessary to achieve the objectives of a valid training program.⁸¹ For example, *Major General (MG) Pushemhard*, a new division commander, scheduled a two-day conference with his brigade and battalion commanders prior to an upcoming Joint Readiness Training Center rotation. After *MG Pushemhard* set an initial conference schedule, 0730 – 2030 each day, he added more to the agenda. Deciding that his subordinates could not afford more time away from their respective organizations, he scheduled breakfast, lunch, and dinner seminars plus informal discussion time during coffee breaks. *MG Pushemhard* may authorize payment for meals and coffee break refreshments if he determines the following: (1) meals are incidental to meetings; (2) meals are necessary for full participation in the meetings; and (3) attendees are not free to take meals elsewhere without being absent from the essential business of the meetings. Under this exception, the Government Accounting Office (GAO) and other auditors will closely scrutinize events to ensure they are valid training activities and that food was actually necessary to achieve the training objectives.⁸²

Away from PDS

Conference attendees may not seek reimbursement from the Army for meals that the government provided to them at nominal or no cost.⁸³ If the conference registration fee includes the

76. Pension Benefit Guaranty Corp.—Provision of Food to Employees, B-270199, 1996 Comp. Gen. LEXIS 242, at *3 (Aug. 6, 1996).

77. See Payment of a Non-Negotiable, Non-Separable Facility Rental Fee that Covered the Cost of Food Service at NRC Workshops, B-281063, 1999 U.S. Comp. Gen. LEXIS 245, at *7 (Dec. 1, 1999) (holding that payment of fee was proper because fee was all-inclusive, not negotiable, and competitively priced to those that did not include food).

78. *Id.*

79. *Id.*

80. JFTR, *supra* note 1, PU4102E (1 Jan. 2002) (per diem). “An arbitrary distance radius must not be established in setting up the local commuting area of the permanent or TDY station (59 Comp. Gen. 397 (1980)).” JFTR, *supra* note 1, PU3500B (general) (1 Jan. 2002). The local area is defined as follows:

- (1) within the limits of the duty station (permanent or temporary) and the metropolitan area around that station which is ordinarily served by local common carriers; or
- (2) within a local commuting area of the duty station, the boundaries of which are determined by the order-issuing official or as prescribed by local Service/Defense Agency directives; or
- (3) separate cities, towns, or installations adjacent to or close to each other, within which the commuting public travels during normal business hours on a daily basis.

Id.

81. 5 U.S.C. § 4109 (2000); *id.* § 4301; see *Coast Guard—Meals at Training Conference*, B-244473, 1992 U.S. Comp. Gen. LEXIS 740, at *3 (Jan. 13, 1992); Decision of the Comptroller General, B-193955, 1979 Comp. Gen. LEXIS 2047 at *3 (Sept. 14, 1979). The JFTR, which implements 37 U.S.C. § 404, and JTR, which implements 5 U.S.C. § 5702, and sets forth the applicable reimbursement rates for service members and civilian employees, respectively, are not controlling as to the maximum cost that may be incurred when costs are properly chargeable as training expenses under 10 U.S.C. § 4301 and 5 U.S.C. § 4109, and not to travel expenses. *Coast Guard—Meals at Training Conference*, 1992 U.S. Comp. Gen. LEXIS 740, at *6; see also 5 U.S.C. § 5702. The sponsoring organization must use sound management practice to avoid unnecessary expense when purchasing meals under this authority. *Coast Guard—Meals at Training Conference*, 1992 U.S. Comp. Gen. LEXIS 740 at *6.

82. Pension Benefit Guaranty Corp.—Provision of Food to Employees, B-270199, 1996 Comp. Gen. LEXIS 242, at *3 (Aug. 6, 1996) (holding that conference planners may not provide food to maximize the time of busy executives, to acquaint the participants, to improve on time attendance, reward, and prevent participants from going to their offices for their snacks and delaying their returning to training); see, e.g., *Corps of Eng'rs—Use of Appropriated Funds to Pay for Meals*, B-249795, 1993 U.S. Comp. Gen. LEXIS 452 (May 12, 1993).

cost of a meal or meals, conference attendees may request reimbursement for the registration fee but may not additionally “double dip” by filing travel vouchers that seek reimbursement for the meals covered by the registration fee.⁸⁴ Travelers must affirmatively annotate vouchers to indicate meals that the government provided to them.

Opportunity to Decrease Costs

A contracting officer may be able to negotiate reduced fees for authorized conference expenses when the sponsoring organization either pays for meals directly or guarantees that attendees will purchase a minimum number of meals.⁸⁵ If the sponsoring organization has funds available and may legally pay for some or all of the attendee meals directly, the conference planner should compare the cost of meals directly provided at government expense against the authorized allowance for meals to identify whether a potential for savings exists. The conference planner should ensure that meal expense estimates do not include state or local tax when the Army will be paying the bill directly. As stated above, the Army is not subject to state or local taxation.⁸⁶

Light Refreshments⁸⁷

Necessary to Achieve Objectives of Training Program

Under very limited circumstances, the sponsoring organization may purchase light refreshments for all attendees. Light refreshments may be purchased under the following conditions:

(1) they are incidental to training; (2) attendance is necessary for full participation in the training; and (3) attendees are not free to purchase food elsewhere without being absent from essential training.⁸⁸

Necessary Because You Want Them

Permanent Place of Duty of Conference Attendees

An Army organization that sponsors a conference and directly pays for all attendee costs may furnish light refreshments to conference attendees who are away from their permanent place of duty. The organization, however, must deduct the cost of the light refreshments from the amount that the organization is authorized to expend on meals.⁸⁹ For example, the *Big Belly Brigade* holds a conference in the city of *Buffet* at the *Allucaneat Hotel*. The brigade is authorized a \$25 travel subsistence allowance per person, per day. They order \$5 worth of light refreshments per person, per day. Now, the brigade has \$20 left per person, per day, to purchase meals. An Army organization that sponsors a conference and does not directly pay for all attendee costs may not provide light refreshments to attendees who are away from their permanent place of duty.⁹⁰ Additionally, a portion of a conference fee cannot fund light refreshments. Army organizations sponsoring conferences may not pay for light refreshments for government civilian employees or service members who are at their permanent place of duty.⁹¹

83. JFTR, *supra* note 1, PU255E.1 (1 Feb. 2002) (conference attendance); JTR, *supra* note 1, PC4955E.1 (1 Feb. 2002) (conference attendance).

84. JFTR, *supra* note 1, PU255E.1 (1 Feb. 2002) (conference attendance); JTR, *supra* note 1, PC4955E.1 (Feb. 2002) (conference attendance).

85. A lodging facility may be willing to offer auditorium, meeting room, hotel room, and conference services fees that decrease as the number of meals guaranteed by the sponsoring organization or paid for by conference attendees increase. The contracting officer may not use a meal guarantee or purchase order to negotiate agreements that benefit individuals rather than the government, e.g.—light refreshments; mementoes for conference attendees; and hotel room upgrades. 18 U.S.C. § 201(c)(1)(B); Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. § 2635.202 (2003).

86. *McCulloch v. Maryland*, 17 U.S. 316, 435-36 (1819).

87. JFTR, *supra* note 1, PU2550F.5 (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950F.5 (1 Apr. 2002) (conference planning).

88. *Coast Guard—Meals at Training Conference*, 1992 U.S. Comp. Gen. LEXIS 740, at *5 (Jan. 13, 1992). The JFTR, which implements 37 U.S.C. § 404, and JTR, which implements 5 U.S.C. § 5702, and sets forth the applicable reimbursement rates for service members and civilian employees, respectively, are not controlling as to the maximum cost that may be incurred when costs are properly chargeable as training expenses under 14 U.S.C. § 469 and 5 U.S.C. § 4109, and not to travel expenses. *Id.* at *6; see 37 U.S.C. § 404; 14 U.S.C. § 469; 5 U.S.C. §§ 4109, 5702. The sponsoring organization must use sound management practice to avoid unnecessary expense when purchasing meals or light refreshments under this authority. *Coast Guard—Meals at Training Conference*, 1992 U.S. Comp. Gen. LEXIS 740, at *6. *But see Pension Benefit Guaranty Corporation—Provision of Food to Employees*, B-270199, 1996 Comp. Gen. LEXIS 242, at *3 (Aug. 6, 1996). The sponsoring organization may not provide light refreshments as an inducement for attendees to arrive on time or to get attendees to interact with each other. *Id.* at *5.

89. *Use of Appropriated Funds to Purchase Light Refreshments at Conferences*, B-288266, Jan. 27, 2003 (finding that GSA does not have the authority to permit agencies to use appropriated funds to pay for refreshments for employees who are not TDY); see *Lieutenant Commander William J. Harrigan, et al.*, B-209191, 1983 U.S. Comp. Gen. LEXIS 1343, at *3 (Apr. 13, 1983) (holding that appropriated funds are not available to pay per diem or actual expenses of employees or service members in excess of that allowed by statute or regulation, whether by direct reimbursement or indirectly by furnishing meals and or rooms by contract).

90. *Use of Appropriated Funds to Purchase Light Refreshments at Conferences*, B-288266, Jan. 27, 2003.

91. *Id.*

Practical Note

A conference planner who attempts to directly coordinate payment for conference refreshments not provided for under the “training” exception is heading for trouble. A contracting officer cannot normally guarantee that attendees will purchase a minimum amount of light refreshments because such refreshments are normally considered a personal expense.⁹² If the sponsoring organization pays for light refreshments using funds it would normally use to purchase meals, the organization has a responsibility to ensure that attendees from the local area do not partake in the refreshments. If the organization charges a non-mandatory fee, the organization has a responsibility to ensure that those who did not pay do not eat.⁹³ In addition, the conference planner may not include light refreshments in a mandatory conference fee because the expense is non-reimbursable.⁹⁴ If the cost of light refreshments is included in a non-mandatory conference fee, the conference planner must ensure attendees are aware that they may not seek reimbursement for the portion of that fee covering light refreshments.⁹⁵

The possibility, in both cases, for a large number of dissatisfied, irritable attendees runs very high. To avoid this situation, the conference planner and contracting officer should discuss the need for light refreshments with a caterer that provides service to the conference location. The caterer may be willing to sell refreshments directly to attendees throughout the confer-

ence or to sell attendees “punch cards” entitling them to a preset number of beverages or snacks.⁹⁶

Rental of Meeting Rooms for Official Business⁹⁷

The conference planner should contact the General Service Administration (GSA) Public Building Service (PBS) to determine the availability and prices of government owned or leased conference facilities within the United States, the Virgin Islands, and Puerto Rico.⁹⁸ When sponsoring or funding a conference, in whole or in part, at a place of public accommodation in the United States, Army organizations must usually use FEMA-approved facilities.⁹⁹ Stricter requirements apply to the rental of conference space within DC.¹⁰⁰

Other Supplies and Services

Office Supplies

Normally, Government Purchase Cardholders are responsible for purchasing supplies. These cardholders must use mandatory blanket purchase agreements (BPAs) when making these purchases.¹⁰¹ Cardholders must place their orders over the Internet at the DOD EMALL.¹⁰² Also, they must order Javits-

92. See generally Dep't of the Army—Claim of the Hyatt Regency Hotel, B-230382, 1989 U.S. Comp. Gen. LEXIS 1494 (Dec. 22, 1989).

93. See generally JFTR, *supra* note 1, PU2555E.3 (1 Dec. 2002) (conference attendance); JTR, *supra* note 1, PC4955E.3 (1 Feb. 2002) (conference attendance).

94. See JFTR, *supra* note 1, PU2555E3-4 (1 Dec. 2002) (conference attendance); JTR, *supra* note 1, PC4955E4, PC4955G (1 Feb. 2002) (conference attendance).

95. See JFTR, *supra* note 1, PU2555E.3 (1 Dec. 2002) (conference attendance); JTR, *supra* note 1, PC4955E.3 (1 Feb. 2002) (conference attendance).

96. The conference planner and contracting officer should make the catering service aware of the need for the service and the potential for individual sales. If the caterer is willing to sell light refreshments directly to the participants, the conference planner may avoid a snack fund and snack time management.

97. JFTR, *supra* note 1, PU2550F.2 (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950F.2 (1 Apr. 2002) (conference planning).

98. See GSA, *Public Buildings Service*, available at <http://www.gsa.gov/Portal/gsa/ep/channelView.do?pageTypeId=8199&channelId=-13303> (last visited Nov. 22, 2003).

99. JFTR, *supra* note 1, PU2550I.3 (1 Feb. 2002) (conference planning); JTR, *supra* note 1, PC4950I.3 (1 Apr. 2002) (conference planning). Conference planners may use non FEMA-approved facilities when an official designated through the Secretarial Process for authorizing the sponsoring or funding of a conference makes a written determination on an individual basis that waiver of the requirement to use FEMA-approved accommodations is necessary and in the public interest for the particular event. JFTR, *supra* note 1, PU2550I.3 (1 Feb. 2002) (conference planning); JTR, *supra* note 1, PC4950I.3 (1 Apr. 2002) (conference planning).

100. An Army organization sponsoring a conference may not rent any part of any building in DC unless Congress has passed a specific appropriation that states such a contract may be made. 40 U.S.C. § 34 (2000). An Army organization that needs to rent conference space within DC should work with GSA to determine if government owned or procured conference space is available. See JFTR, *supra* note 1, PU2550H.3 (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950H.3 (1 Feb. 2002) (conference planning).

101. Memorandum, Sandra O. Sieber, Acting Director, Army Contracting Agency, to Heads of Contracting Activities (Dec. 23, 2002) (on file with the author) [hereinafter Sieber Memo]. Office products include, but are not limited to items such as the following: pens, pencils, makers, xerographic paper and printer paper, fax paper, binders, tape, envelopes, helical-scan, longitudinally oriented video tapes, video cassettes, reel to reel audio tapes, blank endless loop audio cartridge tapes, magnetic tape audio recording cassette, computer tape, reel, cartridge, cassette, diskettes, disk packs, disk cartridges, anti-glare/anti-radiation screens (VDT), ergonomic products (wrist and foot rests), cleaning equipment and supplies (head cleaners, disk drive cleaners, monitor cleaners, toner wipes, mini vacuums, etc.) optical disks, CD ROMS, physical storage, security, protective and related ADP supplies, and remanufactured toner cartridges excluding Hewlett Packard Parts Nos. HP92291A and HP92295A. *Id.*

Wagner-O'Day Act (JWOD) products, if available, in preference to other items of the same general type.¹⁰³

*Telephone Access*¹⁰⁴

The Army may reimburse personnel for actual costs they incur for official phone calls made on wired and cellular phones while at conferences.¹⁰⁵ The Army may even purchase cell phones for official use by its personnel if such phones are determined to be a reasonable and necessary expense.¹⁰⁶ Army portable, mobile, and cellular telephones, however, may only be used for official business, may not be used for personal calls, and may not be substituted for wired telecommunications networks.¹⁰⁷ Conference attendees may also seek reimbursement for authorized computer connection charges incurred for official business while on temporary duty.¹⁰⁸

*Audiovisual and Other Equipment*¹⁰⁹

The conference planner may contact the GSA PBS to inquire about the availability of government contracted or government

employed audiovisual operators and technicians within the United States, Virgin Islands, and Puerto Rico.¹¹⁰

*Printing*¹¹¹

Normally, the sponsoring organization must use the Defense Automation and Production Service (DAPS) for all printing, binding, and blankbook work.¹¹² These services may not be included in conference contracts without prior coordination with the U.S. Army Publishing Directorate (APD).¹¹³ Conversely, "the requirement for an Army contractor or grantee to duplicate less than 5000 units of only one page or less than 25,000 units in the aggregate of multiple-page documents may be included as part of a contract for . . . services such as . . . research."¹¹⁴ Additionally, a sponsoring organization may use in-house copy machines for minor conference reproduction requirements under some circumstances.¹¹⁵

To prevent cost over-runs (and last minute headaches), the conference planner should contact the local DAPS office and request a rate schedule that lays out the cost of printing services conducted under both normal and "rush" time constraints. If the DMA obtains this information at the onset, the DMA can

102. *Id.*; Dep't of Defense, *DOD EMALL*, at <http://www.emall.dla.mil> (last visited Dec. 8, 2003) ("The DOD EMALL strives to be the single entry point for purchasers to find and acquire off-the-shelf, finished goods items from the commercial marketplace and government sources.").

103. Sieber Memo, *supra* note 101; *see also* FAR, *supra* note 20, para. 8.704 (Sept. 2001). The Javits-Wagner O'Day Act requires the government to purchase supplies or services on the Procurement List, at prices established by the Committee, from JWOD participating nonprofit agencies if they are available with the period required. 41 U.S.C. § 46-48c (2000); FAR, *supra* note 20, para. 8.704 (Sept. 2001). The BPAs listed at the DOD EMALL need not be used if: (1) a purchase will be made from local JWOD Self-Service Stores; (2) the mandatory BPA vendors cannot satisfy the ordering office's urgent delivery requirement; or (3) BPA JWOD products are determined to be priced above the fair market value. Sieber Memo, *supra* note 101. If JWOD products are listed at above fair market value, the requiring agency must purchase necessary items from the least expensive JWOD source. *Id.*

104. JFTR, *supra* note 1, PU2550F.4 (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950F.4 (1 Apr. 2002) (conference planning).

105. *See* Reimbursing Employees' Government Use of Private Cellular Phones at a Flat Rate, B-287524, 2001 U.S. Comp. Gen. LEXIS 202, at *9 (Oct. 22, 2001).

106. 31 U.S.C. § 1301(a); Internal Revenue Serv., B-226065, 1987 U.S. Comp. Gen. LEXIS 1378, at *9 (Mar. 23, 1987); *see* U.S. DEP'T OF ARMY, REG. 25-1, ARMY INFORMATION MANAGEMENT para. 6-3.aa. (1) (31 May 2002) [hereinafter AR 25-1]; *see, e.g.*, Reimbursements for Expenses Incurred by Government Officials Using Cellular Telephone in Private Automobiles, B-229406, 1998 U.S. Comp. Gen. LEXIS 1572 (Dec. 9, 1998).

107. AR 25-1, *supra* note 106, at 41.

108. JFTR, *supra* note 1, PU4520-B4 (1 May 2003) (communication services), JTR, *supra* note 1, PC4720-B4 (1 May 2003) (communication services).

109. JFTR, *supra* note 1, PU2550F.3 (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950F.3 (1 Apr. 2002) (conference planning).

110. JFTR, *supra* note 1, PU2550H.3 (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950H.3 (1 Apr. 2002) (conference planning).

111. JFTR, *supra* note 1, PU2550F.6 (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950F.6 (1 Apr. 2002) (conference planning).

112. U.S. DEP'T OF ARMY, REG. 25-30, THE ARMY PUBLISHING PROGRAM para 7-1c (15 July 2002) [hereinafter AR 25-30].

113. *Id.* "Printing requirements for [technical manuals] TMs and other publications may not be procured as part of a contract for conference services. This restriction does not prevent the sponsoring organization from procuring services for writing and editing or for preparing manuscripts and related illustrations as a part of a contract." *Id.* para. 7-2a It also does not prevent a contractor from preparing a recorded manuscript copy in digital form for typesetting if coding instructions have been approved by [APD]. *Id.*

114. *Id.* para. 7-2.c.

115. *Id.* para. 7-28.

assist the conference planner by encouraging parties responsible for preparing conference materials to make timely submissions for review, approval, and reproduction.

Employees' Time at the Conference and on En Route Travel¹¹⁶

The calculation of service members' time costs is simple because the rate of pay remains stable regardless of the hours worked. While the conference planner must still project total hours worked at the conference and total hours spent on en route travel, the planner need not be concerned about overtime costs. Calculation of civilian hours worked is not so simple. Conference planners must project both normal and overtime hours worked at the conference and spent on en route travel.

Time spent traveling by a federal civilian employee is considered hours of work if the following criteria are met:

- (1) An employee is required to travel during regular work hours;
- (2) An employee is required to drive a vehicle or perform other work while traveling;
- (3) An employee is required to travel as a passenger on a one-day assignment away from the official duty station; or
- (4) An employee is required to travel as a passenger on an overnight assignment away from the official duty station during hours on nonworkdays that correspond to the employee's regular working hours.¹¹⁷

Time spent attending a lecture, meeting, or conference is considered civilian employee hours of work if attendance is as follows:

- (1) During an employee's regular working hours; or
- (2) Outside an employee's regular working hours; and
 - (i) The employee is directed by an agency to attend such an event; or
 - (ii) The employee performs work for the benefit of the agency during such attendance.¹¹⁸

Conference sponsors may decrease civilian employee overtime and compensatory time costs by planning conference dates that allow travel to and from conferences during normal working hours of the normal workweek.¹¹⁹ The JFTR and JTR limit the number of personnel attending the conference to that necessary to accomplish the mission.¹²⁰

Speaker Fees¹²¹

The sponsoring organization may use appropriated funds to pay an honorarium in the form of cash, memento, or both to a speaker as a token of appreciation when the speech furthers an authorized agency purpose and the speaker is not a DOD employee or service member.¹²² Normally, honorariums issued to individual speakers may not exceed \$500.¹²³ An honorarium is a token of appreciation—not fair and reasonable compensation for services rendered.¹²⁴

Gifts, Mementoes, or Tokens for Conference Attendees

Generally, appropriated funds may not be used to purchase gifts, mementoes, or tokens for conference attendees.¹²⁵ Official representation funds (ORFs), however, may be used to purchase gifts, mementoes, or tokens for those attendees who fall within the definition of "authorized guests."¹²⁶ These items

116. JFTR, *supra* note 1, PU2550F.9 (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950F.9 (1 Apr. 2002) (conference planning).

