

MEMORANDUM FOR ALL MAJOR SUBORDINATE COMMAND, DISTRICT  
COMMAND, FIELD OPERATING ACTIVITY, AND LABORATORY COUNSELS

SUBJECT: General Guidance for Common Fiscal Questions

1. Background and Purpose. Recently, the Office of Chief Counsel has answered several common fiscal questions, such as attendance at and sponsorship of meetings, gifts, and personal clothing and equipment. The purpose of this memorandum is to provide general guidance to assist local counsel in answering future questions.

2. Sponsorship of Meetings and Conferences.

a. Authority to sponsor meetings for government personnel is a matter of the “necessary expense” rule. General Counsel, U.S. General Accounting Office, Principles of Federal Appropriations Law 4-34 (2d ed. 1991) [hereinafter GAO Red Book]. Under the “necessary expense” rule, an expenditure is proper if it bears a logical relationship to the appropriation sought to be charged, is not otherwise provided for, and is not otherwise prohibited by law. Id. at 4-16. These determinations are left to the broad, but not unfettered, discretion of an appropriate official within the obligating agency, id. at 4-15, and should be made in writing.

b. The “necessary expense” rule also governs sponsoring meetings at which non-government personnel will be in attendance. Id. at 4-39. However, without specific statutory authority, appropriated funds may not be used to pay the travel, transportation, and subsistence (e.g., food and lodging) expenses of non-governmental attendees. 31 U.S.C. § 1345 (2003).

c. Thus, provided the requisite necessary expense determination has been made, appropriated funds may be used to pay the administrative costs (e.g., supplies, photocopying, rental of hotel conference space) of a government-sponsored meeting or conference. As a policy matter, however, the Joint Federal Travel Regulation (JFTR) and Joint Travel Regulation (JTR) impose a duty to minimize these costs. JFTR, Para. U2550-B; JTR, Para. C4950-B.

d. Funds should *not* be accepted from outside sources to pay the appropriated fund costs of a Federally-sponsored meeting or conference. See Para. 8, infra.

e. Conference planners should consult ER 37-1-18 (3 May 1999) for additional guidance. See also Major Michael E.J. Mueller, A Primer: Army Conference Planning, Army Law., Dec. 2003, at 1.

3. Co-Sponsorship of Meetings and Conferences.

a. Co-sponsoring an event with a non-Federal entity requires compliance with the Joint Ethics Regulation (JER).

CECC-G

SUBJECT: General Guidance for Common Fiscal Questions

(1) The head of the command or organization must find that the subject matter of the event is scientific, technical, or professional issues that are relevant to the mission of the command or organization. JER § 3-206.b.(1).

(2) The head of the command or organization must find that the purpose of co-sponsorship is to transfer Federally developed technology or to stimulate wider interest and inquiry into the scientific, technical, or professional issues identified in subparagraph (1), above, and that the event is open to interested parties. JER § 3-206.b.(2).

(3) The non-Federal entity must be a recognized scientific, technical, educational, or professional organization approved for this purpose by the DoD Component Designated Agency Ethics Officer (DAEO). Due consideration must be given to the prohibition against giving preferential treatment to non-Federal entities. JER § 3-206.b.(3). The command may also co-sponsor an event with a state or local government.

(4) The command or organization must accomplish the co-sponsorship through a written agreement. The written agreement may be a formal agreement or simply an exchange of letters. However, it must outline and grant assent to the following items. JER § 3-206.b.(4).

(a) The nature and purpose of the event. That is, the writing should explain the event and how it satisfies the requirements of JER §§ 3-206.b.(1)-(2).

(b) The undertakings and liabilities of the parties and the funding responsibilities, costs, and admission fees, if any. That is, the writing should explain what both co-sponsors are actually paying for and the total costs of the event.

(c) A disclaimer of government liability if the Federal agency reduces the level of its participation or completely withdraws. That is, it *must* be made clear to the non-Federal co-sponsor that the government reserves the right to drop out if necessary.

(d) A statement that the non-Federal entity will not use the fact of co-sponsorship of the event to imply DoD endorsement of the organization or its other events.

(5) No admission fee, beyond what will cover the reasonable costs of sponsoring the event, may be charged. JER § 3-206.b.(5). Be aware that the registration fee for some events arranged by non-Federal entities may be set at a rate that exceeds the cost of sponsoring because it is intended to raise funds for a related purpose, such as a scholarship. DoD activities are not only prohibited from co-sponsorship under these circumstances, but also prohibited from paying the portion of such fees reflecting the fund raising purpose.