117. 5 C.F.R. § 551.422 (2003).

118. *Id.* § 551.423(d).

119. Conference registration may be scheduled for late Monday afternoon or Tuesday morning and the closing session may be scheduled for Thursday afternoon or Friday morning.

120. JFTR, *supra* note 1, PU2550K (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950K (1 Apr. 2002) (conference planning).

121. *See* JFTR, *supra* note 1, PU2550D.1 (1 Dec. 2002) (conference planning); *see* JTR, *supra* note 1, PC4950D.1 (1 Apr. 2002) (conference planning).

122. *See* Dep't of the Army—Incidental Costs of Commemorative Luncheon for Dr. Martin Luther King, Jr., B-208729, 1983 U.S. Comp. Gen. LEXIS 1129, at *2 (May 24, 1983); *see generally* Food and Drug Administration—Use of Appropriations for "No Red Tape" Buttons and Mementoes, B-257488, 1995 U.S. Comp. Gen. LEXIS 703 (Nov. 6, 1995). Department of Defense employees may not receive additional pay or allowances for disbursement of public money or for the performance of any other service or duty unless specifically authorized by law. 5 U.S.C. § 5536 (2000); U.S. DEP'T OF DEFENSE, REG. 5500.7-R, JOINT ETHICS REG. para. 5-405 (12 Dec. 1997) [hereinafter JER].

123. *See* DEFENSE FINANCE ACCOUNTING SERVICE, INDIANAPOLIS, REG. 37-1, para. 09210 (Jan. 2000) [hereinafter DFAS 37-1]. Installation commanders may approve honorariums up to \$500. *Id.*

124. *Id.* para. 09210.

may cost no more than \$285.¹²⁷ Army organizations, however, may not use ORFs to pay for items to present to DOD civilians or uniformed personnel.¹²⁸

Can We Charge at the Door?¹²⁹

An Army organization sponsoring a conference may charge a mandatory conference fee to federal attendees it is authorized, but not required or funded, to train.¹³⁰ The mandatory conference fee may include the pro rata share of all direct and indirect costs attributable to training, regardless of whether the sponsoring organization's expenditures are increased.¹³¹ The mandatory conference fee, however, may not include the cost of items that are not reimbursable to the attendee (e.g., entertainment, mementoes, and gifts).¹³²

For example, the *Army Culinary Institute (ACI)* has a regulatory duty to provide continuous culinary training to Army cooks and regulatory authority to provide training to cooks from other services. The *ACI* plans to sponsor an Army

Cooks' Training Seminar in Las Vegas. During the conference opening dinner, casino entertainers will dazzle and amaze attendees by performing a musical interpretation of "The Iron Chef." The *ACI* may not charge Army attendees a mandatory conference fee to pay for this conference because it has already been authorized to expend a set amount of dollars to train Army cooks. Note that the *ACI* may charge the Navy attendees a mandatory conference fee that covers their pro rata share of direct and indirect conference training costs.¹³³ The *ACI* may not charge either group a mandatory fee that includes the cost of opening night entertainment.

The sponsoring organization should inform other organizations sending attendees that it will only accept military interdepartmental purchase requests (MIPR), DD Form 448, to effect payment of mandatory conference registration fees.¹³⁴ Attendees should not be allowed to pay mandatory conference registration fees by cash or check because Army organizations do not have statutory authority to collect cash and checks from private individuals and then deposit them in the federal Treasury so they may be used later for conference expenses.¹³⁵

125. See *Key Chains for Educators Attending Forest Service Seminars*, B-182629, 1975 U.S. Comp. Gen. LEXIS 149, at *6 (May 20, 1975); see also Major Kathryn R. Sommerkamp, *Commander's Coins: Worth Their Weight in Gold?*, ARMY LAW., Nov. 1997, at 6, available at <http://www.jagcnet.army.mil/ArmyLawyer> (containing a detailed discussion on issues related to commanders' coins that are generally relevant to awards given throughout a conference).

126. U.S. DEP'T OF ARMY, REG. 37-47, REPRESENTATION FUNDS OF THE SECRETARY OF THE ARMY para. 2-9a. (31 May 1996) [hereinafter AR 37-47]. The regulation defines "authorized guest." *Id.* para. 2-3.

127. 41 U.S.C. § 102-42.10 (2000); U.S. DEP'T OF DEFENSE, DIR. 7250.13, OFFICIAL REPRESENTATION FUNDS para. E.2.4.1.8 (10 Sept. 2002) [hereinafter DOD DIR. 7250.13]; AR 37-47, *supra* note 126, para. 2-9 a(1).

128. AR 37-47, *supra* note 126, para. 2-9c. While *DOD Dir. 7250.13* allows a limited amount of ORFs to be expended for such purposes (no more than \$40 per recipient per occasion), AR 37-47 states that ORFs may not be used. DOD DIR. 7250.13, *supra* note 127, para. E.1; AR 37-47, *supra* note 126, para. 2-9c; see Memorandum, Raymond F. Dubois, Director, Office of Secretary of Defense, Administration and Management, to Under Secretaries of Defense (Dec. 23, 2002) (on file with the author) [hereinafter Dubois Memo].

129. JFTR, *supra* note 1, PU2550F.7 (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950F.7 (1 Apr. 2002) (conference planning).

130. 31 U.S.C. § 1535a; see JFTR, *supra* note 1, PU2555E (1 Feb. 2002) (conference planning); JTR, *supra* note 1, PC4955E (1 Feb. 2002) (conference planning); Unauthorized Use of Interest Earned on Appropriated Funds, B-283834, 2000 US Comp. Gen. LEXIS 163, at *5 (Feb. 24, 2000); see also Obligation of Funds under Military Interdepartmental Purchase Requests, B-186535, 1980 Comp. Gen. LEXIS 97, at *4 (June 26, 1980); FAR, *supra* note 20, ¶ 2.101; DFAS 37-1, *supra* note 123, para. 120701.

131. In the Matter of Washington Nat'l Airport; Fed. Aviation Admin., B-136318, 1978 U.S. Comp. Gen. LEXIS 70, at *22 (Aug. 14, 1978); DFMR, *supra* note 12, vol. 11A, ch. 3, para. 03061 (May 2001). The following serves as examples of direct costs: salaries of employees or contractors performing the training; cost of materials or equipment consumed at the conference; and cost of the rented conference facility. Indirect costs are included in the current fiscal year overhead of the sponsoring organization, bear a significant relationship to the conference, and benefit non-sponsoring agencies sending attendees. In the Matter of Washington Nat'l Airport; Fed. Aviation Admin., 1978 U.S. Comp. Gen. LEXIS 70, at *23; see DFMR, *supra* note 12, vol. 11A, ch. 3, para. 03061 para. 010203 (containing DOD billing policies).

132. See JFTR, *supra* note 1, PU2555E3-4 (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4955E4, PC4955G (1 Feb. 2002) (conference attendance).

133. 31 U.S.C. § 1535a (2000); see JFTR, *supra* note 1, PU2555E (1 Feb. 2002) (conference attendance); JTR, *supra* note 1, PC4955E (1 Feb. 2002); see also Unauthorized Use of Interest Earned on Appropriated Funds, B-283834, 2000 U.S. Comp. Gen. LEXIS 163, at *5 (Feb. 24, 2000); Obligation of Funds under Military Interdepartmental Purchase Requests, B-186535, 1980 Comp. Gen. LEXIS 97, at *4 (June 26, 1980); DFAS 37-1, *supra* note 123, para. 120701.

134. See generally DFMR, *supra* note 12, vol. 11A, ch. 3, ¶ 030501 (Apr. 2000). The MIPR should include a description of the services ordered (e.g., training, training materials, meals, lodging), when training will be provided (e.g., conference dates), a funds citation (either direct or reimbursable), and a payment provision which may include a citation of the account number associated with the DOD purchase card; and acquisition authority as may be appropriate. *Id.*

135. 31 U.S.C. 1552.

How Do We Buy Everything?

Purchases Under and Over \$2500

The government purchase card (GPC) must be used when purchasing goods or services below \$2500 (the micro-purchase threshold).¹³⁶ To the extent practicable, the GPC holder should distribute purchases equitably among qualified suppliers.¹³⁷ The cardholder must follow the GPC standard operating procedure (SOP) unless it conflicts with more current legal guidance.¹³⁸

Purchases Over \$2500

When the cost of any item or service is reasonably expected to exceed \$2500, the conference planner should contact the contracting officer.¹³⁹ The contracting officer, normally the only person authorized to make the actual purchase, will ensure that proper procedures are followed before the purchase is made.¹⁴⁰

Cautionary Notes

Conference Facilities

Regardless of anticipated cost, a DMA must consider at least three facilities as potential conference locations and maintain documentation of this consideration for possible inspection by the Office of the Inspector General or other interested parties.¹⁴¹

Cost Splitting

The conference planner may not break down requirements that exceed the micro purchase threshold (\$2500), simplified acquisition threshold (\$100,000), or the simplified acquisition threshold for commercial items (\$5,000,000) into several purchases that are less than the applicable threshold merely to permit the use of less burdensome acquisition procedures.¹⁴² For example, a sponsoring organization that seeks to rent conference space from a hotel with one large auditorium and five small meeting rooms may not break down its requirements (one contract for the auditorium, one contract for the meeting rooms) to stay under an acquisition threshold.

136. DFMR, *supra* note 12, vol. 5, para. 0210; *see* FAR, *supra* note 20, para. 13.2.

137. FAR, *supra* note 20, para. 13.202(a).

138. U.S. DEP'T OF ARMY, GOVERNMENT PURCHASE CARD STANDARD OPERATING PROCEDURE (31 July 2002), *available at* <http://purchasecard.saalt.army.mil/Concept%20of%20Operations%20R1%20March%2003.pdf> (last visited Dec. 9, 2003).

139. FAR, *supra* note 20, para. 7.104(c).

140. *Id.* para. 1.602-1(a) (Apr. 4, 2002); *see* Dep't of the Army—Claim of the Hyatt Regency Hotel, B-230382, 1989 U.S. Comp. Gen. LEXIS 1494 (Dec. 22, 1989) (addressing facts in which Army conference planner, with no contract authority, impermissibly signed multiple contracts with conference facility). For contract actions expected to exceed \$2500 but not to exceed \$10,000, the contract officer must consider soliciting offers from at least three sources to promote competition to the maximum extent practicable. FAR, *supra* note 20, para. 13.104 (Dec. 2001). Whenever practicable, the contract officer should request solicitations from two sources not included in a prior solicitation. *Id.* Whenever contract actions are expected to exceed \$10,000 but not \$25,000, the contract officer must post a solicitation that clearly describes the required supplies or services in a public place or by any appropriate electronic means for a period no less than ten days. *Id.* para. 5.101(a)(2) (Apr. 2002). For contract actions expected to exceed \$25,000, the contracting officer normally must post a synopsis and solicitation online. *Id.* para. 5.101(a) (Apr. 2002); 48 C.F.R. pt. 2.101 (2003); *see* Federal Business Opportunities, *available at* www.FedBizOpps.gov (last visited Sept. 29, 2003). The synopsis and solicitation process lasts at least forty-five days. *See* FAR, *supra* note 20, para. 5.203 (Apr. 2002).

When acquiring commercial items under the simplified acquisition threshold (currently \$5,000,000), the contracting officer may use the combined synopsis or solicitation procedure. *Id.* para. 12.603 (July 2001), para. 13.500(a) (Jan. 2003). A combined synopsis and solicitation of the action must be posted for a period of time that gives potential offerors a reasonable opportunity to respond to each contract action. *Id.* para. 5.203(b) (Apr. 2002), para. 12.603(a) (July 2001). Any acquisition for supplies or services that has an anticipated dollar value exceeding \$2500, but not over \$100,000, is automatically reserved for small business concerns. *Id.* para. 13.003(b)(1) (Jan. 2003).

141. JFTR, *supra* note 1, PU2550H.1 (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950H.1 (1 Apr. 2002) (conference planning). Sponsoring organizations infrequently expend more than the simplified acquisition threshold, currently five million dollars, on conference contracts. Therefore, the procedural requirements that mandate the Army to encourage competition are greatly relaxed. A facility, however, selected to host an Army conference has the opportunity to earn a great deal of revenue from Army conference attendees. The conference planner should work with the organization's contracting officer to encourage as much competition as possible between potential conference facilities to ensure that the sponsoring organization gets the best value possible. JFTR, *supra* note 1, PU2550H.1 (1 Dec. 2002) (conference planning); JTR, *supra* note 1, PC4950H.1 (1 Apr. 2002) (conference planning).

142. FAR, *supra* note 20, para. 13.003 (c) (Jan. 2003).

When Do We Sign the Contract?

An Army appropriation is normally available for a definite period of time.¹⁴³ The Army must legally bind itself to make payment during the period of availability or the authority to obligate expires.¹⁴⁴ Generally, the time limitation pertains to when the Army legally binds itself to make payment, not when it actually disburses funds.¹⁴⁵ The Army may only legally bind itself to make payment for requirements that arise during the period of availability of the funds to be used for the acquisition.¹⁴⁶ One statutory exception to this rule that may be pertinent to large conferences applies to service contracts that do not exceed one year. For this type of contract, the Army may legally use funds available at the time the contract is awarded to pay for expenses that will occur in the following fiscal year, so long as the services start during the current year.¹⁴⁷

For example, on 1 September 2004, the *Big Belly Brigade* identifies a requirement to conduct a conference on 1 August 2005. The brigade wishes to use funds that will expire on 1 October 2004 to pay a contractor to plan and implement the entire project. The brigade may use these funds under the following conditions: (1) there is a need for services to commence before 1 October 2004—the beginning of the next fiscal year; (2) the services will commence before 1 October 2004; and (3) the contract will last no more than twelve months. Conference planners should direct further questions regarding the availability of funds to the resource manager, acquisitions manager, contracting officer, comptroller, or attorney within the organization.

How Do We Pay for Everything Else? (Entertainment or Non-reimbursable Meals)

Generally, appropriated funds may not be used to pay for entertainment or food and beverage expenses.¹⁴⁸ An organization, however, that seeks to provide conference entertainment and other supplies or services for which appropriated funds are

not available, may consider private or informal funding options.

Private Funds

The sponsoring organization may charge a non-mandatory, non-reimbursable entertainment fee that covers entertainment and non-reimbursable food and beverage expenses.¹⁴⁹ But, the sponsoring organization must charge the conference entertainment fee separately from a mandatory conference registration fee, and may not mix the two funds.¹⁵⁰ The conference planner should take appropriate steps to ensure that both conference attendees and their sponsoring commands understand that government funds may not be used to pay the entertainment fee.¹⁵¹

The conference sponsor may ask the custodian of a tax-exempt unit fund to open a new unit bank account specifically to manage the entertainment expenses, for example—“2003 Conference (Conf.) Entertainment (Ent.) Fund.” The conference planner may then require all participants who wish to pay for entertainment to submit a check to the “2003 Conf. Ent. Fund.” If a tax-exempt unit organization does not exist, the conference planner should recommend that one be established.¹⁵² Unit fund custodians and conference planners should not manage unit funds out of their personal bank accounts. Personnel who maintain unit funds in personal accounts may encounter tax problems, run afoul of the law by expending unit funds for personal purposes (temporary loans), or inadvertently block access to such funds should they die or become mentally incompetent.

Informal Funds

Under some circumstances, a commander may direct that a fund custodian expend unit funds on unit entertainment expenses. A commander may only pay for expenses that are consistent with the purpose and function of the fund.¹⁵³ The fol-

143. 31 U.S.C. § 1551 (2000).

144. *Id.* § 1552.

145. Sec’y of Commerce, B-136383, U.S. Comp. Gen. LEXIS 162 (June 27, 1958).

146. *See* Modification to Contract Involving Cost Under-run, B257617, 1995 Comp. Gen. LEXIS 258 (Apr. 18, 1995).

147. 10 U.S.C. § 2410a.

148. *See* Navy Fireworks Display, B-205292, 1982 U.S. Comp. Gen. LEXIS 957, at *4 (June 2, 1982) (holding that fireworks are unauthorized entertainment).

149. *See* Use of Appropriated Funds to Purchase Light Refreshments at Conferences, B-288266, Jan. 27, 2003.

150. *See* JFTR, *supra* note 1, PU2555E3-4 (1 Dec. 2002) (conference attendance); JTR, *supra* note 1, PC4955E4, PC4955G (1 Feb. 2002) (conference attendance).

151. *See* JFTR, *supra* note 1, PU2555E3-4 (1 Dec. 2002) (conference attendance); JTR, *supra* note 1, PC4955E4, PC4955G (1 Feb. 2002) (conference attendance).

152. *See* Internal Revenue Service, Dep’t of the Treasury, *Tax Information for Charities and Other Non-profits*, available at <http://www.irs.gov/charities/article/0,,id=96122,00.ht> (last visited Dec. 9, 2003) (explaining how to apply for tax-exempt status). A tax-exempt organization may apply for an employer identification number. After the Internal Revenue Service issues the organization an employer identification number, the organization may open a bank account. *Id.*

lowing scenario illustrates this rule. The *Hofbrau Brigade Commander* has scheduled a brigade-training event in Munich during Oktoberfest and would like to use informal “entertainment” funds to pay for an “organization cover charge” at a beer hall. Funds may be authorized so long as the purpose of the unit informal fund includes entertainment. The commander may not use the “cup and flower” fund to pay for the same expense. Further, the commander may not use either fund to pay the expenses of non-brigade personnel.

Cautionary Note

The conference planner should not sign an entertainment or non-reimbursable meal contract until the checks have cleared and the cash is in hand. These contracts are not government contracts and bind only the parties who sign them.¹⁵⁴ A conference planner who signs these types of contracts without cash in hand does so at his own peril.

What Records Should be Kept on File?

As discussed above, the DMA must always keep written documentation of the non-conference alternatives considered

and the selection rationale utilized. Additionally, the DMA must maintain a record of the cost of each alternative conference site considered for each conference sponsored or funded, in whole or in part, for thirty or more attendees.¹⁵⁵

Conclusion

Successful conference planning requires research and coordination. Conference planners must work closely with contracting officers to properly define conference requirements so that both can work together to obtain the best bargain for the government. After the contracting officer has received offers from businesses that want to compete for the sponsoring organization’s conference business, the conference planner should screen those offers to ensure they meet the minimum requirements set forth above. The conference planner should then evaluate the remaining offers using criteria that the regulations require and that the DMA provides to him. Finally, the conference planner should provide viable options and make a well-researched recommendation for the DMA’s review and approval.

153. U.S. DEP’T OF ARMY, REG. 600-20, ARMY COMMAND POLICY para. 4-21 (13 May 2002).

154. See Dep’t of the Army—Claim of the Hyatt Regency Hotel, B-230382, 1989 U.S. Comp. Gen. LEXIS 1494 (Dec. 22, 1989) (finding that Army conference planner with no contract authority impermissibly signed multiple contracts with conference facility).

155. See JFTR, *supra* note 1, PU2550H1 (1 Dec. 2002) (conference planning); see JTR, *supra* note 1, PC495H1 (1 Apr. 2002) (conference planning).

Official Representation Funds: Fiscally Controlled Funds or “Easy Money”?

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I want the easy, easy money, I want the good times, oh, I never had. I want the easy, easy money, I want the good life. I want it bad.

—Billy Joel¹

Introduction

Article I, Section 9 of the Constitution of the United States of America states that “no Money shall be drawn from the Treasury but in Consequence of an Appropriation made by Law.”² This is Congress’s “power of the purse”—the greatest power it has and the one it most zealously guards.³ During the nation’s early years, however, executive agencies did little to control the money they were given and abuses of public funds were common.⁴ Often, Congress was forced to appropriate additional funds in order to cover the nation’s expenses and obligations. To curb these abuses, Congress passed a series of statutes that established rules for fiscal control.⁵ Some statutes provide for criminal sanctions if they are not followed.⁶ A complete exposition of all these controls is outside the scope of this article. This article looks, however, at the three primary fiscal controls applicable to all government funds—purpose, time, and amount—to determine if and how they apply to a particular

type of funds—official representation funds (ORFs). The article begins with a brief discussion of what ORFs are and how they are used within the Department of Defense (DOD). Next, the article examines fiscal controls in general and when and if they apply to ORFs. Finally, the article examines the administrative controls for these funds within the DOD. This inquiry demonstrates that ORFs are indeed fiscally-controlled funds that serve an important purpose within the government.

This inquiry is important because ORFs appear on the surface to be completely discretionary to the heads of federal agencies.⁷ For the Army, Congress appropriates millions of dollars for this purpose.⁸ As the U.S. Supreme Court has noted, “the protection of the public fisc is a matter that is of interest to every citizen”⁹ As citizens, it is important to know whether the funds we give the government are subject to appropriate control, or whether there are “pots” of “easy money” that agency officials can spend for anything and everything they might want. As judge advocates, we are obligated to our client, the Army, to ensure that expenditures are made lawfully.

1. Billy Joel, *Easy Money*, on INNOCENT MAN (Sony Records 1983).

2. U.S. CONST. art. I, § 9, cl. 7.

3. See U.S. GENERAL ACCOUNTING OFFICE, OFFICE OF THE GENERAL COUNSEL, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW 1-3 (2d ed. 1991) [hereinafter GAO RED BOOK] (providing a more complete discussion of the “power of the purse”). Commentators have described Congress’s power to appropriate funds as “the most important single curb in the Constitution on Presidential power.” *Id.* (quoting EDWARD S. CORWIN, THE CONSTITUTION AND WHAT IT MEANS TODAY 134 (H.W. Chase & C. H. Ducat, 14th ed. 1978)). “The established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress.” *United States v. MacCollom*, 426 U.S. 317, 321 (1976).

4. GAO RED BOOK, *supra* note 3, at 1-6.

5. *Id.* at 1-6 - 1-7; see Purpose Statute, 31 U.S.C. § 1301(a); Antideficiency Act, 31 U.S.C. § 1341 (2000); “Bona Fide Needs” Statute, 31 U.S.C. § 1502(a); “Miscellaneous Receipts” Statute, 31 U.S.C. § 3302(b).

6. For example, to enforce the Antideficiency Act, the U.S. Code provides that “[a]n officer or employee of the United States Government or of the District of Columbia government knowingly and willfully violating section 1341(a) or 1342 of this title shall be fined not more than \$5,000, imprisoned for not more than 2 years, or both.” 31 U.S.C. § 1350.

7. See *infra* note 26 and accompanying text.

8. Official representation funds are drawn from the emergency and extraordinary expense limitation contained in the operations and maintenance portion of the annual appropriation bills. For Fiscal Year 2004, as an example, Congress appropriated just over \$25 billion dollars for expenditures necessary for the operation and maintenance of the Army, but not otherwise specified in the appropriations act. Of that, “not to exceed \$ 11,034,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Army.” Department of Defense Appropriations Act, 108 Pub. L. 87, tit. II, 117 Stat. 1054, 1056 (2003).

9. *Brock v. Pierce County*, 476 U.S. 253, 262 (1986).

What Is the Function of ORFs?

ORFs in General

The longstanding general rule in fiscal law is that government departments and agencies may not use appropriated funds for entertainment expenses, unless expressly authorized by Congress.¹⁰ Entertainment expenses include such things as food and gifts.¹¹ This prohibition includes the entertainment of both U.S. citizens and foreigners.¹² The rule makes some sense because of the potential for abuse that exists with these kinds of expenditures. There are circumstances, however, when agencies legitimately need to make these kinds of expenditures to conduct their affairs with other nations and, in some circumstances, with U.S. citizens.

An early Army case, often cited for the proposition that governments may not use appropriated funds for entertainment expenses, aptly demonstrates this need for a mechanism to pay protocol, or etiquette related expenses.¹³ In Fiscal Year (FY) 1925, Congress appropriated \$50,000 to fund an aerial flight around the world.¹⁴ The appropriation provided the following:

* * and not exceeding \$50,000 may be used for all contingent expenses in connection with an aerial flight around the world, for such purposes as may be approved or authorized by the Secretary of War, to be immediately available; * * *¹⁵

Two lieutenants were making arrangements for the flight which, given the technology of the time, involved landing in other countries. In making these arrangements, the lieutenants spent \$1265 “entertaining officials of various governments.”¹⁶ The question before the Comptroller General (CG) was whether these expenses were payable from the appropriation cited above. The CG ruled that they were not, even though the Secretary of War seemed to have authority to approve the expense under the language of the appropriation. To form his decision, the CG examined the appropriation request that the Army made to Congress and the discussion in Congress and found no mention of entertainment. From this, he concluded that the “contingent expenses” contemplated by Congress did not include entertainment.¹⁷ Unfortunately for the two young officers, no Army appropriation was available to meet these expenses at the time.

It is reasonable to conclude from common experience, however, that in many cultures, certain etiquette obligations are expected to be met in order to meet with officials and obtain decisions necessary to accomplish an objective. Many of these are expensive, involve food, drink or other entertainment expenses, but do not fit within the normal congressional appropriations. The State Department long had an entertainment appropriation because it was obvious that they needed to meet requirements of etiquette when dealing with foreign dignitaries.¹⁸ As the 20th Century progressed, it became clear that other agencies, like the Army officers from the then-War Department, had similar types of obligations. Congress began providing funds to meet official entertainment requirements, first limited to foreign visitors overseas, and then more broadly funding these types of expenses, even for officials from other agencies.¹⁹ In the 1960’s, the term “official reception and rep-

10. *See, e.g.*, To the Administrator, Veterans Administration, B-152331, 43 Comp. Gen. 305 (1963) (“[I]t is a general rule of longstanding that funds appropriated for Government departments and agencies may not be used for entertaining individuals by giving luncheons, etc., except when specifically authorized by statute.”).

11. *See, e.g.*, Matter of: Refreshments at Awards Ceremony, B-223319, 65 Comp. Gen. 738 (1986).

12. *See* GAO RED BOOK, *supra* note 3, at 4-100.

13. *See* To Captain Carl Halla, U.S. Army, 5 Comp. Gen. 455 (1925).

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *See* Matter of: U.S. Trade Representative--Use of Reception and Representation Funds, B-223678, 1989 U.S. Comp. Gen. LEXIS 598 n.2 (June 5, 1989) which states the following:

The “official reception and representation” appropriations originated from the need to permit officials of agencies with significant presence in foreign countries to reciprocate courtesies extended to them by foreign officials. Since the early 1960’s, when it seems to have originated, the use of R & R appropriations has outgrown the foreign relations context and has now become the most common, although not the only, form of “entertainment” appropriation.

Id.

19. GAO RED BOOK, *supra* note 3, at 4-109.

resentation funds” was coined (sometimes shortened to R & R funds) and most of these expenses now fall under this title.²⁰ Unfortunately, this term is not defined anywhere in the law.²¹ The CG has provided what he terms “a rough outline of a definition”²² stating,

Fairly read, our decisions make clear that we will not object to an agency’s use of its R & R appropriation to cover expenses incurred in connection with official agency events, typically characterized by a mixed ceremonial, social and/or business purpose, and hosted in a formal sense by high level agency officials.²³

Without a statutory meaning for the term, it can be difficult to determine the proper purposes to which governments can apply the money. Agency heads are generally given broad discretion in expending these funds, which raises the question—is this money subject to fiscal control, or is it simply “easy money” to be spent however the agency wishes?

ORFs in the DOD

Congress has long provided some form of “contingency” funds to the military.²⁴ Today, Congress provides these funds from the “emergency and extraordinary expense” limitation in the operations and maintenance appropriation (O & M).²⁵ Authority for this limitation has been codified in 10 U.S.C. § 127, entitled “Emergency and Extraordinary Expenses.”²⁶ Congress provides standing authority that:

within the limitation of appropriations made for the purpose, the Secretary of Defense, the Inspector General of the Department of Defense, and the Secretary of a military department within his department, may provide for any emergency or extraordinary expense which cannot be anticipated or classified. When it is so provided in such an appropriation, the funds may be spent on approval or authority of the Secretary concerned or the Inspector General for any purpose he determines to be proper, and such a determination is final and conclusive upon the accounting officers of the United States.²⁷

This statutory provision seems to provide plenary authority to the Secretary for any and all certifiable expenses. The statute, in a subsequent section, provides some administrative limits. For individual expenditures exceeding \$500,000, but less than \$1 million, the Secretary must give notice to Congress and wait five days before spending the money.²⁸ For individual expenditures exceeding \$1 million, the Secretary must wait fifteen days before spending the money.²⁹ Additionally, Congress must receive a quarterly report of all emergency and extraordinary expenses.³⁰ The first line of the statute provides the Secretary with discretion to use only funds appropriated specifically for “emergency and extraordinary expenses.”³¹ Thus, if Congress is not happy with the expenditures being reported to it, it can simply reduce or eliminate the funds appropriated for this purpose. The DOD, as well as each military service, provides additional limitations by regulation, but these are addressed later in this article.³²

20. *Id.* at 4-110 to 4-111.

21. *Id.*

22. *U.S. Trade Representative*, 1989 U.S. Comp. Gen. LEXIS 598, at n.3. The CG states,

We are not aware of any definition of “official reception” in the sundry appropriations therefore or their legislative history. Nor is it our purpose here to provide other than a rough outline of a definition. The essential point of any definition must reflect a distinction between the kinds of social and quasi-social functions suggested above that fall within the meaning of the phrase “official reception” and interagency working sessions or routine business meetings.

Id.

23. *Id.*

24. Act of Mar. 3, 1795, 1 Stat. 438. As discussed above, however, expenditures for entertainment were not considered allowable under this appropriation.

25. *See supra* note 8; *see also infra* note 34 and accompanying text.

26. 10 U.S.C. § 127 (2000).

27. *Id.*

28. *Id.* § (c)(1)(A).

29. *Id.* § (c)(1)(B).

30. *Id.* § (d).

The emergency and extraordinary expense funds for the DOD are included with the operations and maintenance appropriation for each service. While the appropriation does not mention “official representation” or “reception and representation,” it has long been recognized that the emergency and extraordinary expense limitation includes what the DOD terms as ORFs.³³ Congress specifies what portion of the O & M funds appropriated may be used, pursuant to 10 U.S.C. § 127, for emergency and extraordinary expenses. For example, the Army’s O & M appropriation for FY 2004 states,

For expenses, not otherwise provided for, necessary for the operation and maintenance of the Army, as authorized by law; *and not to exceed \$ 11,034,000 can be used for emergencies and extraordinary expenses, to be expended on the approval or authority of the Secretary of the Army*, and payments may be made on his certificate of necessity for confidential military purposes, \$25,029,346,000³⁴

The Army, by regulation, identifies four non-exclusive categories of expenses for which emergency and extraordinary expense funds may be used. These are Intelligence Contingency Funds, Criminal Investigation Activities, and two cate-

gories of miscellaneous expenses, A and B.³⁵ Category A are for “official courtesies and other representation expenses . . .”;³⁶ category B provides for any unanticipated expenditure that is not for official representation, such as emergency rescues.³⁷

The General Accounting Office (GAO) has generally given wide latitude to the Secretaries in the executive branch, at least with some categories of emergency and extraordinary expenses. For example, in 1992, the defense attaché in Port-Au-Prince, Haiti submitted an emergency and extraordinary expense voucher to the Embassy for Defense Intelligence Agency (DIA) expenditures pursuant to an agreement with the Department of State for the Embassy there to provide fiscal services.³⁸ The voucher did not specify what the expenses were, nor did it contain any other documentation because, the defense attaché asserted, the certifying officer did not have a sufficient security clearance to allow him to see the supporting documents.³⁹ The certifying officer refused to certify the funds and requested an advance decision from the CG. The State Department refused to forward the request for an advance decision arguing that the payment could be certified on the defense attaché’s signature alone, since the attaché had delegated authority from the Secretary pursuant to 10 U.S.C. § 127.⁴⁰ The certifying officer argued that he is required to certify both the legality and correctness of the voucher—a function he could not perform without the documentation.⁴¹

31. The meaning of “emergency and extraordinary” and its efficacy as a limitation is somewhat questionable. In a GAO audit in 1986, one of the errors noted was that some expenditures “were not of an emergency and extraordinary nature as they recur on a regular basis and clearly could have been anticipated.” Internal Controls: Defense’s Use of Emergency and Extraordinary Funds, GAO/AFMD-86-44, Comp. Gen. B-221257 (June 4, 1986). As an example of an event the GAO viewed as problematic was the annual Christmas reception for congressional staff. *Id.* The GAO questioned this because the event occurred every year, could have been anticipated, and could have been budgeted for. They recommended that the DOD regulations be modified to prohibit the use of emergency and extraordinary event funds for recurring events. *Id.* The current version of the DOD instruction does not include any such prohibition. See U.S. DEP’T OF DEFENSE, DIR. 7250.13, OFFICIAL REPRESENTATION FUNDS (ORF) (10 Sept. 2002) [hereinafter DOD DIR. 7250.13]. Additionally, the author is aware through personal experience at the Office of the Army General Counsel that the joint congressional reception continued to occur as late as FY00 and ORFs funded it. Clearly, the DOD did not agree with the GAO’s interpretation of this limitation in its audit and the GAO has apparently not taken any action to enforce its interpretation.

32. See *infra* notes 114 - 159 and accompanying text.

33. GAO RED BOOK, *supra* note 3, at 4-110 (citing Internal Controls: Defense’s use of Emergency and Extraordinary Funds, GAO/AFMD-86-44 (June 4, 1986); DOD Use of Official Representation Funds to Entertain Foreign Dignitaries, GAO/ID-83-7 (Dec. 29, 1982)).

34. Department of Defense Appropriations Act, 108 Pub. L. 87, 117 Stat. 1054 (Sept. 30, 2003) (emphasis added).

35. U.S. DEP’T OF ARMY, REG. 37-47, REPRESENTATION FUNDS OF THE SECRETARY OF THE ARMY para. 1-5 (31 May 1996) [hereinafter AR 37-47]. Sister services also have implementing guidance for the emergency and extraordinary expense limitation, and specifically ORF. See U.S. DEP’T OF NAVY, SEC’Y OF THE NAVY INSTR. 7042.7J, GUIDELINES FOR THE USE OF OFFICIAL REPRESENTATION FUNDS (5 Nov. 1998) [hereinafter SECNAVINST 7042.7J]; U.S. DEP’T OF NAVY, SEC’Y OF THE NAVY INSTR. 7042.14A, FUNDING OF VISITS BY FOREIGN DIGNITARIES (28 Feb. 1991) [hereinafter SECNAVINST 7042.14A]; U.S. DEP’T OF AIR FORCE, INSTR. 65-603, OFFICIAL REPRESENTATION FUNDS – GUIDANCE AND PROCEDURES (30 Jan. 2002) [hereinafter AFI 65-603].

36. *Id.* at 1.

37. *Id.*

38. Matter of: Certification of Defense Intelligence Agency Emergency and Extraordinary Expense Vouchers, B-251905, 72 Comp. Gen. 279 (1993). The arrangement with the State Department is the Foreign Affairs Administrative Service Agreement. The Comptroller General noted that they “have previously approved similar types of interagency servicing arrangements under the Economy Act, 31 U.S.C. § 1535. See, e.g., 55 Comp. Gen. 388 (1975); 59 Comp. Gen. 471 (1980); B-205616, July 16, 1982.”

39. Matter of: Certification of Defense Intelligence Agency Emergency and Extraordinary Expense Vouchers, 72 Comp. Gen. at 279.

40. *Id.*

The CG agreed with the State Department. While recognizing the certifying officer's usual obligation to certify legality and correctness, the CG found that the certification contained on the voucher (made by the defense attaché) combined with the authority of 10 U.S.C. § 127 satisfies the certification requirement.⁴² Once an emergency and extraordinary expense is so certified, 10 U.S.C. § 127 binds the certifying officers who may not question, nor are they responsible for the Secretary's original certification. Regarding liability for improper payments, the CG noted that when there are multiple certifications by certifying officials, the certification on the base document is the one binding for liability. Subsequent officials are only liable for errors in their own processing of the payment, not the payment itself.⁴³ Thus, it is the defense attaché who is liable for any impropriety with the payment. The CG concluded with the following broad statement regarding 10 U.S.C. § 127 and its impact on his own authority:

Reading these provisions together, the Secretary of Defense, or a designee, is authorized to make expenditures on the Secretary's certificate of necessity . . . for any emergency or extraordinary expense the Secretary determines to be proper, and the Secretary's determination of propriety is final and conclusive on this Office.⁴⁴

In practice, however, the CG has not given this degree of deference with the subset of emergency and extraordinary expense funds called ORF.⁴⁵ The GAO has approved, and disapproved, various purposes for these funds. As the CG has stated:

An agency head's custodianship of an official reception and representation account traditionally entails "a great deal of discretion" as to expenditures. *61 Comp. Gen. 261 (1982)*. This does not mean, however, that there are no limits on the proper expenditure of the fund.⁴⁶

Consequently, despite the apparent unfettered discretion that Secretaries have regarding emergency and extraordinary expense funds, the GAO will carefully scrutinize expenditures of these funds for official representation purposes in accord with traditional fiscal principles.

Fiscal Controls

Limitations as to Purpose

Purpose In General

The so-called "purpose statute" is 31 U.S.C. § 1301. Subsection (a) of that statute provides that "[a]ppropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."⁴⁷ In other words, agencies must spend money only for the purposes Congress specifies in the appropriation. Different agencies request their funds using various descriptors. Consequently, not all appropriations are provided for the same purposes across the various agencies of the executive branch. While some of the purposes are similar, many of the names are specific to the agency. In the DOD, for example, the O & M funds are provided to cover day-to-day operating expenses, while procurement funds cover the acquisition of equipment and materiel for the force.

While it may seem like a straightforward matter to determine the purpose of funds by looking at the appropriation act, things are not that simple. For example, suppose a DOD agency needs to buy a new computer for an office. Is that an operating expense to be funded by O & M (which is readily available via government credit cards⁴⁸ and other payment devices) or is it an investment in a new system of equipment that requires procurement funds? The answer is, "it depends." The GAO has determined a three-part test for analyzing whether an obligation is properly funded by a particular "pot of money." These three parts are as follows:

1. The expenditure of an appropriation must be for a particular statutory purpose, or *nec-*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. For the Army, ORFs are .0012 Funds - Miscellaneous Expense, Category A. See AR 37-47, *supra* note 35, para. 1-5.

46. Matter of: HUD Gifts, Meals, and Entertainment Expenses, B-231627, 68 Comp. Gen. 226 (1989).

47. 31 U.S.C. § 1301(a) (2000).

48. Government Purchase Cards are all managed under GSA Smartpay which enables government agencies to execute small purchases with the convenience of a credit card. See U.S. General Services Administration, *Government Charge Cards Overview*, available at http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=8930&contentType=GSA_OVERVIEW (last visited Dec. 31, 2003). It should be noted that other types of funds are available via credit card programs, not just O & M.

essary and incident to the proper execution of the general purpose of the appropriation.

2. The expenditure must not be prohibited by law.
3. The expenditure must not be otherwise provided for; it must not fall within the scope of some other appropriation.⁴⁹

When is an expense “necessary and incident” to a proper purpose? The CG has stated that “an expenditure is permissible if it is *reasonably necessary* in carrying out an authorized function or will *contribute materially* to the effective accomplishment of that function”⁵⁰ This inquiry is important in two aspects of the three-part test. First, it helps to determine whether the expense fits properly within the particular appropriation from which an agency wants to pay the obligation. Second, it helps to determine if some other appropriation is more appropriate for that expense (part three of the test).

In evaluating this test, there are primarily four types of documents to consider. First, look to the appropriation act and its accompanying authorization act and their legislative history. Second, consider standing statutory authorities that exist for your agency that might either allow or prohibit the expenditure. Third, consider case law decisions regarding government spending for the particular type of funds, primarily in CG decisions. Finally, look to any regulatory restrictions that might exist in the agency. For ORFs, the appropriations act language is not particularly helpful. In the DOD, for example, the limitation from which ORFs are drawn simply specifies that the money is for “emergency and extraordinary expenses.”⁵¹ Consequently, if ORFs are to be fiscally controlled, we must examine how this term has been interpreted when the funds are used for representation purposes, other statutes that might limit their expenditure, and any administrative controls established by the agency.

The Purpose of ORFs

The CG’s three-part test for proper purpose provides a useful framework for discussing the decisions analyzing representation funds. Looking at cases discussing representation funds for the DOD and other agencies demonstrates that the CG tests ORF expenditures against these principles just like any other type of appropriated fund.

The Expenditure Must Be Necessary & Incident to “Official Representation”

The first limitation is imposed by the plain language description of the funds—they are “official representation” funds. Thus, the use must be official and must involve representation. Two cases demonstrate well the types of circumstances when this restriction arises.

In 1987, the Department of Housing and Urban Development (HUD) used a portion of its research and development (R & D) appropriation to pay for “food, entertainment, and gift items” in support of an international trade show for construction equipment in the Soviet Union.⁵² The HUD’s sponsorship of this event was purportedly pursuant to a bilateral cooperation agreement between the U.S. and the Soviet Union. The R & D appropriation was generally available for support of this bilateral agreement, along with other things.⁵³ The particular trade show, however, did not fit within the statutory authority HUD had for support of these shows.⁵⁴ Consequently, its activities involving the show were unauthorized and could not be official.