CECC-G

SUBJECT: General Guidance for Common Fiscal Questions

b. Absent specific statutory authority, co-sponsored conferences must also be justified under the "necessary expense" rule as described above. The steps required by JER § 3-206 can only begin once a necessary expense determination has been made.

c. Contracting vs. Co-sponsorship. Co-sponsorship is not the same as contracting. However, if the agency plans to contract with the non-Federal sponsor for any services associated with the co-sponsored event, any such contract must follow the requirements of the Federal Acquisition Regulation (FAR) and the Defense, Army, and Engineer FAR Supplements (DFARS, AFARS, and EFARS). Additionally, since other contractors would not be competing for the contract, a contracting officer would need to determine that the contract falls within one of the exceptions to the general requirement to compete contracts. 10 U.S.C. § 2304(c) (2003).

d. Sharing the Costs of a Co-sponsored Event. JER § 3-206 prescribes the preferred method of co-sponsoring events, allowing each sponsoring entity to fund a share of the project. Under this method, the entities divide the costs for the event, and determine which entity will be responsible for which costs. The parties then pay for their shares of the conference themselves. The division of costs must be a part of the written agreement required by JER § 3-206.b.(4). Again, I note that the written agreement may simply be a series of letters exchanged between the parties, as long as the letters signify agreement to the key terms outline in subparagraph (4), above.

#### 4. Conference Attendance.

a. Civilian Personnel. A civilian employee may attend a non-government sponsored meeting if the meeting is part of a training program under 5 U.S.C. § 4109 or is related to agency functions or management under 5 U.S.C. § 4110. If neither section 4109 nor section 4110 applies, and the meeting is of a "society or association," appropriated funds may not be used. 5 U.S.C. § 5946 (2003); GAO Red Book, *supra* at 4-31 to 4-32. Attendance at federally sponsored meetings is a matter of the "necessary expense" rule. Detailed guidance may be found in the JTR at Paragraph C4955.

#### b. Military Personnel.

(1) Without approval of the Secretary of Defense or his designee, DoD travel appropriations may not be used for military attendance at meetings of technical, scientific, professional, and similar organizations. 37 U.S.C. § 412. In accordance with the JFTR, members may attend such conferences at government expense to further the programs of their components, present scientific and technical papers that further the development of U.S. resources, and maintain an effective professional, scientific, technical, managerial, and supervisory workforce. JFTR, para. U2555-D3.

CECC-G

SUBJECT: General Guidance for Common Fiscal Questions

(2) The administrative approval requirement does not apply to federally sponsored meetings, which are simply a matter of the "necessary expense" rule. GAO Red Book, supra at 4-36. Further guidance may be found in the JFTR at Paragraph U2555.

c. Level of Attendance. No hard and fast limit exists on the level of Federal government participation in non-federally sponsored meetings (e.g., meetings of professional organizations such as ASME, ASCE, AUSA, and SAME). However, attendance of Federal government personnel in a representative capacity should be limited to a level commensurate with representing agency interests. Memorandum from G. Edward Dickey, Acting Assistant Secretary of the Army, to U.S. Army Chief of Engineers (Sept. 20, 1992). Beyond this level, federal personnel should pay their own way and attend in a personal, rather than representative, capacity. In other words, official attendance at non-federally sponsored meetings should be kept to the minimum necessary to perform the agency mission and satisfy professional development requirements.

d. International Conferences—USACE Specific Authority and Constraints. Appropriations made for flood control or rivers and harbors may be used to send USACE representatives to international engineering or scientific conferences held outside the United States. However, no more than ten USACE representatives may attend any single conference under this authority. 33 U.S.C. § 701u (2003).

e. Permanent International Commission of Congresses of Navigation.

(1) Appropriated funds may be used to pay the actual expenses of United States delegates to meetings of the congresses of navigation and the international commission. Three thousand dollars are authorized to be appropriated for this purpose each year. 22 U.S.C. § 266 (2003).

(2) As an exception to 31 U.S.C. § 1345, no more than \$45,000 annually of rivers and harbors appropriations are available to pay the expenses of delegates to meetings of the congresses of navigation and the international commission. 22 U.S.C. § 275a (2003).

f. Attendance at Awards and Retirement Banquets.

(1) Award Recipients. Appropriated funds may be used to fund travel and transportation expenses for recipients of non-federally sponsored awards. E.g., JFTR, para. U7325. Travel and transportation expenses may also be authorized for a spouse (or similar relation) of the award recipient. Id. at para. U7327. Award recipients and their spouses may also accept free attendance at and travel to such events. 31 U.S.C. § 1353 (2003); JER § 4-101.a.(1).

CECC-G

SUBJECT: General Guidance for Common Fiscal Questions

(2) Non-Recipient Attendees. Appropriated funds may be used to fund the attendance of non-recipients consistent with the “necessary expense” rule and the Dickey memorandum cited in subparagraph c, above.

g. Attendance as a Speaker, Panel Member, or the Like. Employees and military members may serve as speakers and panel members at conferences related to their official duties, and may accept travel and related expenses from a non-Federal source to do so. Id.

5. Food. The guidelines set forth in this section apply to both conference planning (sponsorship and co-sponsorship) and conference attendance. Appropriated funds may only be used consistent with the following guidelines.

a. General Rule. As a general rule, appropriated funds may not be used to purchase food for employees at their assigned duty station. Food is a personal expense that employees are expected to pay for from their salaries. E.g., GAO Red Book, supra at 4-84 to 4-85.

b. Exceptions.

(1) Training. In some circumstances, the government may pay for meals while government employees are training. 5 U.S.C. § 4109 (2003). This exception applies both to TDY employees and employees attending the training at their duty station. E.g., Coast Guard – Meals at Training Conference, 1992 U.S. Comp. Gen. LEXIS 740 (B-244,473) (Jan. 13, 1992) (unpublished). For this exception to apply, the meals must be necessary to the training. Id. Under the Government Employee Training Act (GETA), 5 U.S.C. §§ 4101-4119 (2003),

“training” means the process of providing for and making available to an employee, and placing or enrolling the employee in, a planned, prepared, and coordinated program, course, curriculum, subject, system, or routine of instruction or education, in scientific, professional, technical, mechanical, trade, clerical, fiscal, administrative, or other fields which will improve individual and organizational performance and assist in achieving the agency’s mission and performance goals[.]

5 U.S.C. § 4101(4) (2003). An event does not meet this definition if it consists of discussing day-to-day projects or updating employees on routine operations within the agency. E.g., Meals for Attendees at Internal Government Meetings, 68 Comp. Gen. 606 (1989). See also GAO Red Book, supra at 4-23. An agency’s characterization of an event as “training” is relevant, but not determinative. E.g., Corps of Engineers – Use of Appropriated Funds to Pay for Meals, 72 Comp. Gen. 178 (1993).

(2) Conferences and Meetings. Another exception to the general prohibition against using appropriated funds to purchase food for employees is participation in formal meetings and conferences. 5 U.S.C. § 4110 (2003). However, for this exception to apply, the event must not be a purely internal business meeting or a conference sponsored by a government agency. Further, the meals must be incidental to the meeting, attendance of the employees at the meals must be necessary for full participation in the meeting, and the employees must not be free to take meals elsewhere without being absent from essential business. Corps of Engineers – Use of Appropriated Funds to Pay for Meals, 72 Comp. Gen. at 178. Note also that this exception applies only to civilian employees, and Title 10 of the United States Code contains no parallel provision for military members. But see JFTR, para. U4510 (authorizing reimbursement for occasional meals within the local area of the permanent duty station when meals are procured at personal expense outside the limits of the permanent duty station).

(3) Light Refreshments.

(a) The Federal Travel Regulation (FTR) provides that agencies sponsoring a conference may provide “light refreshments” to agency employees attending an official conference under certain conditions. Light refreshments include, but are not limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. FTR § 301-74.11. The Per Diem, Travel and Transportation Allowance committee incorporated this change into the JTR and JFTR on March 7 and March 31, 2000, respectively. When some attendees are in a travel status and some are not, the JTR and JFTR state that light refreshments may be provided with appropriated funds if the majority (51%) of the attendees are from a permanent duty station other than that of the sponsoring activity. JFTR, Para. U2550-F5; JTR, Para. C4950-F5. In other words, the conference proponent cannot simply move the conference to trigger this exception. Further, light refreshments may only be provided for breaks between conference sessions; the exception does not justify holding an independent “light hors d’oeuvres” icebreaker, networking session, continental breakfast, or similar event. See Pension Benefit Guaranty Corp. – Provision of Food to Employees, 1996 U.S. Comp. Gen. LEXIS 402 (B-270,199) (Aug. 6, 1996) (unpublished) (holding that, barring very unusual circumstances, ice-breakers, socials, and similar events do not justify the purchase of food using appropriated funds).