Specifically regarding the entertainment expenditures, the CG found the R & D appropriation inappropriate for this purpose based on the “general rule of longstanding that funds appropriated for Government departments and agencies may not be used for entertaining individuals by giving luncheons, etc., except when specifically authorized by statute and authorized or approved by proper administrative officers.”⁵⁵ Neither the R & D appropriation, nor the statute authorizing the bilateral agreement authorized entertainment or gift expenses.⁵⁶

The inappropriateness of the R & D appropriation was further supported by the fact that HUD receives a small amount of official reception and representation funds in a different appropriation. In accordance with the three part test above, the CG noted that when a more specific appropriation is available for a particular purpose, that fund should be used.⁵⁷ The HUD argued that its ORFs could only be used domestically and were, thus, unavailable for the Soviet conference, but the CG summarily dismissed that assertion.⁵⁸

While the ORF could be used for entertainment expenses, it could not be applied to the Soviet trade conference. The Comptroller said that “[t]he appropriation act requires that entertainment be ‘official’ in nature. In our view, entertainment cannot be ‘official’ if its primary purpose is to further an unauthorized

49. Secretary of Interior, B-120676, 34 Comp. Gen. 195 (1954).

50. Internal Revenue Serv. Fed. Credit Union—Provision of Automatic Teller Machine, B-226065, 66 Comp. Gen. 356, 359 (1987) (emphasis added).

51. *See supra* note 8.

52. Matter of: HUD Gifts, Meals, and Entertainment Expenses, B-231627, 68 Comp. Gen. 226 (1989).

53. *Id.*

54. *Id.*

activity.”⁵⁹ Thus, even using funds as flexible as ORFs, the funds must meet the terms of its appropriated purpose—the representation must support an activity that is “official.”

A similar distinction can be seen regarding the term “representation” in a case involving the Office of the U.S. Trade Representative.⁶⁰ That agency asked the CG two questions. First, could it use ORFs to fund food for employees in certain circumstances? Second, could it use ORFs to pay for business cards?⁶¹

The Office of the U.S. Trade Representative had internal meetings in two situations in which they desired to provide food for employees. The first were meetings that occasionally occurred before duty hours and the second were internal meetings during breaks in negotiations that extended beyond duty hours.⁶² The GAO noted the general rule that expenses classified as entertainment or personal could not be charged against appropriated funds. They explained their reasoning for these rules:

The theory is not so much that these items can never be business-related, because sometimes they clearly are. Rather, what the decisions are really saying is that, because public confidence in the integrity of those who spend the taxpayer’s money is essential, certain items which may appear frivolous or wasteful--however, legitimate they may in fact be in a specific context -- should, if they are to be charged to public funds, be authorized specifically by the Congress.⁶³

In practice, this specific authorization by Congress has been in the form of a limitation for reception and representation funds for “those agencies which can justify the need” for such funds.⁶⁴ Thus, for refreshments, the ORF limitation was the most applicable if the event involved “official reception.” In this case, the GAO found that reception, or in the DOD parlance representation, was not involved. The event was not one “characterized by a mixed ceremonial, social or business purpose, and hosted in a formal sense by high level agency officials.”⁶⁵ Rather, it was simply feeding employees working outside of normal duty hours. The CG commended the employees for their devotion to duty, but relied on the general rule that food “may not be provided to employees at their official duty station, even when unusual working conditions are involved.”⁶⁶

The GAO also defined representation more specifically in the context of business cards. The CG stated that “the term ‘representation,’ as used in the phrase ‘official reception and representation,’ means precisely what it implies--representing the agency or the United States in dealings with others in an official context.”⁶⁷ Thus, for those whose duties included this type of representation, business cards could be a legitimate expense since the purpose for the cards are to provide “the recipient [with] a convenient record or reminder of the person’s name, organization, title, and telephone number.”⁶⁸ This decision was unusual since, at the time, the GAO had routinely disallowed business cards to be purchased with appropriated funds because they were viewed as a personal expense.⁶⁹ This decision shows the unique nature of ORFs and the unique role they play.

These two cases demonstrate the application of the “necessary and incident” rule to ORFs. The event must be reasonably

55. To the Administrator, Veterans Administration, B-152331, 43 Comp. Gen. 305 (1963).

56. *HUD Case*, Comp. Gen. B-231627.

57. *See supra* note 49 and accompanying text.

58. *HUD Case*, Comp. Gen., B-231627. The GAO said, “[w]e have not found any previous decision of this Office or any other authority which limits the use of official reception and representation funds based upon a distinction between domestic and international activities.” *Id.*

59. *Id.*; *see also* text accompanying note 57.

60. Matter of: U.S. Trade Representative--Use of Reception and Representation Funds, B-223678, 1989 U.S. Comp. Gen. LEXIS 598 (June 5, 1989).

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

related to “official representation”—that is, the event must support the official business of the United States and must involve representing the United States to others. While the funds are flexible to allow entertainment and other unusual expenses, the funds must still meet this fundamental test. Of course, if Congress grants the authority to spend funds, it can also pass statutes which limit the objects for which those funds may be used.

The Expenditure Must Not Be Prohibited by Law

Congress’s power to authorize expenditures can be used in the negative—Congress can prohibit expenditures as well. These prohibitions can range from the routine to the unusually specific. For example, Congress generally prohibits the expenditure of appropriated funds to put phone lines in private residences.⁷⁰ Congress also expressly prohibits the DOD from using appropriated funds to build, maintain, or operate a golf course in the United States.⁷¹ Generally, no amount of necessary expense language or rationale can overcome a statutory prohibition.⁷²

The GAO usually treats statutory prohibitions very strictly. For example, the GAO has consistently held that agencies may not overcome a statutory prohibition by requesting funds for the prohibited item, even if Congress appropriates money for it without comment.⁷³ According to the GAO, “[a]n appropria-

tion would be available for an otherwise prohibited item only if it makes specific reference to the item. Congress can, in effect, ‘waive’ a statutory prohibition, but it must do so explicitly.”⁷⁴

There is one major exception, however, to these general rules—when applying the statutory prohibition would make the accomplishment of a specific appropriation impossible.⁷⁵ This exception requires that violating the statutory prohibition be “absolutely essential” to accomplishing the object of the specific appropriation.⁷⁶ A good example comes from an early GAO case regarding the prohibition in 41 U.S.C. § 12 against constructing a public building without a specific appropriation from Congress.⁷⁷ Congress passed an appropriation to establish air mail service between New York, Chicago, and San Francisco.⁷⁸ The agency built hangars and related facilities at an airfield in Chicago, even though these buildings were not specifically mentioned in the appropriation.⁷⁹ The CG found that the funds were available for this purpose because it was impossible for the agency to accomplish the purpose of the appropriation without them.⁸⁰

While the impact of a statutory prohibition has not been central to any ORF cases, there is at least one case in which this was a subsidiary issue.⁸¹ In this case, a customs service employee was improperly reimbursed for, among other things, private membership in an airline club.⁸² The funds were recouped from the employee and he appealed. Regarding the airline club

69. See, e.g., Matter of: Forest Serv.—Purchase of Info. Cards, B-231830, 68 Comp. Gen. 467 (1989); B-195036, 1979 U.S. Comp. Gen. LEXIS 2322 (July 11, 1979); B-131611, 1968 U.S. Comp. Gen. LEXIS 2916 (Feb. 15, 1968); To the Commissioner of the United States to A Century of Progress, 12 Comp. Gen. 565 (1933). In the late 1990’s, the GAO reversed this position finding that the purchase of business cards could meet the necessary expense rule for government employees who regularly deal with those outside their agency. See Matter of: Jerome J. Markiewicz, B-280759, 1998 U.S. Comp. Gen. LEXIS 412 (Nov. 5, 1998). Note that the agencies within the Defense Department have somewhat more restrictive rules by regulation. See U.S. DEP’T OF ARMY, REG. 25-30, THE ARMY PUBLISHING AND PRINTING PROGRAM para. 7-11 (15 July 2002); U.S. DEP’T OF AIR FORCE, INSTR. 65-601, BUDGET GUIDANCE AND PROCEDURES VOL. 1, para. 4.36 (24 Dec. 2002); Memorandum, U.S. Dep’t of the Navy (Financial Management and Comptroller), subject: Department of Navy Guidance for Procuring Business Cards (8 July 1999), available at <http://www.fmo.navy.mil/docs/bus-cards.pdf>; see also Memorandum, Director, Office of Administration and Management, Office of the Secretary of Defense, to Secretaries of the Military Departments, subject: Printing of Business Cards (15 July 1999), available at http://www.defenselink.mil/dodgc/defense_ethics/resource_library/BuscardAug.htm.

70. 31 U.S.C. § 1348 (2000). It should be noted that the statute authorizes the Secretary of Defense to establish exceptions to this rule by regulation. *Id.*

71. 10 U.S.C. § 2246.

72. GAO RED BOOK, *supra* note 3, at 4-21.

73. *Id.* at 4-10.

74. *Id.*

75. *Id.* at 4-21.

76. *Id.*

77. See Comptroller General McCarl to the Postmaster General, 2 Comp. Gen. 133 (1922).

78. *Id.*

79. *Id.*

80. *Id.*

membership, the employee claimed that the expense was proper because he was the Regional Director of Investigations.⁸³ The Inspector General (IG) for the agency required the recoupment of the money, finding that it was an entertainment expense. The IG also noted that the Customs Service did have a small amount of R & R funds, but these were not available to regional personnel.⁸⁴ The CG agreed with the IG that the private membership was not allowable because it was an entertainment expense. It also added an additional reason why the agency could not use appropriated funds. "Furthermore, 5 U.S.C. § 5946 (1982) generally prohibits the use of appropriated funds for the payment of membership fees incurred by individual employees."⁸⁵ While the CG did not specifically mention the R & R appropriation, it is reasonable to infer from the context that he added this additional reason to negate the IG's implication that R & R funds could be used to purchase a private membership. The reason was the statutory prohibition. Of course, even without the statutory prohibition, it would be difficult to relate this to the purpose of "official representation" as discussed above.

The Expenditure Must Not Be Otherwise Provided For

The final test for a necessary expense is fairly straightforward—to be necessary, the expense cannot be provided for in another, more specific appropriation.⁸⁶ Whether or not there are funds available in the other appropriation is irrelevant.⁸⁷ The DOD accounts for this control administratively with regard to ORFs. Its directive states the following:

E2.4.6. To ensure the integrity of the congressional limitation on emergency and extraordinary expenses, the following procedures shall be observed:

E2.4.6.1. Expenses incurred solely because of the authorized representation functions shall be charged to official representation costs that are a part of the emergency and extraordinary expense limitation.

E2.4.6.2. Other costs, such as salaries, travel, and transportation of DOD personnel, shall be charged to the appropriation properly chargeable for such costs.

E2.4.6.3. Under no circumstances may ORF expenses be charged to non-ORF funds to avoid emergency and extraordinary expense limitations. To simplify accounting for ORF-funded events or activities, costs normally charged as a non-ORF expense occasionally may be accounted for as an ORF expense.⁸⁸

Such administrative controls are important because agency ORFs are much more limited, in terms of dollars available, than other funds. Consequently, the motivation is to charge an expense against some other appropriation, if possible, to preserve the more flexible ORFs for other events.

A state department case counsels caution when determining whether the ORF limitation or some other appropriation is more specific.⁸⁹ The State Department has a representation fund pursuant to statutory authority.⁹⁰ These are similar to ORFs, but are usually referred to as "R & R Funds."⁹¹ The State Department also has a lump sum appropriation for salaries and expenses in the "administration of foreign affairs."⁹² A portion of this appropriation is allotted for "official residence expenses"

81. Matter of: Bertram C. Drouin - Use of Rental and Government Automobiles, Travel Expenses, Imprest Fund Charges, B-216016, 1987 U.S. Comp. Gen. LEXIS 1388 (Mar. 23, 1987).

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. GAO RED BOOK, *supra* note 3, at 4-22.

87. *Id.*

88. DOD DIR. 7250.13, *supra* note 31, para. E2.4.6.

89. Matter of: Appropriations Chargeable with Expenses of Representational Events at Foreign Posts, B-214145, 64 Comp. Gen. 138 (1984) [hereinafter Representational Events at Foreign Posts].

90. See 22 U.S.C. § 4085 (2000).

91. See text accompanying *supra* note 20.

92. *Representational Events at Foreign Posts*, B-214145, 64 Comp. Gen. at 138.

(ORE) to fund maids, busboys, etc. for the official residences.⁹³ Normally, the State Department charged additional wait staff needed for representational events to the R & R appropriation. A practice had developed in a number of overseas stations, however, to charge the ORE allotment for additional wait staff when the R & R appropriation ran out.⁹⁴ The GAO framed the issue as follows: “It is not disputed that the representational allowance appropriation is specifically available for the ‘extra help’ expenses at issue. The question is whether the ORE allotment is equally available for the same purpose.”⁹⁵

The GAO answered this question in the negative. First, the State Department regulations specifically defined the household staff that could be funded by ORE.⁹⁶ The temporary wait staff hired only for a single function did not meet this definition. Second, even if the definition was viewed broadly, the State Department regulations prohibited funding an expense to the ORE account if it was “properly borne” by another appropriation.⁹⁷ Finally, the GAO reasserted its longstanding rule

that an appropriation made for a specific purpose is available for that purpose to the exclusion of a more general appropriation that might also include that purpose. Applying this principle to the instant case, there is no question that the representational appropriation is specifically available to cover the expenses of representational functions. Compensation of waiters and busboys hired only for particular representational functions is clearly included.⁹⁸

Consequently, for wait staff hired only for representational functions, the R & R appropriation is the more specific and the ORE appropriation is the more general one. As a result, the charges had to be expensed against the R & R appropriation.

This decision shows that applying an expense related to a representational function to a non-ORF account can be tricky. The DOD directive properly states the rule—if an expense is incurred *solely* because of the representational function, the ORF account must be charged to the exclusion of all others.⁹⁹

How Much Time Do We Have to Spend ORFs?

Appropriated funds are only available for a specified period of time. There are generally three types of funds—annual, multi-year, and no-year.¹⁰⁰ Annual appropriations are available only for the fiscal year for which they are appropriated. Multi-year funds are available for the time specified in the appropriation. No-year funds are available until expended.¹⁰¹ Normally the appropriation language itself will specify the period of availability for the funds. If the statute does not specify, however, the funds are only available for the fiscal year in which they are appropriated pursuant to 31 U.S.C. § 1301(c).¹⁰²

Pursuant to these standards, the O & M accounts within the DOD are annual appropriations. As mentioned previously, the emergency and extraordinary expense limitation from which ORFs are drawn is contained in this appropriation.¹⁰³ The CG recently had an opportunity to reaffirm the principle that a limitation is available for the same period of time as the appropriation it is a part of, in a case involving the Department of Energy (DOE).

The DOE received an appropriation for “departmental administration” which are no-year funds.¹⁰⁴ Within this appropriation is a limitation for R & R, the DOE equivalent to the DOD’s ORFs. The IG for the department found funding violations during an inspection of travel accounts because he believed that the R & R limitation could only be used during the fiscal year in which it was appropriated.¹⁰⁵ The DOE General Counsel disagreed, opining that the R & R limitation had the

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. See text accompanying *supra* note 88.

100. GAO RED BOOK, *supra* note 3, at 5-3.

101. *Id.* at 5-3 thru 5-4.

102. *Id.* at 5-4.

103. See *supra* note 8 and text accompanying notes 25 and 34.

104. Matter of: Availability of Department of Energy Reception and Representation Funds, B-274576, 1997 U.S. Comp. Gen. LEXIS 13 (Jan. 13, 1997).

same duration as the departmental administration funds—that is, they were no-year funds which could be obligated until expended.¹⁰⁶ The CG agreed with the General Counsel.

The IG based his opinion on the DOE's past practice which was to merge any remaining R & R limitation into the departmental administration account at the end of the fiscal year and use it for other administration purposes.¹⁰⁷ The General Counsel simply stated that the past practice did not change the legal status of the funds.¹⁰⁸ The CG agreed, stating,

The authority conferred by law for obligating "Departmental Administration" funds is the same regardless of whether the purpose is an R & R activity or some other purpose for which the funds are available Thus, the authority conferred each year to use a specified portion of the "Departmental Administration" appropriation for R & R activities does not expire at the end of the first fiscal year of each annual appropriation act merely because DOE does not obligate the maximum authorized.¹⁰⁹

Of course, the Department's past practice did not violate the law—they simply were using less of the appropriation for R & R than they could have used.

This case reaffirms the principle that limitations retain the same time limit for obligation as the appropriation from which they are drawn. For DOD, the ORF limitation is a portion of the emergency and extraordinary expense limitation in the O & M appropriations. Unlike the DOE, the DOD's O & M appropriation is an annual appropriation. So, ORFs, like O & M funds, are only available for obligation for one year.

What Is the Amount Available?

On the surface, the question of the funding amount available for a particular purpose seems relatively simple—just look at the amount appropriated. In fiscal law, however, the discussion of the amount available can be somewhat more complex. The inquiry deals largely with issues surrounding the Antideficiency Act and the prohibitions that prevent agencies from over-obligating and overspending their appropriation.¹¹⁰ For the purposes of this article, a detailed discussion of the Antideficiency Act is unnecessary. Suffice it to say that the act applies to ORFs in the same way as it does to other appropriated funds.

The key point is the way ORFs are structured. The ORFs are part of a limitation to an appropriation. The language from the FY 2004 appropriation is typical— "and not to exceed \$11,034,000 can be used for emergencies and extraordinary expenses."¹¹¹ The "not to exceed" language establishes an absolute maximum that can be spent for emergency and extraordinary expenses.¹¹² The fact that there is additional money available in the general appropriation of which it is a part (O & M) makes no difference—no more than the amount specified may be used. Conversely, this language requires no minimum amount that must be used. Nothing prevents the Army, for example, from spending \$0 on emergency and extraordinary expenses and still spending the entirety of the O & M appropriation on other unrestricted expenses for which that appropriation is properly available.¹¹³ Basically Congress is saying that you do not have to spend anything on this purpose, but if you need to, you can only spend this much.

This brief discussion of the key fiscal controls of purpose, time, and amount should leave the reader with one main impression—ORFs are fiscally controlled like other appropriated funds. While they provide more flexibility for some types of expenses, neither Congress, nor the GAO view them as totally discretionary to any agency official. Using the DOD as an example, it is clear that the agencies understand this and have administrative measures in place to ensure that these very useful and important funds are properly used.

105. *Id.* at *2.

106. *Id.* at *2-*3.

107. *Id.* at *4-*5.

108. *Id.* at *5-*6.

109. *Id.* at *7-*8.

110. See GAO RED BOOK, *supra* note 3, ch. 6.

111. See *supra* note 34 and accompanying text.

112. See GAO RED BOOK, *supra* note 3, at 6-4.

113. *Id.* at 6-5. As a practical matter, local resource managers should discuss the issue through command channels before reallocating O & M dollars from ORFs to general O & M projects. The higher command may provide additional O & M dollars and preserve the ORF limitation for other parts of the command. If the resource manager fails to check this, the local command could squander valuable ORF limitation that could be used elsewhere in the command.

Administrative Controls Within the DOD

This article began with the congressional “power of the purse.” The most coercive exercise of that power is when Congress refuses to fund something or removes funding previously provided. This is, perhaps, the greatest fear with ORFs. Agency heads like and need the flexibility that these funds provide. But while agency heads have a great deal of discretion, they do not want to use the funds in a way that angers Congress and creates a reason to deny the funds in the future.

Within the DOD, administrative controls have been developed to avoid this outcome by delegating authority to subordinate officials while also ensuring that the funds are used acceptably. These controls are especially important in an organization as large as the DOD because the agency has senior leaders dispersed throughout the world who have need of representation funds. Consequently, the ORFs are apportioned out and executed in the field. The system of agency controls allows the Secretary of Defense and other subordinate officials to exercise their statutory responsibilities regarding these funds while still providing authority and flexibility to leaders in the field.

Department of Defense Directive 7250.13 contains the DOD ORF controls.¹¹⁴ This publication begins by establishing a clear purpose for ORFs. Within the DOD, “ORFs shall be used to maintain the standing and prestige of the United States by extending official courtesies to guests of the Department of Defense.”¹¹⁵ The directive defines the types of guests for which official courtesies are authorized, who may extend those courtesies, and the types of courtesies that may and may not be extended.

Authorized Guests & Hosts

The DOD only allows the expenditure of ORFs to fund courtesies to the following:

3.1.1. Civilian or military dignitaries and officials of foreign governments.

3.1.2. Senior U.S. Government officials.

3.1.3. Dignitaries and senior officials of State and local governments.

3.1.4. Other distinguished and prominent citizens (may include retired or former civilian or military officials of the Department) who have made a substantial contribution to the United States or the Department of Defense.¹¹⁶

Foreign dignitaries may be “invited” or “uninvited.” If they are invited, the DOD will generally fund their transportation within the United States, but the foreign official must fund their transportation to and from the United States.¹¹⁷ Only the “Secretary of Defense, the Deputy Secretary of Defense, the Secretaries of the Military Departments, the Chairman or the Vice Chairman of the Joint Chiefs of Staff, the Military Service Heads, and the Director of the Defense Intelligence Agency (DIA)” may issue invitations for U.S.-funded visits.¹¹⁸ Invitations may only be extended to the DOD official’s foreign counterpart, that counterpart’s spouse, and two accompanying officials.¹¹⁹ Other officials who visit at their own expense may also be extended appropriate courtesies by authorized DOD hosts,¹²⁰ which the directive defines as:

the Secretary of Defense, the Deputy Secretary of Defense, the Secretaries of the Military Departments, the Chairman of the Joint Chiefs of Staff, the Vice Chairman of the Joint Chiefs of Staff, the Under Secretaries of Defense (USDs), the Assistant Secretaries of Defense (ASDs), the Military Service Heads, the Commanders of the Unified and Specified Commands, the Directors of the Defense Agencies, and the President of the USUHS. At their discretion, those DOD officials may delegate the authority to host official functions.¹²¹

The Army, as well as other services, have similar and consistent guidance in its regulation.¹²² It is important to note that the

114. DOD DIR. 7250.13, *supra* note 31, para. E2.4.6. The Army regulation for ORFs is *U.S. Dept. of Army, Reg. 37-47, Representation Funds of the Secretary of the Army*. AR 37-47, *supra* note 35. While the Army regulation remains largely consistent with the DOD directive, it has not been updated since the DOD directive was revised in 2002. Consequently, users must always check the Army regulation against the DOD directive. The Army regulation is still in force, however, so when it gives guidance that is within the discretion that the DOD policy gives to the Secretary of the Army, follow the regulation.

115. DOD DIR. 7250.13, *supra* note 31, para. 3.1.

116. *Id.* para. 3.1.

117. *Id.* para. E2.2.1.2.1.

118. *Id.* para. E2.2.1.1.

119. *Id.* para. E2.2.1.2.

120. *Id.* para. E2.1.

121. *Id.*

DOD directive allows the Service Secretaries to delegate their authority to host ORF events. The Secretary of the Army has exercised this authority and allows the following to serve as hosts:

the Chief of Staff, Army, Vice-Chief of Staff, Army, principal officials of HQDA, MACOM commanders and other officials who receive a Letter of Authority from [the Office of the Assistant Secretary of the Army for Financial Management and Comptroller] OASA (FM & C) in accordance with paragraph 3-1b, and installation commanders.¹²³

Some senior military officials may be considered authorized guests.¹²⁴ These officials are listed in Enclosure 1 to the DOD directive.¹²⁵ The military services have similar lists in their implementing regulations.¹²⁶

Allowable Courtesies

Generally

The DOD directive lists the typical types of courtesies that agencies may pay for all members of the “official party” attending the ORF event. Included in this official party are any authorized U.S. escort officers and interpreters.¹²⁷ The list is not all-inclusive, but is illustrative. The directive states that all officials planning ORF events must use “sound judgment and discretion” when determining what they should fund.¹²⁸ The list of courtesies includes:

- Lodging;
- Meals and refreshments;
- Gratuities for services rendered by

- non-Government personnel;
- Official communications made by U.S. escort personnel that relate directly to the official visit;
- Valet services; i.e., laundry and dry cleaning, which normally would not have been incurred except for travel associated with the official visit;
- Entertainment; i.e., theaters, sports activities and events, concerts, and sightseeing tours;
- Taxi fares and rental vehicle fees, when Government transportation is not available;
- Gifts and mementos [under the conditions discussed below]; and
- Fees for travelers’ checks to support [sic] mission.¹²⁹

Gifts

Official representation funds may finance gifts for presentation to authorized guests. Only the officials listed above as authorized hosts and those to whom they delegate authority to host ORF events, however, may present these gifts.¹³⁰ Subordinate officials may have written authorization to present the gift on behalf of the authorized official, but this delegation should only occur “in extenuating circumstances.”¹³¹ Gifts purchased and presented are limited in price by the maximum amount a U.S. official is allowed to receive from a foreign official. This amount is currently \$285, but changes periodically to adjust for inflation.¹³² Additionally, the DOD allows the presentation of small gifts to DOD officials listed as being authorized to receive official courtesies.¹³³ These gifts must be mementos and must have a value of \$40 or less.¹³⁴

122. AR 37-47, *supra* note 35, para. 2-7; *see also* SECNAVINST 7042.7J, *supra* note 35, para. 5; AFI 65-603, *supra* note 35, para. 7.

123. AR 37-47, *supra* note 35, para. 2-7.

124. DOD DIR. 7250.13, *supra* note 31, para 3.3.

125. The designated officials are: Secretary of Defense and Deputy Secretary of Defense, Under Secretaries of Defense, Director, Defense Research and Engineering, Assistant Secretaries of Defense, Comptroller of the Department of Defense (C, DOD), General Counsel of the Department of Defense (GC, DOD), Inspector General of the Department of Defense (IG, DOD), Director, Operational Test and Evaluation, Assistants to the Secretary of Defense, Chairman of the Joint Chiefs of Staff, Vice Chairman of the Joint Chiefs of Staff, Director, Joint Staff, Unified and Specified Commanders, Deputy Commander in Chief, Europe (DCINCEUR), Secretaries, Under Secretaries, and Assistant Secretaries of the Military Departments, Chiefs and Vice Chiefs of Staff of the Army and Air Force, Chief and Vice Chief of Naval Operations, Commandant and Assistant Commandant of the Marine Corps, Directors of the Defense Agencies, President, USUHS. *Id.* encl. 1.

126. AR 37-47, *supra* note 35, para. 2-4f.; SECNAVINST 7042.7J, *supra* note 35, para. 6a.(5), encl. 1; AFI 65-603, *supra* note 35, para. 3.3.

127. DOD DIR. 7250.13, *supra* note 31, para. E2.4.1.

128. *Id.* para. E2.3.

129. *Id.* para. E2.4.1 (bullets added).

130. *Id.* para. E2.4.1.8.1.

131. *Id.* para. E2.4.1.8.2.

It is important to note that guidance for a particular service must be consulted down to the level at which the funds are executed. For example, if you are at an installation, you must not only check the DOD directive, but also the Army regulation, as well as major command and installation-level regulations and policies to give proper advice. For example, the Army gives additional gift guidance in *AR 37-47*. Paragraph 2-9 of that regulation provides the following:

Gift items procured in bulk may not include the presenting official's name unless the official is the SA, CSA, or the Sergeant Major of the Army. This limitation does not prohibit the specific inscribing or engraving of a single item individually selected for a certain presentation or occasion. ORFs shall not be used for the presentation to, or acceptance by, DOD personnel of mementos of any kind.¹³⁵

So, even though DOD allows mementos to certain DOD officials, the Army regulation does not allow the expenditure and limits courtesies, even for those DOD officials allowed to be authorized guests, to those "minimally required" which means "small, modest functions."¹³⁶

Leisure and Entertainment Activities

Leisure and entertainment activities are generally allowed, but the DOD allows only one or two entertainment events during the course of the official visit.¹³⁷ The activities must also be "modest" in nature, which means the "hospitality that the typical American host, whose rank and position are equal to that of

the foreign dignitary, would provide to a special guest during a week's visit in his or her residence."¹³⁸ Dinners, luncheons, and receptions should not be considered "entertainment" for these purposes.¹³⁹ Additionally, significant detours in the travel itinerary may not be scheduled to facilitate leisure activities.¹⁴⁰

The Army's guidance is very similar and consistent with this policy. Paragraph 2-8 of the Army regulation, however, also requires that the leisure activities coincide with the military orientation aspect of the visit.¹⁴¹

Special Limitations for Visits by Citizens of the United States

Official representation funds are generally meant to maintain the standing and prestige of the United States.¹⁴² The DOD recognizes that meeting this purpose may also require providing limited courtesies to certain U.S. officials. The DOD policy allows these courtesies to "be offered to Federal, State, and local dignitaries and officials such as the President and the Vice President of the United States, members of the Cabinet, members and professional staff of Congress, governors of States, mayors of cities, citizens' committees,"¹⁴³ since the funds are meeting the same purpose—maintaining the standing and prestige of the department with these important groups. The directive also allows courtesies to "other distinguished or prominent citizens who have made a substantial contribution to the nation or to the DOD, and members of the news media on certain occasions."¹⁴⁴ It does not define these occasions.

The types of courtesies allowable are much more limited with these groups, however. Official representation funds may

132. *Id.* para. E.2.4.1.8. The DOD Directive cross references 22 U.S.C. § 2694, which in turn cross references 5 U.S.C. § 7342 as statutory support for this limitation. The General Services Administration (GSA) revises the amount for 5 U.S.C. § 7342 once every three years to take inflation into account. The GSA most recently revised the amount to \$285 in Change in Consumer Price Index Minimal Value, 67 Fed. Reg. 56495 (Sept. 4, 2002).

133. *See supra* notes 124 through 126 and accompanying text.

134. Memorandum, Director of Administration and Management, Office of the Secretary of Defense, to Under Secretaries of Defense and Directors of Defense Agencies and Field Agencies, subject: Official Representation Funds (ORF) (23 Dec. 2002). The memorandum provides examples of "mementos" as including "coins, paperweights, lapel pins, and plaques." *Id.*

135. *AR 37-47*, *supra* note 35, paras. 2-9c. and 2-9d. Other services have similar language that prohibit the presentation of gifts to DOD Personnel, despite the fact that the DOD allows such expenditures. *See* SECNAVINST 7042.7J, *supra* note 35, para. 6c.(1); AFI 65-603, *supra* note 35, para. 4.1.

136. *AR 37-47*, *supra* note 35 para. 2-4f; *see also* AFI 65-603, *supra* note 35, para. 3.3.

137. DOD DIR. 7250.13, *supra* note 31, para. E2.2.1.2.4.2.

138. *Id.*

139. *Id.* para. E2.2.1.2.4.1; *see also supra* text accompanying note 129 where examples of "entertainment" are provided (including "theaters, sports activities and events, concerts, and sightseeing tours"). Meals and refreshments are a separate category.

140. *Id.* para. E2.2.1.2.5.

141. *AR 37-47*, *supra* note 35, para. 2-8d; *see also* SECNAVINST 7042.7J, *supra* note 35, para. 6; AFI 65-603, *supra* note 35, paras. 1.2 and 5.1.6.

142. *See supra* note 116 and accompanying text.

143. DOD DIR. 7250.13, *supra* note 31, at E2.3.1.

pay for “the cost of luncheons, dinners, receptions, mementos, and participation expenses at DOD-sponsored events” for these individuals.¹⁴⁵ Any other type of expense may not be approved unless there is “specific justification.”¹⁴⁶

Prohibited Courtesies

Official representation funds may only be expended for purposes expressly allowed by regulation.¹⁴⁷ Thus, if the regulation does not expressly provide authority, the expenditure is prohibited unless you obtain authority by a waiver.¹⁴⁸ Additionally, the DOD specifically prohibits ORF funding for certain types of expenses. Of note is the prohibition against funding retirement ceremonies for the DOD personnel and change-of-command ceremonies.¹⁴⁹ Exceptions to this prohibition may be granted “by the Secretary of Defense, the Deputy Secretary of Defense, the Secretary of the Military Department concerned, or the Chairman or the Vice Chairman of the Joint Chiefs of Staff.”¹⁵⁰ This exception must be granted in advance of the event.

Events “solely for entertainment of DOD personnel” are prohibited as well.¹⁵¹ There is an exception for certain high-level leaders on official visits to the field.¹⁵² During these visits, “minimally required” expenditures may be made to extend official courtesies to those visiting the DOD officials.¹⁵³ To help ensure that there is not even an appearance that events are being hosted solely for the DOD personnel, the DOD defines the ratios of authorized guests to the DOD personnel that may

attend an official event in order to fund the event with ORFs. For events of less than thirty persons, twenty percent of the attendees “should be honored or distinguished guests and members of their party.”¹⁵⁴ For events of thirty or more people, the ratio goes up to fifty percent authorized guests.¹⁵⁵ In instances when it is desirable for additional DOD personnel to attend, the directive still specifies that only the number of the DOD Personnel “actively participating in the event or otherwise required to attend by virtue of their position or duties (but not in excess of the ratios in subparagraphs E2.4.3.1., and E2.4.3.2.) shall be considered part of the official party” to be funded by ORFs.¹⁵⁶ Other DOD personnel in attendance shall pay a pro rata share of event expenses.¹⁵⁷

Other prohibitions include the following:

- Personal items, such as clothing, toilet articles, cigarettes, hair and beauty care, shoeshine, and souvenirs.
- Long-distance telephone calls originated by the authorized guest, except when directly related to the purpose of the visit.
- Gifts or flowers to be presented by the authorized guests.
- Christmas, greeting, or calling cards.
- Classified projects for intelligence purposes.
- Payment of membership fees or dues.
- Any portion of any event that is eligible

144. *Id.*

145. *Id.* para. E2.3.2.

146. *Id.*

147. AR 37-47, *supra* note 35, para. 2-10; AFI 65-603, *supra* note 35, para. 10.

148. *Id.*

149. DOD DIR. 7250.13, *supra* note 31, para. E2.4.2.5. *But see* Matter of: U.S. Army School of the America’s—Use of Official Representation Funds, B-236816, 69 Comp. Gen. 242 (Feb. 1990) (distinguishing an incoming commander’s reception from a private change of command reception in certain circumstances).

150. DOD DIR. 7250.13, *supra* note 31, para. E2.4.2.5.

151. *Id.* para. 3.3.

152. *See supra* notes 124 through 126 and accompanying text.

153. DOD DIR. 7250.13, *supra* note 31, para. 3.3.

154. *Id.* para. E2.4.3.1. Note that the ratios are measured prior to the event based on the attendance list. The list, however, must be modified for record-keeping purposes showing who actually attended. *Id.* para. E2.4.4. Although the DOD directive does not give a reason for this requirement, it is fair to infer that, when records are audited, repeated events that are “padded” with authorized guests would be viewed negatively. The services reflect these ratios in their own implementing regulations. *See* AR 37-47, *supra* note 35, para. 2-5; SECNAVINST 7042.7J, *supra* note 35, para. 6b.; AFI 65-603, *supra* note 35, para. 1.2.

155. DOD DIR. 7250.13, *supra* note 31, para. E2.4.3.2.

156. *Id.* para. E2.4.5.

157. *Id.*

for sponsorship with welfare and recreation funds, except expenses of authorized guests.

- Repairs, maintenance, and renovation projects to enhance the appearance of DOD facilities.¹⁵⁸

The DOD directive reflects a sensitivity to the fact ORFs are critical and flexible funds that could be taken away if they are abused. The directive concludes with an important bottom line for all those dealing with ORFs:

To ensure the integrity of the congressional limitation on emergency and extraordinary expenses, . . . All DOD personnel authorized to expend ORFs shall monitor personally the use of such funds to ensure the highest order of propriety and integrity of all expenditures.¹⁵⁹

Conclusion

The foregoing discussion should leave you with two main impressions. First, representation funds provide important flexibility to government leaders to provide for legitimate government expenses funded nowhere else. Second, there are important fiscal controls that maintain the integrity and fidelity of these funds so that taxpayers can be confident that their money is being spent prudently. These controls are rooted in the fundamentals of fiscal law—purpose, time, and amount—as well as responsible administrative controls that the agencies establish themselves. Official representation funds are not “easy money” to be spent any way agencies want, but important fiscally controlled funds that fulfill a valuable purpose for the nation.

158. *Id.* para. E2.4.2.

159. *Id.* para. E2.4.7.

Center for Law and Military Operations (CLAMO) Report

The Judge Advocate General's Legal Center & School

Legal Support for the Afghan National Army

Background

Following the overthrow of the Taliban government in Afghanistan, the United Nations has struggled with how best to assist Afghanistan to establish a new government. This effort has yielded the Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions (Bonn Agreement).¹ The Bonn Agreement tasks member nations to guide and assist the fledgling Afghan government in a variety of areas.² For example, the Bonn Agreement tasks the Italian government to provide assistance with civil justice reform; it tasks the German government to assist in the creation of a new Afghan police force.³ It also designates the United States as the lead government to assist the Afghan government to create and train an Afghan National Army (ANA).⁴ To accomplish this objective, the United States has created the Office of Military Cooperation-Afghanistan (OMC-A), headquartered in the capital city of Kabul, near the U.S. embassy.⁵ The OMC-A includes an Office of the Staff Judge Advocate (OSJA). Due to its unique mission, the OSJA routinely grapples with unusual and challenging issues.

The OMC-A's current Staff Judge Advocate is Colonel (COL) John Mantooh, who recently succeeded COL David Gordon.⁶ Lieutenant Colonel (LTC) Platte Moring⁷ of the

Pennsylvania National Guard and LTC Kyle Goerke⁸ of the Oklahoma National Guard assist COL Mantooh. Although the OMC-A OSJA is small, it recently expanded when the Dutch Army supplemented it with LTC Hans Wiersma⁹ and Captain (CPT) Eric Pouw.¹⁰ The OMC-A joint manning document also authorizes a position for an Assistant Rule of Law Officer.¹¹ The author's recent rotation in this position serves as the basis of the instant report. While the author had many tasks and missions during the rotation, the principal missions were to (1) implement and oversee the Law of War (LOW) training program for the ANA; and (2) assist in the revision of the military justice code for the ANA.

The LOW Training Program

To understand the ANA LOW training program, it is necessary to describe the training cycles at Kabul Military Training Compound (KMTC).¹² At KMTC, the U.S. Army conducts basic training for the ANA in ten-week cycles.¹³ Each cycle consists of training one battalion, which is referred to as a "Kandak."¹⁴ Every Kandak contains three constituent training companies. During its initial week—zero week—at KMTC, each Kandak undergoes basic in-processing, such as equipment and uniform issue. Over the following three weeks, every company rotates through various training regimens. One week is devoted entirely to classroom instruction. During this week, an

1. *Agreement on Provisional Arrangements in Afghanistan Pending the Re-Establishment of Permanent Government Institutions*, S.C. Res. 1383, U.N. SC, 4434th mtg., U.N. Doc. S/2001/1154 (2001), available at <http://afghanlaw.de/Bonn%20Agreement.htm> (last visited Dec. 11, 2003) [hereinafter Bonn Agreement].

2. *Id.*

3. See G.A. Res. 875, U.N. GAOR, 56th Sess., U.N. Doc A/56/875 (2002).

4. *Id.* at 10; see also Hamid Karzai, Decree of the President of the Islamic Transitional State of Afghanistan on the ANA (Dec. 1, 2002), available at <http://www.unama-afg.org/docs/bonn/decreed%20on%20army.pdf> (last visited Dec. 11, 2003).

5. U.S. Dep't of Army, OMC-A Mission (unpublished) (on file with author). The OMC-A mission statement is as follows:

OMC-A, through training and mentoring, assists Afghanistan in developing a national multi-ethnic, values based, cohesive Ministry of Defense by establishing an organizational structure, functional procedures, and a professional trained staff to effectively provide strategic direction, policy, resources, and coordination of Afghan military institutions and operations.

Id.

6. Interview with COL John Mantooh, Staff Judge Advocate, in Kabul, Iraq (Nov. 15, 2003) (serving as the source for the information regarding personnel assigned to OMC-A) [hereinafter Interview with COL Mantooh].

7. Lieutenant Colonel Platte Moring is assigned as the Staff Judge Advocate for the 213th Area Support Group of the Pennsylvania National Guard. *Id.*

8. Lieutenant Colonel Kyle Goerke is assigned to the 45th Infantry Brigade of the Oklahoma National Guard. *Id.*

9. Lieutenant Hans Wiersma is assigned to Personnel and Organization Headquarters, Labor Law Division, Royal Netherlands Army, the Hague, the Netherlands. *Id.*

10. Captain Eric Pouw is assigned to Army Staff Headquarters, Legal Affairs Division, Royal Netherlands Army, The Hague, the Netherlands. *Id.*

Afghan major, who is a member of the cadre, instructs ANA trainees for five hours on basic LOW principles in Dari.¹⁵

Initially, the KMTC cadre was unaccustomed to the presence and LOW input of judge advocates. In anticipation of this reluctance, the OSJA demonstrated its ability to enhance the program and provide tangible support. Prior to its initial visit to KMTC, the OSJA drafted the *LOW Training Program for the ANA*.¹⁶ Additionally, the OSJA procured several hundred copies of a cargo pocket-sized-summary of the Geneva Conventions,¹⁷ translated into Dari. The OSJA's ability to supply the Afghans with useful training materials at this initial meeting proved that it could enhance training. Consequently, the KMTC eagerly accepted the OSJA review of the existing LOW Program of Instruction (POI), oversight of substantive classroom instruction, and suggestions for other training materials. Other training support initiatives included preparation of LOW posters, which now adorn the walls within KMTC, LOW slide shows in Dari and Pashtu, and LOW soldier cards.