(b) A recent Comptroller General decision, however, modifies the light refreshments exception found in the FTR. Pursuant to the decision, appropriated funds may be used to provide light refreshments *only* as part of an employee’s travel subsistence allowance. Appropriated funds may *not* be used to provide light refreshments to employees not in a travel status, ***regardless of the percentage of attendees in a travel status***. Use of Appropriated Funds to Purchase Light Refreshments at Conferences, B-288,266 (Jan. 27, 2003).

(d) Appropriated funds may also be used to provide light refreshments in connection with an awards ceremony under 5 U.S.C. § 4503 (civilian incentive awards) or 10 U.S.C. § 1124

CECC-G

SUBJECT: General Guidance for Common Fiscal Questions

(military *cash* awards). E.g., Refreshments at Awards Ceremony, 65 Comp. Gen. 738 (1986); see also Contract & Fiscal L. Dep't, The Judge Advocate General's School, U.S. Army, 8<sup>th</sup> Comptroller Accreditation Course Deskbook 2-11 to 2-12 (June, 2002).

c. Integrated Facility Rental Fees. It is permissible to pay a facility rental fee that includes the cost of food where the fee is all-inclusive, non-negotiable, and competitively priced to rental fees that do not include food. Nuclear Regulatory Commission (NRC) – Payment of a Non-Negotiable, Non-Separable Facility Rental Fee that Covered the Cost of Food Served at NRC Workshops, 1999 U.S. Comp. Gen. LEXIS 245 (B-281,063) (Dec. 1, 1999) (unpublished).

d. Travel Pay. Appropriated funds may be used to provide food to TDY personnel. In some circumstances, meals can be furnished, but generally appropriated funds are used by reimbursing the employees for TDY expenses, including meals, at the appropriate rate (e.g., the Proportional Meal Rate when one or two meals are provided at government expense). 5 U.S.C. § 5702 (2003) (civilian employees); 37 U.S.C. § 404 (2003) (military personnel). See JFTR, chap. 4; JTR, chap. 4, parts J-O. Additionally, personnel may be reimbursed for occasional meals within the local area of their permanent duty station (PDS) when they are required to procure meals at personal expense outside the limits of the PDS (e.g., when in a local travel status). JFTR, para. U4510; JTR, para. C4710.

6. Entertainment. Absent specific statutory authorization, appropriated funds may not be used to pay for entertainment. Though not explicitly defined by the Comptroller General, "entertainment" is broadly construed and includes receptions, banquets, music, live performances, and the like. GAO Red Book, supra at 4-82 to 4-84.

7. Gifts and Mementos.

a. General Rule. Absent specific statutory authority, appropriated funds may not be used to purchase gifts for meeting and conference attendees. A "gift" is an item of intrinsic value not given as an award. Id. at 4-128. Appropriated funds may be used to purchase items of absolutely no intrinsic value that promote an agency objective, for the purpose of advertising that objective. See, e.g., Food and Drug Administration – Use of Appropriations for "No Red Tape" Buttons and Mementoes, 1995 U.S. Comp. Gen. LEXIS 703 (B-257,488) (Nov. 6, 1995) (unpublished) (allowing the purchase of "No Red Tape" buttons to promote employee efficiency and the purchase of coffee mugs and pens presented to employees as honorary or informal recognition awards).

b. Exceptions. There are limited exceptions to the general rule stated above. For example, "[o]fficial representation funds may be used to purchase gifts, mementos, or tokens that will be presented to authorized guests in connection with official courtesies." AR 37-47, Para. 2-9a. (31 May 1996). The Chief of Engineers receives limited representation funds (both Operations and

CECC-G

SUBJECT: General Guidance for Common Fiscal Questions

Maintenance, Army (OMA) and General Expense (GE)) for this purpose. Moreover, there are other special statutory exceptions, such as the USACE Water Safety Program. 33 U.S.C. § 569d (2003).

c. Honoraria. Appropriated funds may be used to present honoraria to non-Federal attendees (e.g., speakers, panelists, presenters) at Federally sponsored events provided the expenditure is justified under the “necessary expense” rule. The honorarium may be a cash payment or a tangible gift. E.g., Army—Incidental Costs of Commemorative Luncheon for Dr. Martin Luther King, Jr., 1983 U.S. Comp. Gen. LEXIS 1129 (B-208,729) (May 24, 1983) (unpublished).