One of the most critical initiatives was to continue LOW training at the unit-level after basic training. Near the end of the ten-week training cycle, the ANA Kandak battalions form with a regular (not training) cadre of officers and non-commissioned officers. Following graduation from basic training, ANA Kandak Battalions move to the ANA compound at Pol-E-Charkhi.¹⁸ At Pol-E-Charkhi, the Kandak Battalions rotate through combat mission and training cycles.¹⁹ Through the integration of situational training exercises, the OSJA hoped to incorporate LOW principals into unit standard procedures. Without the continuation of training at the unit level, ANA troops might simply forget the classroom instruction at KMTC. Through the assistance of a mentor, the OSJA met with Major General (MG) Mohammed Moin Faqueer, the ANA Central Corps Commander to discuss these concerns and ideas for improvement.²⁰ Major General Moin concurred with the OSJA.²¹ Subsequently, they coordinated further planning details with the Deputy Corps Commander, Brigadier General (BG) Afzal Aman.²²

11. U.S. Dep't of Army, OMC-A Joint Manning Document (unpublished) (on file with author). The Assistant Rule of Law Officer requires a U.S. or coalition attorney in the grade of major or lieutenant colonel for a minimum period of three months. In this position, a judge advocate assists the OMC-A Staff Judge Advocate and Rule of Law Officer in all aspects of military law reform and military legal training for the ANA and Ministry of Defense. Specific duties include the following:

- (1) Train commanders and soldiers at tactical level (focus on Central Corps) on law of land warfare, with emphasis on practical exercises and problem solving;
- (2) Train commanders on legal relationships with civil authorities;
- (3) Initiate "train-the-trainer" course to prepare ANA to assume responsibilities for above instruction;
- (4) Mentor Afghan Military Justice Departments as they reform the military judicial code and system to conform with international standards;
- (5) Establish instructional programs to support the growth of code and system, to include drafting training materials; and
- (6) Help conduct legal review of rules and regulations that the Afghan Ministry of Defense develops and instruct Afghan military legal personnel on this process.

Id.

12. The KMTC is a compound located about eight miles east of downtown Kabul.

13. Interview with CPT Matthew T. Jones, 1st Battalion, 86th Field Artillery Regiment, Vermont Army National Guard, at Kabul Military Training Compound (Nov. 3, 2003) [hereinafter Interview with CPT Jones]. Captain Jones served with the Training and Doctrine Department at KMTC. Though not a judge advocate, CPT Jones is a licensed attorney.

14. *Id.*

15. *Id.* The two principal languages within the ANA are Dari and Pashtu. *Id.*

16. CENTER FOR LAW & MILITARY OPERATIONS, THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER & SCHOOL, U.S. ARMY, LAW OF WAR TRAINING PROGRAM FOR THE AFGHAN NATIONAL ARMY (Oct. 23, 2003). This document is really an outline of instruction that is aimed at three different groups. The first section is the most detailed and is intended for those who will be conducting training classes to the troops. The second section is a basic guide for brigade and battalion-level ANA commanders. The third section lists basic soldier rules. Finally, the appendices contains the full text of the Geneva Conventions. *Id.*

17. See Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilians in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287. Due to an excellent relationship with the International Community of the Red Cross (ICRC), the OSJA obtained these translations. The author personally had several meetings with Michael O'Brien and Caspar Landolt of the ICRC. This was critical because it was very difficult to get accurate translations of documents produced in mass quantity.

18. Interview with CPT Jones, *supra* note 13.

19. Interview with Major (MAJ) David Butler, 87th Troop Command, in Pol-E-Charkhi, Afghanistan (Nov. 5, 2003) [hereinafter Interview with MAJ Butler]. Major Butler served as the American "mentor" for the 2d Brigade Commander for the ANA Central Corps.

20. Interview with MG Mohammed Moin Faqueer, ANA Central Corps Commander, in Pol-E-Charkhi, Afghanistan (Nov. 5, 2003) [hereinafter Interview with MG Faqueer]. The U.S. Army provides mentors to advise and assist all commanders in the ANA, from company to corps-level command. Interview with MAJ Butler, *supra* note 19.

The last phase of LOW training was more advanced for the senior Afghan leaders. The senior leaders ranged from brigade-level commanders to members of the Ministry of Defense. The OSJA's goal was to build on the foundational training of the International Community of the Red Cross (ICRC) who conducted LOW training with forty-two senior level Afghan officers.²³ Based on this goal, the OSJA drafted a higher-level LOW outline and began formulating a training plan around the outline. Completion and approval of the training plan are pending.²⁴

Military Justice Reform

Military justice reform is a far more difficult issue to resolve. The need for a workable system of justice within the ANA is immediate.²⁵ In one reported incident, an ANA noncommissioned officer (NCO) beat a fellow NCO on the head and shoulders with a metal pipe as retribution for stealing a soft drink.²⁶ Additionally, it was not uncommon to hear of an ANA commander locking a soldier inside a connex for a minor military infraction.²⁷ Yet, drafting legislation to revise a military justice system involves the input and coordination of many, in addition to the time required to negotiate the political process.

The first step in revising the military justice system was to develop a thorough understanding of it. Without a working knowledge of the current system, it would be difficult to suggest reforms. It was imperative to understand issues such as the

organization of the court system, applicable punitive articles, appellate procedure, and the relevant rules of evidence. Unfortunately, the Taliban destroyed much of the writings containing current and past Afghan laws, including the military justice code.²⁸ The few books remaining are closely held.²⁹

In this context, the OSJA began meeting twice weekly with Major General Abdul Salaam Ismat, the Chief Judge for the Ministry of the Interior.³⁰ By September, the interest and attendance of the Afghan military judiciary increased. The following judges joined the semi-weekly meetings: Major General Abdul Hadi, Chief Judge for the Court for Officer Crimes; BG Sayed Hassan, Chief Judge for the Court of the Ministry of Defense; and BG Abdul Majid Naieb Khawary, Chief Judge for the Court of Appeals.³¹

Through discussions regarding the organizational structure of their military justice system, the Afghan judges eventually produced a draft statute, *The Organization and Authority of Courts of the Armed Forces of Afghanistan*.³² Negotiations also included discussions aimed at modifications of the applicable punitive articles³³ and the inclusion of enumerated rights of an accused.³⁴ Their existing military justice code contains thirty-two punitive articles, all of which are "military service crimes."³⁵ It includes such offenses as treason,³⁶ surrendering,³⁷ and desertion.³⁸ Yet, it contains no provision for the prosecution of many common law offenses, such as murder or rape. Individual rights of an accused are found under other assorted Afghan laws³⁹ and international agreements to which Afghani-

21. Interview with MG Faqeer, *supra* note 20.

22. Interview with BG Afzal Aman, Deputy Central Corps Commander, in Pol-E-Charkhi, Afghanistan (Nov. 5, 2003).

23. Interview with Michael O'Brien, ICRC, in Kabul, Afghanistan (Nov. 12, 2003).

24. Interview with COL Mantooth, *supra* note 6.

25. Interview with CPT Jones, *supra* note 13. While working on a daily basis with the ANA, CPT Jones personally witnesses and receives reports of the manner with which the ANA struggles to maintain discipline in its ranks. *Id.*

26. *Id.*

27. *Id.*

28. Interview with MG Abdul Salaam Ismat, Chief Judge of the Court for the Ministry of the Interior, in Kabul, Afghanistan (Sept. 21, 2003) [hereinafter Interview with MG Ismat].

29. *Id.*

30. The meetings began in July 2003, at the office of MG Ismet at the Ministry of the Interior. The U.S. representatives were COL David Gordon and LTC Platte Moring.

31. Interview with MG Ismat, *supra* note 28.

32. The Organization and Authority of Courts of the Armed Forces of Afghanistan (Nov. 11, 2003) (unpublished statute) (on file with author). This document sets forth the hierarchical structure of the court system and describes jurisdiction and appellate procedure. It also includes several substantive individual protections. For example, Article 8 states that "[a] person accused of a crime is presumed to be innocent until such time a court determines their guilt of an offense(s) by issuance of a final order." *Id.* This document is still in draft form—the Afghan legislature has not considered it. Interview with COL Mantooth, *supra* note 6.

33. OFFICIAL GAZETTE, MINISTRY OF JUSTICE, THE DEMOCRATIC REPUBLIC OF AFGHANISTAN (Apr. 5, 1986) [hereinafter OFFICIAL GAZETTE] (containing the existing applicable punitive articles).

stan is a signatory.⁴⁰ Interestingly, the *Official Gazette*, which contains the applicable punitive articles, contains no rules of evidence.⁴¹

At the suggestion of the author, the judges contemplated including the entire military justice code within one publication, similar to the *Manual for Courts-Martial*.⁴² Aware of the need to proceed quickly, the OSJA drafted, edited, internally reviewed, and translated this publication—*Military Justice Code for the ANA*.⁴³ It incorporates *The Organization and Authority of Courts of the Armed Forces of Afghanistan*,⁴⁴ augments the punitive articles, supplies a procedure for the resolution of cases without trial (non-judicial punishment), and provides rudimentary rules of evidence.⁴⁵ The OSJA created a very basic draft to simplify its translation and implementation. Afghan officials are currently reviewing it.⁴⁶

Key projects for furthering stability with the ANA are (1) implementation of a vibrant and effective LOW Program and (2) revision of the military justice system. Although neither of these projects is the subject of headlines in the media, each represents a critical block in the foundation of the fledgling Afghan government. The foundation will continue to strengthen as judge advocates, working alongside the Afghan allies, make steady, measurable progress in fortifying the stability of that war-torn nation. Major R. Lance Miller.

34. The accused has several sources of rights under the existing laws of Afghanistan. See AFGHAN CONST. OF 1964 (applying to Afghanistan under the Bonn Agreement until a new Afghan Constitution has been approved by the Constitutional Loya Jirga); Bonn Agreement, *supra*, note 1, para. 2 (1)); *Universal Declaration of Human Rights*, G.A. Res. 217A, 3d Sess., (1948); *Rome Statute of the International Criminal Court*, U.N. Doc. A/CONF.183/10 (1998); *International Covenant on Civil and Political Rights*, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, UN Doc. A/6316 (1966); AFGHAN PENAL CODE OF 1355.

35. OFFICIAL GAZETTE, *supra* note 33, ch. 2.

36. *Id.* art. 17.

37. *Id.* art. 18.

38. *Id.* art. 19.

39. See, e.g., AFGHAN CONST. OF 1964; AFGHAN PENAL CODE OF 1355. For example, an accused is entitled to be free from the evidentiary use of a coerced confession under Article 26, of the AFGHAN CONST. OF 1964, but this protection is not explicit in the *Official Gazette*. AFGHAN CONST. OF 1964; OFFICIAL GAZETTE, *supra* note 33.

40. For example, the right to a speedy trial is secured by Article 9(3) of the *International Covenant on Civil and Political Rights*, *supra*, note 34, but is also not enumerated in the *Official Gazette*. OFFICIAL GAZETTE, *supra* note 33.

41. See *id.*

42. MANUAL FOR COURTS-MARTIAL, UNITED STATES (2002).

43. Military Justice Code for the ANA (Oct. 26, 2003) (unpublished) (on file with author) [hereinafter Military Justice Code].

44. The Organization and Authority of Courts of the Armed Forces of Afghanistan, *supra* note 32 (serving as a draft law which sets forth the organization of the courts, jurisdiction, and appellate procedure).

45. Military Justice Code, *supra* note 43.

46. Interview with COL Mantooth, *supra* note 6.

Notes from the Field

Revisions to *Army Regulations 27-55, Notarial Services* and *608-99, Family Support, Child Custody, & Paternity*

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Revised editions of two legal assistance regulations have just been released. They are *Army Regulation (AR) 27-55, Notarial Services*¹ and *AR 608-99, Family Support, Child Custody, and Paternity*.² These are available *only* in the electronic version and can be accessed through the web site for the Army Publishing Directorate at <http://www.apd.army.mil/>. If you want a paper copy, your only option is to print it yourself.

AR 27-55

AR 27-55, Notarial Services, was approved on 17 November 2003 with an effective date of 17 December 2003. Significant changes contained in this revision include the following:

- (1) Implements recent legislative changes to 10 U.S.C. § 1044a(b) authorizing designated civilian employees located outside the United States to perform as military notaries (paras. 1-7b and 2-2a(5)).
- (2) Adds the requirement [for military notaries] to maintain a notary log (para. 3-5b).
- (3) Removes the requirement to include social security numbers of witnesses (fig. 4-1).
- (4) Adds appendix B, Military Notary that summarizes notarial authority, duties, and guiding principles for military notaries.³

AR 608-99

AR 608-99, Family Support, Child Custody, and Paternity, was approved on 29 October 2003 with an effective date of 29 November 2003. Significant changes contained in this revision include the following:

- (1) Clarifies the responsibility of Staff Judge Advocates to establish office policies to avoid conflicts of interest in implementing this regulation (para. 1-4h(2)).
- (2) Substitutes “Basic Allowance for Housing” for “Basic Allowance for Quarters” (para. 1-7 and throughout).
- (3) Clarifies what actions trigger a command’s obligation to take action under this regulation (para. 2-1b).
- (4) Clarifies a soldier’s obligation to provide support in the case of paternity orders that do not include a financial support obligation (para. 2-2a).
- (5) Expands the definition of “court order” for paternity purposes to include the functional equivalent of court orders as established under state law (para. 2-2b).
- (6) Clarifies a soldier’s obligation to provide support in the case of a foreign paternity order (para. 2-2c).
- (7) Eliminates the interim support requirement for families residing in government family housing (para. 2-6d).
- (8) Defines the events that begin or end an obligation to provide support under the terms of this regulation (para. 2-7).
- (9) Defines interim support requirements for periods of less than one full month (para. 2-8).
- (10) Creates an exception authority for a battalion commander to release a soldier from the interim support requirements to a spouse if the soldier (without children) has been separated from his or her spouse for eighteen months and has not acted to prevent a court from establishing a financial support obligation (para. 2-14b(6)).
- (11) Creates procedures whereby the Special Court-Martial Convening Authority (SPC-MCA) may grant exceptions to this regulation (para. 2-15).⁴

1. U.S. DEP’T OF ARMY, REG. 27-55, NOTARIAL SERVICES (17 NOV. 2003) [hereinafter AR 27-55].

2. U.S. DEP’T OF ARMY, REG. 608-99, FAMILY SUPPORT, CHILD CUSTODY, AND PATERNITY (29 OCT. 2003) [hereinafter AR 608-99].

3. AR 27-55, *supra* note 1, summary of change (citing paras. 1-7b, 2-2a, 3-5b, fig. 4-1).

4. AR 608-99, *supra* note 2, summary of change (citing paras. 2-1, 2-2, 2-6, 2-7, 2-8, 2-14, 2-15).

Servicemembers Civil Relief Act Replaces Soldiers' and Sailors' Civil Relief Act

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Introduction

On 19 December 2003, President Bush signed Public Law No. 108-189,¹ a major amendment of the the Soldiers' and Sailors' Civil Relief Act (SSCRA).² Prior to these changes, the last major revision of the SSCRA occurred in 1940.³ Other than minor changes in 1942 and 1991, the current version largely reflects the Act as written in 1918.⁴ Now, after over sixty years, a complete revision and update of the SSCRA has been enacted. The President's signature relegates the SSCRA to history and we will now operate under the new Servicemembers Civil Relief Act (SCRA).⁵

The SCRA reflects the combined effort of the House and Senate Committees on Veterans Affairs and will serve as a source of important protections for our servicemembers, active and reserve, in the future. Much of the resulting legislation reflects a 1991 Department of Defense draft revision of the SSCRA, which was updated in 2002. The three goals of this draft were to make the Act easier to read and understand by clarifying its language and putting it in modern legislative drafting form; to incorporate into the Act many years of judicial interpretation; and to update the Act to take into account generally accepted practice under its provisions and new developments in American life not envisioned by the original drafters.⁶

The resulting SCRA accomplishes these three goals.

This note will not attempt to review the history of this legislation or analyze the new law. It is only intended to alert practitioners to some of the more important provisions of this legislation. Even experienced practitioners under the SSCRA will have to acquaint themselves with these new provisions.⁷

Title I—General Provisions

The SCRA definition of "military service" incorporates the changes made to the SSCRA in 2002.⁸ Consequently, the SCRA extends coverage to members of the National Guard serving "more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds."⁹ Prior to the 2002 amendment, the SSCRA only applied to members of the National Guard if they were serving in Title 10 status. The SCRA applies to National Guard personnel serving in either Title 10 status or Title 32 status as defined in the Act.

Next, the SCRA expands the definition of "court" to include "an administrative agency of the United States or of any State."¹⁰ Previously, the SSCRA did not apply to administrative hearings. The increasingly widespread use of administrative hearings had left a large gap in the intended protection of servicemembers. This extension to administrative proceedings is emphasized again when the SCRA specifically defines its applicability as including "any judicial or administrative proceeding commenced in any court or agency."¹¹

Finally, Section 109 of the SCRA adds a provision concerning a legal representative of the servicemember. A legal repre-

1. Servicemembers Civil Relief Act, Pub. L. No. 108-189, 117 Stat. 2835 (2003).

2. 50 U.S.C. app. §§ 501-594 (2000).

3. Act of October 17, 1940, ch. 888, 54 Stat. 1178 (codified as amended at 50 U.S.C. App. §§ 501-593 (1994)).

4. ADMIN. & CIVIL L. DEP'T, THE JUDGE ADVOCATE GENERAL'S SCHOOL, U.S. ARMY, JA 260, THE SOLDIERS' AND SAILORS' CIVIL RELIEF GUIDE (July 2000) (providing a brief historical review of the SSCRA).

5. Pub. L. No. 108-189 (2003). Section 1(a) provides that the Act shall be known as the "Servicemembers Civil Relief Act." H.R. REP. NO. 108-081, § 1 (2003).

6. Memorandum, Colonel Steven T. Strong, Director, Legal Policy, Office of the Under Secretary of Defense (Personnel & Readiness), to Service Legal Assistance Chiefs (3 Oct. 2001) (on file with author).

7. The appendix to this article provides a cross-reference between some of the more frequently used sections of the SSCRA and the new SCRA.

8. Veterans Benefit Act of 2002, Pub. L. No. 107-330, 116 Stat. 2820 (2002).

9. Pub. L. No. 108-189, § 101(2)(A)(ii)(2003).

10. *Id.* § 101(5).

sentative is defined as either “[a]n attorney acting on the behalf of a servicemember” or “[a]n individual possessing a power of attorney.” Under the SCRA, a servicemember’s legal representative can take the same actions as a servicemember.¹² Also, the SSCRA referred to dependents, but never defined the term. Section 101(4) of the SCRA now contains a definition of the term “dependent.”¹³

Title II—General Relief

Section 201 of the SCRA establishes requirements that must be met before a court can enter a default judgment. This complete revision of the corresponding provision of the SSCRA clarifies the procedures required before a court can enter a default judgment but provides little substantive change. One addition is language defining when a court should grant a stay when the defendant is in military service and has not received notice of the proceedings.¹⁴ The court must grant a stay for at least ninety days upon request of the court-appointed attorney if there may be a defense which cannot be presented in the absence of the servicemember, or the attorney has been unable to contact the servicemember to determine the existence of a defense. This stay procedure is unrelated to the new required stay procedures when the servicemember has received actual notice of the proceedings and requests a stay.¹⁵

The SSCRA gave the court discretion to grant a stay of proceedings when the servicemember’s military service materially affected his ability to participate in the case.¹⁶ The SCRA substantially revises this provision, mandating an initial stay. Additionally, the previously discussed extension of the SCRA to administrative hearings expands the reach of this stay provi-

sion to include administrative proceedings. The SCRA mandates an automatic stay for at least ninety days upon the servicemember’s request.¹⁷ The request¹⁸ must explain why the current military duty materially affects the servicemember’s ability to appear, provide a date when the servicemember can appear, and include a letter from the commander stating that the servicemember’s duties preclude his appearance and that he is not authorized leave at the time of the hearing. Prior practice discouraged a direct application to the court for a stay in fear that the court may treat such a request as an appearance. Section 202(c) of the SCRA eliminates this concern. This new provision makes clear that a request for a stay “does not constitute an appearance for jurisdictional purposes and does not constitute a waiver of any substantive or procedural defense.”¹⁹ Servicemembers who remain unable to appear may use similar procedures to request further stays at the discretion of the court.²⁰ In another new requirement, the court must appoint counsel to represent the servicemember if the court denies the request for an additional stay.²¹

The six percent interest cap²² was one of the most frequently used provisions of the SSCRA. This provision requires the reduction of interest on any pre-service loan to six percent. One area of ambiguity was whether the interest in excess of six percent is forgiven, deferred, or subject to some other treatment. Section 207 of the SCRA resolves this issue. It also, for the first time, details the steps that a servicemember must take to obtain the interest rate reduction. The servicemember must make a written request to reduce the interest to six percent and include a copy of his applicable active duty orders.²³ Once the creditor receives the notice, the creditor must grant the relief effective as of the date the servicemember is called to active duty. The creditor must forgive any interest in excess of the six percent

11. *Id.* § 102(b).

12. *Id.* § 109(b).

13. *Id.* § 101(4).

14. *Id.* § 201(d).

15. *Id.* § 201(e) & (f).

16. 50 U.S.C. app. § 521 (2000).

17. Pub. L. No. 108-189, § 202(b)(1) (2003).

18. *Id.* § 202(b)(2). As a condition to staying proceedings, the statute requires a written request. *Id.*

19. *Id.* § 202(c).

20. *Id.* § 202(d)(1).

21. *Id.* § 202(d)(2).

22. 50 U.S.C. app. § 526.

with a resulting decrease in the amount of periodic payment that the servicemember is required to make.²⁴ As under the SSCRA, the creditor may avoid reducing the interest rate to six percent only if it can convince a court that the servicemember's military service has not materially affected the servicemember's ability to pay.²⁵

Title III—Rent, Installment Contracts, Mortgages, Liens, Assignment, and Leases

Section 300 of the SSCRA provided that, absent a court order, a landlord may not evict a servicemember or the dependents of a servicemember from a residential lease when the monthly rent is \$1200 or less. The SCRA increases the applicable rent ceiling to \$2400 for the year of 2003.²⁶ The Act provides a formula to calculate the rent ceiling for subsequent years.²⁷

Perhaps the most significant changes are found in Section 305 of the SCRA. Its counterpart in the SSCRA allowed termination of a pre-service "dwelling, professional, business, agricultural, or similar" lease executed by or for a servicemember

and occupied for those purposes by the servicemember or their dependents.²⁸ This provision did not provide any relief to an active duty soldier required to move due to military orders. It also failed to address automobile leases. Section 305 remedies these problems. Leases covered under Section 305 include the same range of leases that the SSCRA covered.²⁹ The section still applies to leases entered prior to entry on active duty.³⁰ It adds a new provision, however, extending coverage to leases entered into by active duty servicemembers who subsequently receive orders for a permanent change of station (PCS) or a deployment for a period of ninety days or more.³¹ The section also contains a totally new provision addressing automobiles leased for personal or business use by servicemembers and their dependents.³² Servicemembers may cancel pre-service automobile leases if the servicemember receives orders to active duty for a period of one hundred and eighty days or more.³³ Also, servicemembers may terminate automobile leases entered into while the servicemember is on active duty if the servicemember receives PCS orders to a location outside the continental United States or deployment orders for a period of one hundred and eighty days or more.³⁴

23. Pub. L. No. 108-189, § 207(b)(1) (2003).

24. *Id.* § 207(a)(2) & (3).

25. *Id.* § 207(c).

26. *Id.* § 301(a)(1)(A)(ii).

27. *Id.* 301(a)(2).

28. 50 U.S.C. app. § 534.

29. Pub. L. No. 108-189, § 305(b)(1) (2003).

30. *Id.* § 305(b)(1)(A).

31. *Id.* § 305(b)(1)(B).

32. *Id.* § 305(b)(2).

33. *Id.* § 305(b)(2)(A).

34. *Id.* § 305(b)(2)(B).

Title IV—Life Insurance

Article IV of the SSCRA permits servicemembers to request deferments of certain commercial life insurance premiums and other payments for the period of military service and two years thereafter. If the Department of Veterans Affairs approves the request, the United States will guarantee the payments, the policy shall continue in effect, and the servicemember will have two years after the period of military service to repay all premiums and interest.³⁵ The total amount of life insurance that this program could cover was limited to \$10,000.³⁶ The SCRA increases this total amount to the greater of \$250,000 or the maximum limit of the Servicemembers Group Life Insurance.³⁷

Title V—Taxes and Public Lands

The important changes within this Title are found in Section 511, Residence for Tax Purposes. The SSCRA provided that a nonresident servicemember's military income and personal property are not subject to state taxation if the servicemember is present in the state only due to military orders.³⁸ Some states, however, have included the amount of the nonresident servicemember's military income when calculating the applicable state income tax bracket for the servicemember's spouse. The result often places the spouse in a higher tax bracket. Thus, while the military income is not directly taxed, the servicemember and spouse pay more in state income tax than if the state did not consider the servicemember's military pay. This practice will end as Section 511(d) of the SCRA precludes states from using the military pay of servicemembers to increase the state income tax of the servicemember or spouse. The section also contains a new provision that clarifies that the protections of this section extend to servicemembers who are legal residents of a federal Indian reservation.³⁹

The remaining changes in this Title were minor. Most of the changes merely clarify language and update the legislative format. The SCRA also eliminates three sections of the SSCRA relating homestead rights to public lands⁴⁰ as the programs no longer exist.

Title VI—Administrative Remedies

Changes within this Title merely clarify language and update the legislative format.

Title VII—Further Relief

The final significant change will have special meaning to reserve judge advocates. The 1991 amendment to the SSCRA⁴¹ allowed an individual with a pre-service professional liability (malpractice) insurance policy to suspend such coverage during the period of active military service. The insurance provider is responsible for any claims brought as a result of actions prior to the suspension. The insurance provider would not charge premiums during the period of suspension, and must reinstate the policy upon the request of the professional. This provision applied to a person "engaged in the furnishing of health-care services or other services determined by the Secretary of Defense to be professional services."⁴² Mobilization orders since 1991 contain Secretarial determination that legal services are "professional services." The SCRA eliminates the need to include this provision in mobilization orders by modifying the definition of persons covered to specifically include those providing legal services.⁴³ The remaining changes within this Title merely clarify language and update the legislative format.

35. 50 U.S.C. app. §§ 540-547 (2000).

36. *Id.* app. § 541.

37. Pub. L. No. 108-189, § 402(c) (2003).

38. 50 U.S.C. app. § 514.

39. Pub. L. No. 108-189, § 511(e) (2003).

40. 50 U.S.C. apps. §§ 502, 503, & 510.

41. *Id.* app. § 592.

42. *Id.* app. § 592(a)(2)(A).

43. Pub. L. No. 108-189, § 703(a)(2)(A) (2003).

Conclusion

The SCRA's changes represent a long overdue update to the important protections that the SSCRA provided to servicemembers. With the prospect of continued mobilizations and deployments, our servicemembers will increasingly rely on the improved protections of the SCRA. Legal assistance attorneys

must become familiar with these changes and update their SSCRA correspondence to reflect these new provisions. It will become progressively more important to educate judges, attorneys, landlords, lessors, lenders, and other affected parties of these new provisions. Hopefully, this note is a first step in this process.

SSCRA/SCRA Reference Guide

| <u>Provision</u> | <u>SSCRA Section</u> | <u>50 U.S.C. App.</u> | <u>SCRA Section</u> |
|-----------------------------------|--------------------------|---------------------------|-------------------------|
| Definitions | 101 | 510 | 101 |
| Application & Jurisdiction | 102 | 512 | 102 |
| Persons Liable on SM's Obligation | 103 | 513 | 103 |
| Waiver of Benefits | 107 | 517 | 107 |
| Effect on Future Financial Acts | 108 | 518 | 108 |
| Legal Representatives | N/A | N/A | 109 |
| Default Judgments | 200 | 520 | 201 |
| Stay of Proceedings | 201 | 521 | 202 |
| Statute of Limitations | 205 | 525 | 206 |
| Maximum Rate of Interest | 206 | 526 | 207 |
| Eviction and Distress | 300 | 530 | 301 |
| Installment Contracts | 301 | 531 | 302 |
| Mortgage Foreclosures | 302 | 532 | 303 |
| Termination of Leases | 304 | 534 | 305 |
| Extension to Dependents | 306 | 536 | 308 |
| Residence for Tax Purposes | 514 | 574 | 511 |
| Anticipatory Relief | 700 | 590 | 701 |
| Professional Liability Protection | 702 | 592 | 703 |
| Reinstatement of Health Insurance | 703 | 593 | 704 |
| Residency for Voting | 704 | 594 | 705 |

CLE News

1. Resident Course Quotas

Attendance at resident continuing legal education (CLE) courses at The Judge Advocate General's School, U.S. Army (TJAGSA), is restricted to students who have confirmed reservations. Reservations for TJAGSA CLE courses are managed by the Army Training Requirements and Resources System (ATRRS), the Army-wide automated training system. If you do not have a confirmed reservation in ATRRS, you do not have a reservation for a TJAGSA CLE course.

Active duty service members and civilian employees must obtain reservations through their directorates of training or through equivalent agencies. Reservists must obtain reservations through their unit training offices or, if they are non-unit reservists, through the U.S. Army Personnel Center (ARPER-CEN), ATTN: ARPC-OPB, 1 Reserve Way, St. Louis, MO 63132-5200. Army National Guard personnel must request reservations through their unit training offices.

Questions regarding courses should be directed to the Deputy, Academic Department at 1-800-552-3978, dial 1, extension 3304.

When requesting a reservation, please have the following information:

TJAGSA Code—181

Course Name—133d Contract Attorneys Course 5F-F10

Course Number—133d Contract Attorney's Course 5F-F10

Class Number—133d Contract Attorney's Course 5F-F10

To verify a confirmed reservation, ask your training office to provide a screen print of the ATRRS R1 screen, showing by-name reservations.

The Judge Advocate General's School, U.S. Army, is an approved sponsor of CLE courses in all states that require mandatory continuing legal education. These states include: AL, AR, AZ, CA, CO, CT, DE, FL, GA, ID, IN, IA, KS, KY, LA, ME, MN, MS, MO, MT, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, WA, WV, WI, and WY.

2. TJAGSA CLE Course Schedule (August 2003 - September 2005)

| Course Title | Dates | ATRRS No. |
|----------------------|---|--------------------------|
| GENERAL | | |
| 52d Graduate Course | 18 August 03 - 27 May 04 | (5-27-C22) |
| 53d Graduate Course | 16 August 04 - 26 May 05 | (5-27-C22) |
| 54th Graduate Course | 15 August 05 - thru TBD | (5-27-C22) |
| 163d Basic Course | 6 - 30 January 04 (Phase I - Ft. Lee) 30 January - 9 April 04 (Phase II - TJAGSA) | (5-27-C20) (5-27-C20) |
| 164th Basic Course | 1 - 24 June 04 (Phase I - Ft. Lee) 25 June - 3 September 04 (Phase II - TJAGSA) | (5-27-C20) (5-27-C20) |
| 165th Basic Course | 14 September - 8 October 04 (Phase I - Ft. Lee) 8 October - 16 December 04 (Phase II - TJAGSA) | (5-27-C20) (5-27-C20) |
| 166th Basic Course | 4 - 28 January 05 (Phase I - Ft. Lee) 28 January - 8 April 05 (Phase II - TJAGSA) | (5-27-C20) (5-27-C20) |
| 167th Basic Course | 31 May - June 05 (Phase I - Ft. Lee) 25 June - 1 September 05 (Phase II - TJAGSA) | (5-27-C20) (5-27-C20) |
| 168th Basic Course | 13 September - thru TBD (Phase I - Ft. Lee) TBD (Phase II - TJAGSA) | (5-27-C20) |

| | | |
|---|------------------------------|-------------|
| 9th Speech Recognition Training | 25 October - 5 November 04 | (512-27DC4) |
| 13th Court Reporter Course | 26 January - 26 March 04 | (512-27DC5) |
| 14th Court Reporter Course | 26 April - 25 June 04 | (512-27DC5) |
| 15th Court Reporter Course | 2 August - 1 October 04 | (512-27DC5) |
| 16th Court Reporter Course | 24 January - 25 March 05 | (512-27DC5) |
| 17th Court Reporter Course | 25 April - 24 June 05 | (512-27DC5) |
| 18th Court Reporter Course | 1 August - 5 October 05 | (512-27DC5) |
| 4th Court Reporting Symposium | 15 -19 November 04 | (512-27DC6) |
| 180th Senior Officers Legal Orientation Course | 26 - 30 January 04 | (5F-F1) |
| 181st Senior Officers Legal Orientation Course | 22 - 26 March 04 | (5F-F1) |
| 182d Senior Officers Legal Orientation Course | 17 - 21 May 04 | (5F-F1) |
| 183d Senior Officers Legal Orientation Course | 13 - 17 September 04 | (5F-F1) |
| 184th Senior Officers Legal Orientation Course | 15 - 19 November 04 | (5F-F1) |
| 185th Senior Officers Legal Orientation Course | 24 - 28 January 05 | (5F-F1) |
| 186th Senior Officers Legal Orientation Course | 28 March - 1 April 05 | (5F-F1) |
| 187th Senior Officers Legal Orientation Course | 13 - 17 June 05 | (5F-F1) |
| 188th Senior Officers Legal Orientation Course | 12 - 16 September 05 (5F-F1) | |
| 10th RC General Officers Legal Orientation Course | 21- 23 January 04 | (5F-F3) |
| 11th RC General Officers Legal Orientation Course | 19 - 21 January 05 | (5F-F3) |
| 34th Staff Judge Advocate Course | 7 - 11 June 04 | (5F-F52) |
| 35th Staff Judge Advocate Course | 6 - 10 June 05 | (5F-F52) |

| | | |
|---|-----------------------|------------------|
| 7th Staff Judge Advocate Team Leadership Course | 7 - 9 June 04 | (5F-F52-S) |
| 8th Staff Judge Advocate Team Leadership Course | 6 - 8 June 05 | (5F-F52-S) |
| 2004 Reserve Component Judge Advocate Workshop | 19 - 22 April 04 | (5F-F56) |
| 2005 Reserve Component Judge Advocate Workshop | 11 - 14 April 05 | (5F-F56) |
| 2004 JAOAC (Phase II) | 4 - 16 January 04 | (5F-F55) |
| 2005 JAOAC (Phase II) | 2 - 14 January 05 | (5F-F55) |
| 35th Methods of Instruction Course | 19 - 23 July 04 | (5F-F70) |
| 36th Methods of Instruction Course | 18 - 22 July 05 | (5F-F70) |
| 2004 JAG Annual CLE Workshop | 4 - 8 October 04 | (5F-JAG) |
| 15th Legal Administrators Course | 21 - 25 June 04 | (7A-550A1) |
| 16th Legal Administrators Course | 20 - 24 June 05 | (7A-550A1) |
| 15th Law for Paralegal NCOs Course | 29 March - 2 April 04 | (512-27D/20/30) |
| 16th Law for Paralegal NCOs Course | 28 March - 1 April 05 | (512-27D/20/30) |
| 15th Senior Paralegal NCO Management Course | 14 - 18 June 04 | (512-27D/40/50) |
| 16th Senior Paralegal NCO Management Course | 13 - 17 June 05 | (512-27D/40/50) |
| 8th Chief Paralegal NCO Course | 14 - 18 June 04 | (512-27D- CLNCO) |
| 9th Chief Paralegal NCO Course | 13 - 17 June 05 | (512-27D- CLNCO) |
| 5th 27D BNCOC | 12 - 29 October 04 | |
| 6th 27D BNCOC | 3 - 21 January 05 | |
| 7th 27D BNCOC | 7 - 25 March 05 | |
| 8th 27D BNCOC | 16 May - 3 June 05 | |
| 9th 27D BNCOC | 1 - 19 August 05 | |

| | | |
|--|-----------------------------|------------|
| 4th 27D ANCOC | 25 October - 10 November 04 | |
| 5th 27D ANCOC | 10 - 28 January 05 | |
| 6th 27D ANCOC | 25 April - 13 May 05 | |
| 7th 27D ANCOC | 18 July - 5 August 05 | |
| 4th JA Warrant Officer Advanced Course | 12 July - 6 August 04 | (7A-270A2) |
| 11th JA Warrant Officer Basic Course | 31 May - 25 June 04 | (7A-270A0) |
| 12th JA Warrant Officer Basic Course | 31 May - 24 June 05 | (7A-270A0) |
| JA Professional Recruiting Seminar | 14 - 16 July 04 | (JARC-181) |
| JA Professional Recruiting Seminar | 13 - 15 July 05 | (JARC-181) |

ADMINISTRATIVE AND CIVIL LAW

| | | |
|--|-----------------------------|-----------|
| 3d Advanced Federal Labor Relations Course | 20 - 22 October 04 | (5F-F21) |
| 58th Federal Labor Relations Course | 18 - 22 October 04 | (5F-F22) |
| 54th Legal Assistance Course | 10 - 14 May 04 | (5F-F23) |
| 55th Legal Assistance Course | 1 - 5 November 04 | (5F-F23) |
| 56th Legal Assistance Course | 16 - 20 May 05 | (5F-F23) |
| 2004 USAREUR Legal Assistance CLE | 18 - 22 Oct 04 | (5F-F23E) |
| 28th Admin Law for Military Installations Course | 8 - 12 March 04 | (5F-F24) |
| 29th Admin Law for Military Installations Course | 14 - 18 March 05 | (5F-F24) |
| 2004 USAREUR Administrative Law CLE | 13 - 17 September 04 | (5F-F24E) |
| 2005 USAREUR Administrative Law CLE | 12 - 16 September 05 | (5F-F24E) |
| 2004 Federal Income Tax Course (Charlottesville, VA) | 29 November - 3 December 04 | (5F-F28) |

| | | |
|------------------------------------|---------------------|-----------|
| 2004 Hawaii Estate Planning Course | 20 - 23 January 05 | (5F-F27H) |
| 2004 USAREUR Income Tax CLE | 13 - 17 December 04 | (5F-F28E) |
| 2004 Hawaii Income Tax CLE | 12 - 16 January 04 | (5F-F28H) |
| 2005 Hawaii Income Tax CLE | 11 - 14 January 05 | (5F-F28H) |
| 2004 PACOM Income Tax CLE | 5 - 9 January 2004 | (5F-F28P) |
| 2005 PACOM Income Tax CLE | 3 - 7 January 2005 | (5F-F28P) |
| 22d Federal Litigation Course | 2 - 6 August 04 | (5F-F29) |
| 23d Federal Litigation Course | 1 - 5 August 05 | (5F-F29) |
| 2d Ethics Counselors Course | 12 - 16 April 04 | (5F-F202) |
| 3d Ethics Counselors Course | 18 - 22 April 05 | (5F-F202) |

CONTRACT AND FISCAL LAW

| | | |
|--|---------------------------|-----------|
| 152d Contract Attorneys Course | 23 February - 5 March 04 | (5F-F10) |
| 153d Contract Attorneys Course | 26 July - 6 August 04 | (5F-F10) |
| 154th Contract Attorneys Course | 28 February - 11 March 05 | (5F-F10) |
| 155th Contract Attorneys Course | 25 July - 5 August 05 | (5F-F10) |
| 6th Advanced Contract Law (Intellectual Property & Non-FAR Transactions) | 15 - 19 March 04 | (5F-F103) |
| 5th Contract Litigation Course | 21 - 25 March 05 | (5F-F102) |
| 2004 Government Contract Law Symposium | 7 - 10 December 04 | (5F-F11) |
| 68th Fiscal Law Course | 26 - 30 April 04 | (5F-F12) |
| 69th Fiscal Law Course | 3 - 7 May 04 | (5F-F12) |
| 70th Fiscal Law Course | 25 - 29 October 04 | (5F-F12) |
| 71st Fiscal Law Course | 25 - 29 April 05 | (5F-F12) |
| 72d Fiscal Law Course | 2 - 6 May 05 | (5F-F12) |

| | | |
|---|---------------------|-----------|
| 12th Comptrollers Accreditation Course (Hawaii) | 26 - 30 January 04 | (5F-F14) |
| 13th Comptrollers Accreditation Course (Fort Monmouth) | 14 - 17 June 04 | (5F-F14) |
| 6th Procurement Fraud Course | 1 - 3 June 04 | (5F-F101) |
| 2004 USAREUR Contract & Fiscal Law CLE | 12 - 16 January 04 | (5F-F15E) |
| 2005 USAREUR Contract & Fiscal Law CLE | 10 - 14 January 05 | (5F-F15E) |
| 2004 Maxwell AFB Fiscal Law Course | 10 - 13 February 04 | |
| 2005 Maxwell AFB Fiscal Law Course | 7 - 11 February 05 | |

CRIMINAL LAW

| | | |
|--|----------------------|-----------|
| 10th Military Justice Managers Course | 23 - 27 August 04 | (5F-F31) |
| 11th Military Justice Managers Course | 22 - 26 August 05 | (5F-F31) |
| 47th Military Judge Course | 26 April - 14 May 04 | (5F-F33) |
| 48th Military Judge Course | 25 April - 13 May 05 | (5F-F33) |
| 21st Criminal Law Advocacy Course | 15 - 26 March 04 | (5F-F34) |
| 22d Criminal Law Advocacy Course | 13 - 24 September 04 | (5F-F34) |
| 23d Criminal Law Advocacy Course | 14 - 25 March 05 | (5F-F34) |
| 24th Criminal Law Advocacy Course | 12 - 23 September 05 | (5F-F34) |
| 28th Criminal Law New Developments Course | 15 - 18 November 04 | (5F-F35) |
| 2004 USAREUR Criminal Law CLE | 5 - 9 January 04 | (5F-F35E) |
| 2005 USAREUR Criminal Law CLE | 3 - 7 January 05 | (5F-F35E) |

INTERNATIONAL AND OPERATIONAL LAW

| | | |
|---|--------------------|----------|
| 4th Domestic Operational Law Course | 25 - 29 October 04 | (5F-F45) |
| 1st Basic Intelligence Law Course (TJAGSA) | 28 - 29 June 04 | (5F-F41) |

| | | |
|---|----------------------------|-----------|
| 2d Basic Intelligence Law Course | 27 - 28 June 05 | (5F-F41) |
| 1st Advanced Intelligence Law (National Ground Intelligence Center) | 30 June - 2 July 04 | (5F-F43) |
| 2d Advanced Intelligence Law | 29 June - 1 July 04 | (5F-F43) |
| 81st Law of War Course | 2 - 6 February 04 | (5F-F42) |
| 82d Law of War Course | 12 - 16 July 04 | (5F-F42) |
| 83d Law of War Course | 31 January - 4 February 05 | (5F-F42) |
| 84th Law of War Course | 11 - 15 July 05 | (5F-F42) |
| 41st Operational Law Course | 23 February - 5 March 04 | (5 F-F47) |
| 42d Operational Law Course | 9 - 20 August 04 | (5F-F47) |
| 43d Operational Law Course | 28 February - 11 March 05 | (5F-F47) |
| 44th Operational Law Course | 8 - 19 August 05 | (5F-F47) |
| 2005 USAREUR Operational Law CLE | 10 - 14 January 2005 | (5F-F47E) |

3. Civilian-Sponsored CLE Courses

For further information on civilian courses in your area, please contact one of the institutions listed below:

AAJE: American Academy of Judicial Education
P.O. Box 728
University, MS 38677-0728
(662) 915-1225

ABA: American Bar Association
750 North Lake Shore Drive
Chicago, IL 60611
(312) 988-6200

AGACL: Association of Government Attorneys
in Capital Litigation
Arizona Attorney General's Office
ATTN: Jan Dyer
1275 West Washington
Phoenix, AZ 85007
(602) 542-8552

ALIABA: American Law Institute-American Bar
Association
Committee on Continuing Professional
Education
4025 Chestnut Street
Philadelphia, PA 19104-3099
(800) CLE-NEWS or (215) 243-1600

ASLM: American Society of Law and Medicine
Boston University School of Law
765 Commonwealth Avenue
Boston, MA 02215
(617) 262-4990

CCEB: Continuing Education
of the Bar
University of California Extension
2300 Shattuck Avenue
Berkeley, CA 94704
(510) 642-3973

| | | | |
|--------|---|--------|---|
| CLA: | Computer Law Association, Inc. 3028 Javier Road, Suite 500E Fairfax, VA 22031 (703) 560-7747 | MLI: | (504) 388-5837 Medi-Legal Institute 15301 Ventura Boulevard, Suite 300 Sherman Oaks, CA 91403 (800) 443-0100 |
| CLESN: | CLE Satellite Network 920 Spring Street Springfield, IL 62704 (217) 525-0744 (800) 521-8662 | NCDA: | National College of District Attorneys University of Houston Law Center 4800 Calhoun Street Houston, TX 77204-6380 (713) 747-NCDA |
| ESI: | Educational Services Institute 5201 Leesburg Pike, Suite 600 Falls Church, VA 22041-3202 (703) 379-2900 | NITA: | National Institute for Trial Advocacy 1507 Energy Park Drive St. Paul, MN 55108 (612) 644-0323 in (MN and AK) (800) 225-6482 |
| FBA: | Federal Bar Association 1815 H Street, NW, Suite 408 Washington, DC 20006-3697 (202) 638-0252 | NJC: | National Judicial College Judicial College Building University of Nevada Reno, NV 89557 |
| FB: | Florida Bar 650 Apalachee Parkway Tallahassee, FL 32399-2300 | NMTLA: | New Mexico Trial Lawyers' Association P.O. Box 301 Albuquerque, NM 87103 (505) 243-6003 |
| GICLE: | The Institute of Continuing Legal Education P.O. Box 1885 Athens, GA 30603 (706) 369-5664 | PBI: | Pennsylvania Bar Institute 104 South Street P.O. Box 1027 Harrisburg, PA 17108-1027 (717) 233-5774 (800) 932-4637 |
| GII: | Government Institutes, Inc. 966 Hungerford Drive, Suite 24 Rockville, MD 20850 (301) 251-9250 | PLI: | Practicing Law Institute 810 Seventh Avenue New York, NY 10019 (212) 765-5700 |
| GWU: | Government Contracts Program The George Washington University National Law Center 2020 K Street, NW, Room 2107 Washington, DC 20052 (202) 994-5272 | TBA: | Tennessee Bar Association 3622 West End Avenue Nashville, TN 37205 (615) 383-7421 |
| IICLE: | Illinois Institute for CLE 2395 W. Jefferson Street Springfield, IL 62702 (217) 787-2080 | TLS: | Tulane Law School Tulane University CLE 8200 Hampson Avenue, Suite 300 New Orleans, LA 70118 (504) 865-5900 |
| LRP: | LRP Publications 1555 King Street, Suite 200 Alexandria, VA 22314 (703) 684-0510 (800) 727-1227 | UMLC: | University of Miami Law Center P.O. Box 248087 Coral Gables, FL 33124 (305) 284-4762 |
| LSU: | Louisiana State University Center on Continuing Professional Development Paul M. Herbert Law Center Baton Rouge, LA 70803-1000 | | |

| | | | |
|-------|--|----------|---|
| UT: | The University of Texas School of Law Office of Continuing Legal Education 727 East 26th Street Austin, TX 78705-9968 | Colorado | Anytime within three-year period |
| VCLE: | University of Virginia School of Law Trial Advocacy Institute P.O. Box 4468 Charlottesville, VA 22905 | Delaware | Period ends 31 December; confirmation required by 1 February if compliance required; if attorney is admitted in even-numbered year, period ends in even-numbered year, etc. |

4. Phase I (Correspondence Phase), RC-JAOAC Deadline

The suspense for submission of all RC-JAOAC Phase I (Correspondence Phase) materials is **NLT 2400, 1 November 2004**, for those judge advocates who desire to attend Phase II (Resident Phase) at TJAGLCS in the year 2005 (“2005 JAOAC”). This requirement includes submission of all JA 151, Fundamentals of Military Writing, exercises.

This requirement is particularly critical for some officers. The 2005 JAOAC will be held in January 2005, and is a prerequisite for most judge advocate captains to be promoted to major.

A judge advocate who is required to retake any subcourse examinations or “re-do” any writing exercises must submit the examination or writing exercise to the Non-Resident Instruction Branch, TJAGLCS, for grading by the same deadline (1 November 2004). If the student receives notice of the need to re-do any examination or exercise after 1 October 2004, the notice will contain a suspense date for completion of the work.

Judge advocates who fail to complete Phase I correspondence courses and writing exercises by 1 November 2004 will not be cleared to attend the 2005 JAOAC. If you have not received written notification of completion of Phase I of JAOAC, you are not eligible to attend the resident phase.

If you have any further questions, contact Lieutenant Colonel JT. Parker, telephone (434) 971-3357, or e-mail JT.Parker@hqda.army.mil.

5. Mandatory Continuing Legal Education Jurisdiction and Reporting Dates

| <u>Jurisdiction</u> | <u>Reporting Month</u> |
|----------------------------|-------------------------------|
| Alabama** | 31 December annually |
| Arizona | 15 September annually |
| Arkansas | 30 June annually |
| California* | 1 February annually |

| | |
|------------------|---|
| Florida** | Assigned month triennially |
| Georgia | 31 January annually |
| Idaho | 31 December, admission date triennially |
| Indiana | 31 December annually |
| Iowa | 1 March annually |
| Kansas | 30 days after program, hours must be completed in compliance period July 1 to June 30 |
| Kentucky | 10 August; 30 June is the end of the educational year |
| Louisiana** | 31 January annually |
| Maine** | 31 July annually |
| Minnesota | 30 August |
| Mississippi** | 1 August annually |
| Missouri | 31 July annually |
| Montana | 1 April annually |
| Nevada | 1 March annually |
| New Hampshire** | 1 August annually |
| New Mexico | prior to 30 April annually |
| New York* | Every two years within thirty days after the attorney’s birthday |
| North Carolina** | 28 February annually |
| North Dakota | 31 July annually |
| Ohio* | 31 January biennially |

| | | | |
|------------------|--|---|------------------------|
| Oklahoma** | 15 February annually | Utah | 31 January |
| Oregon | Period end 31 December; due 31 January | Vermont | 2 July annually |
| Pennsylvania** | Group 1: 30 April Group 2: 31 August Group 3: 31 December | Virginia | 31 October annually |
| Rhode Island | 30 June annually | Washington | 31 January triennially |
| South Carolina** | 1 January annually | West Virginia | 31 July biennially |
| Tennessee* | 1 March annually | Wisconsin* | 1 February biennially |
| | | Wyoming | 30 January annually |
| | | * Military Exempt | |
| | Minimum credits must be completed by last day of birth month each year | ** Military Must Declare Exemption For addresses and detailed information, see the March 2003 is- sue of <i>The Army Lawyer</i> . | |
| Texas | Minimum credits must be completed by last day of birth month each year | | |

Current Materials of Interest

1. The Judge Advocate General's On-Site Continuing Legal Education Training and Workshop Schedule (2003-2004 Academic Year)

| <u>DATE</u> | <u>TRNG SITE/HOST UNIT</u> | <u>SUBJECT</u> | <u>ACTION OFFICER</u> |
|-------------------|---|---|---|
| 30 Jan - 1 Feb 04 | Columbus, OH 9th LSO Columbus Northwest Marriott Hotel | Operations Law, Administrative and Civil Law | 1LT Matthew Lampke (614) 644-7257 Mlampke@ag.state.oh.us |
| 7 - 8 Feb 04 | Seattle, WA 70th RRC/6th LSO | Operational Law, Administrative and Civil Law | MAJ Randy Petgrave Randolph.petgrave@us.army.mil |
| 21 - 22 Feb 04 | Salt Lake City, UT 96th RRC/87th LSO/UTARNG | Mobilization/Demobilization Law Topics/Operational Law, Criminal Law | LTC Frandsen Richard.frandsen@us.army.mil |
| 27 - 29 Feb 04 | Dallas, TX 16th LSO/90th RRC | Administrative and Civil Law, Criminal Law | LTC Jeffrey Stacey Jeffrey.Stacey@mail.va.gov |
| 6 - 7 Mar 04 | Washington, DC 10th LSO/99th RRC National War College Fort Belvoir | Operational Law, Contingency Contracting | CPT Joel Starr (202) 712-5152 joelstarr@aol.com |
| 13 - 14 Mar 04 | San Mateo, CA 63rd LSO/75th LSO | Administrative and Civil Law, Criminal Law | MAJ Mark McClenahan mark.mcclenahan@citigroup.com |
| 19 - 21 Mar 04 | St. Louis, MO 89th RRC/8th LSO Renaissance (Marriott) Hotel | Administrative and Civil Law, Contract Law | 8th LSO POC TBD |
| 2 - 4 Apr 04 | Perdido Beach, AL 81st RSC/174th LSO/ 213th LSO | Administrative and Civil Law, Contract Law | CPT William Osborne William.Osborne2@se.usar.army.mil |
| 17 - 18 Apr 04 | Indianapolis, IN INARNG | Criminal Law, Administrative Law | COL George C. Thompson (317) 247-3491 George.Thompson@in.ngb.army.mil |
| 24 -25 Apr 04 | Boston, MA 94th RRC | Criminal Law, Operational Law | MAJ Angela Horne (978) 784-3931 angela.horne@us.army.mil |

* Prospective students may enroll for the on-sites through the Army Training Requirements and Resources System (ATRRS) using the designated Course and Class Number.

2. The Judge Advocate General's School, U.S. Army (TJAGSA) Materials Available through the Defense Technical Information Center (DTIC)

Each year, TJAGSA publishes deskbooks and materials to support resident course instruction. Much of this material is useful to judge advocates and government civilian attorneys who are unable to attend courses in their practice areas, and TJAGSA receives many requests each year for these materials. Because the distribution of these materials is not in its mission, TJAGSA does not have the resources to provide these publications.

To provide another avenue of availability, some of this material is available through the Defense Technical Information Center (DTIC). An office may obtain this material through the installation library. Most libraries are DTIC users and would be happy to identify and order requested material. If the library is not registered with the DTIC, the requesting person's office/organization may register for the DTIC's services.

If only unclassified information is required, simply call the DTIC Registration Branch and register over the phone at (703) 767-8273, DSN 427-8273. If access to classified information is needed, then a registration form must be obtained, completed, and sent to the Defense Technical Information Center, 8725 John J. Kingman Road, Suite 0944, Fort Belvoir, Virginia

22060-6218; telephone (commercial) (703) 767-8273, (DSN) 427-8273, toll-free 1-800-225-DTIC, menu selection 2, option 1; fax (commercial) (703) 767-8228; fax (DSN) 426-8228; or e-mail to reghelp@dtic.mil.

If there is a recurring need for information on a particular subject, the requesting person may want to subscribe to the Current Awareness Bibliography (CAB) Service. The CAB is a profile-based product, which will alert the requestor, on a biweekly basis, to the documents that have been entered into the Technical Reports Database which meet his profile parameters. This bibliography is available electronically via e-mail at no cost or in hard copy at an annual cost of \$25 per profile. Contact DTIC at www.dtic.mil/dtic/current.html.

Prices for the reports fall into one of the following four categories, depending on the number of pages: \$7, \$12, \$42, and \$122. The DTIC also supplies reports in electronic formats. Prices may be subject to change at any time. Lawyers, however, who need specific documents for a case may obtain them at no cost.

For the products and services requested, one may pay either by establishing a DTIC deposit account with the National Technical Information Service (NTIS) or by using a VISA, MasterCard, or American Express credit card. Information on establishing an NTIS credit card will be included in the user packet.

There is also a DTIC Home Page at <http://www.dtic.mil> to browse through the listing of citations to unclassified/unlimited documents that have been entered into the Technical Reports Database within the last twenty-five years to get a better idea of the type of information that is available. The complete collection includes limited and classified documents as well, but those are not available on the web.

Those who wish to receive more information about the DTIC or have any questions should call the Product and Services Branch at (703)767-8267, (DSN) 427-8267, or toll-free 1-800-225-DTIC, menu selection 6, option 1; or send an e-mail to bcorders@dtic.mil.

Contract Law

- AD A301096 Government Contract Law Deskbook, vol. 1, JA-501-1-95.
- AD A301095 Government Contract Law Deskbook, vol. 2, JA-501-2-95.
- AD A265777 Fiscal Law Course Deskbook, JA-506-93.

Legal Assistance

- AD A384333 Soldiers' and Sailors' Civil Relief Act Guide, JA-260 (2000).
- AD A333321 Real Property Guide—Legal Assistance, JA-261 (1997).
- AD A326002 Wills Guide, JA-262 (1997).
- AD A346757 Family Law Guide, JA 263 (1998).
- AD A384376 Consumer Law Guide, JA 265 (2000).
- AD A372624 Uniformed Services Worldwide Legal Assistance Directory, JA-267 (1999).
- AD A360700 Tax Information Series, JA 269 (2002).
- AD A350513 The Uniformed Services Employment and Reemployment Rights Act (USAERRA), JA 270, Vol. I (1998).
- AD A350514 The Uniformed Services Employment and Reemployment Rights Act (USAERRA), JA 270, Vol. II (1998).
- AD A329216 Legal Assistance Office Administration Guide, JA 271 (1997).
- AD A276984 Deployment Guide, JA-272 (1994).
- AD A360704 Uniformed Services Former Spouses' Protection Act, JA 274 (2002).
- AD A326316 Model Income Tax Assistance Guide, JA 275 (2001).
- AD A282033 Preventive Law, JA-276 (1994).

Administrative and Civil Law

- AD A351829 Defensive Federal Litigation, JA-200 (2000).
- AD A327379 Military Personnel Law, JA 215 (1997).
- *AD A413606 Reports of Survey and Line of Duty Determinations, JA-231 (2003).
- AD A347157 Environmental Law Deskbook, JA-234 (2002).
- AD A377491 Government Information Practices, JA-235 (2000).

- AD A377563 Federal Tort Claims Act, JA 241 (2000).
 AD A332865 AR 15-6 Investigations, JA-281 (1997).

Labor Law

- AD A360707 The Law of Federal Employment, JA-210 (1998).
 AD A360707 The Law of Federal Labor-Management Relations, JA-211 (1999).

Criminal Law

- AD A302672 Unauthorized Absences Programmed Text, JA-301 (2003).
 AD A303842 Trial Counsel and Defense Counsel Handbook, JA-310 (1995).
 AD A302445 Nonjudicial Punishment, JA-330 (1995).
 AD A302674 Crimes and Defenses Deskbook, JA-337 (1994).
 AD A274413 United States Attorney Prosecutions, JA-338 (1994).

International and Operational Law

- AD A377522 Operational Law Handbook, JA-422 (2003).

* Indicates new publication or revised edition.

3. Regulations and Pamphlets

The following provides information on how to obtain *Manuals for Courts-Martial, DA Pamphlets, Army Regulations, Field Manuals, and Training Circulars*.

(1) The U.S. Army Publications Distribution Center (USAPDC) at St. Louis, Missouri, stocks and distributes Department of the Army publications and blank forms that have Army-wide use. Contact the USAPDC at the following address:

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 DSN 892-0900

(2) Units must have publications accounts to use any part of the publications distribution system. Consult *Department of the Army Regulation 25-30, The Army Integrated Publishing and Printing Program* (15 July 2002). The U.S. Army Publishing Agency web site provides administrative departmental publications and forms to include Army regulations, circulars, pamphlets, optional forms, standard forms, Department of Defense forms and Department of the Army forms. The web site to access the departmental publications and forms is <http://www.usapa.army.mil>. Consult Table 5-1, AR 25-30, for official departmental publications web sites.

4. The Legal Automation Army-Wide Systems XXI—JAGCNet

a. The Legal Automation Army-Wide Systems XXI (LAAWS XXI) operates a knowledge management and information service called JAGCNet primarily dedicated to servicing the Army legal community, but also provides for Department of Defense (DOD) access in some cases. Whether you have Army access or DOD-wide access, all users will be able to download TJAGSA publications that are available through the JAGCNet.

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know your user name and password, select "Enter" from the next menu, then enter your "User Name" and "Password" in the appropriate fields.

(d) If you have a JAGCNet account, *but do not know your user name and/or Internet password*, contact your legal administrator or e-mail the LAAWS XXI HelpDesk at LAAW-SXXXI@jagc-smtp.army.mil.

(e) If you do not have a JAGCNet account, select "Register" from the JAGCNet Intranet menu.

(f) Follow the link "Request a New Account" at the bottom of the page, and fill out the registration form completely. Allow seventy-two hours for your request to process. Once your request is processed, you will receive an e-mail telling you that your request has been approved or denied.

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5. TJAGSA Publications Available Through the LAAWS XXI JAGCNet

For detailed information, see the September 2003 issue of *The Army Lawyer*.

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The Judge Advocate General's Legal Center and School, U.S. Army, Charlottesville, Virginia continues to improve capabilities for faculty and staff. We have installed new computers throughout TJAGLCS, all of which are compatible with Microsoft Windows 2000 Professional and Microsoft Office 2000 Professional throughout TJAGLCS.

The Judge Advocate General's Legal Center and School, U.S. Army, faculty and staff are available through the

Internet. Addresses for TJAGLCS personnel are available by e-mail at jagsch@hqda.army.mil or by calling the LTMO at (434) 971-3314. Phone numbers and e-mail addresses for TJAGLCS personnel are available on the TJAGLCS Web page at <http://www.jagcnet.army.mil/tjagsa>. Click on "directory" for the listings.

For students who wish to access their office e-mail while attending TJAGLCS classes, please ensure that your office e-mail is web browser accessible prior to departing your office. Please bring the address with you when attending classes at TJAGLCS. If your office does not have web accessible e-mail, you may establish an account at the Army Portal, <http://ako.us.army.mil>, and then forward your office e-mail to this new account during your stay at TJAGLCS. Dial-up internet access is available in TJAGLCS billets.

Personnel desiring to call TJAGLCS can dial via DSN 521-7115 or, provided the telephone call is for official business only, use our toll free number, (800) 552-3978; the receptionist will connect you to the appropriate department or directorate. For additional information, please contact the Legal Technology Management Office at (434) 971-3264 or DSN 521-3264.

7. The Army Law Library Service

Per *Army Regulation 27-1*, paragraph 12-11, the Army Law Library Service (ALLS) must be notified before any redistribution of ALLS-purchased law library materials. Posting such a notification in the ALLS FORUM of JAGCNet satisfies this regulatory requirement as well as alerting other librarians that excess materials are available.

Point of contact is Mr. Dan Lavering, The Judge Advocate General's Legal Center and School, U.S. Army, ATTN: ALCS-ADD-LB, 600 Massie Road, Charlottesville, Virginia 22903-1781. Telephone DSN: 521-3306, commercial: (434) 971-3306, or e-mail at Daniel.Lavering@hqda.army.mil.

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