#### 8. Registration Fees.

a. Charging a Fee for a Government Sponsored Event. It is permissible to charge a registration fee for a government sponsored conference consistent with the following guidelines.

(1) Fees can certainly be charged for any items that cannot properly be purchased with appropriated funds. For example, a fee can be collected from each attendee to cover a souvenir mug. These funds should be managed like any other non-appropriated fund.

(2) Congress possesses the “power of the purse,” and controls agency behavior by giving more (or less) money. An agency could short-circuit this constitutional prerogative if an agency could take money from an outside source and use these funds to carry out its mission. Without permission from Congress, this amounts to an improper augmentation of agency appropriations—it allows the agency to do more, or different, than Congress apparently wants the agency to do. Put differently, an agency *cannot* have some entity other than Congress funding its operations, unless Congress has authorized the agency to do so. See GAO Red Book, supra at 6-103.

(a) General Rule. To the extent that a conference expense is properly chargeable to appropriated funds, it *must* be borne by agency appropriations. The cost may not be shifted outside of the agency, as this would improperly augment agency appropriations. Therefore, in the absence of specific statutory authority to the contrary, any registration fee collected from outside sources for these expenses must be deposited into the Treasury as miscellaneous receipts. 31 U.S.C. § 3302 (2003). See also Memorandum from Matt Reres, Deputy General Counsel (Ethics & Fiscal), to CIO/G6 (Mar. 27, 2002), subject: Director of Information Management (DOIM) Conference.

(b) Training Exception. Under GETA, an agency may extend its training programs to employees of other Federal agencies on a reimbursable basis. 5 U.S.C. § 4104 (2003). The agency may retain these fees unless it receives appropriations for interagency training. Decision of Associate General Counsel Keplinger, 1991 U.S. Comp. Gen. LEXIS 1523 (B-241,269)

CECC-G

SUBJECT: General Guidance for Common Fiscal Questions

(Feb. 28, 1991) (unpublished). Similarly, an agency may admit state and local government employees to its training programs, and may charge a fee or waive it in whole or part. Any fees collected are credited to the appropriation to which the training costs were charged. 42 U.S.C. § 4742 (2003). Private individuals may also be admitted to the training programs on a space-available, fee basis, though any fees received from private attendees must be deposited as miscellaneous receipts in the absence of specific statutory authority to the contrary. Army Corps of Engineers – Disposition of Fees Received from Private Sector Participants in Training Courses, 1997 U.S. Comp. Gen. LEXIS 252 (B-271,894) (July 24, 1997) (unpublished). However, attendance of private, state, and local participants must be “incidental to the necessary and authorized training of government employees.” To the Secretary of Commerce, 42 Comp. Gen. 673 (1963); see also Army Corps of Engineers – Disposition of Fees Received from Private Sector Participants in Training Courses, 1997 U.S. Comp. Gen. LEXIS 252, at \*2 (noting that the training program is “primarily for the benefit of [agency] employees”).

b. Reimbursement of Registration Fees. Registration fees charged for attendance at conferences, whether federally or non-federally sponsored, may be paid for using appropriated funds, either directly by the agency or by reimbursement, consistent with the JFTR and JTR. See JFTR, chap. 2, part G; JTR, chap. 4, part S. In general, this means that employees and military members may be reimbursed for expenses that are otherwise allowable appropriated fund expenses. Further, for non-governmentally sponsored meetings *only*, it is acceptable to fully reimburse a registration fee covering both attendance and meals provided the fee is inclusive. W.E. Finley, National Capital Planning Commission, 38 Comp. Gen. 134 (1958). If meals are separately charged, they may only be reimbursed consistent with the guidance in paragraph 5, above.

c. Registration fees, whether imposed by the government or an outside entity, should be structured or segregated in consideration of the above guidelines. As noted, it is perfectly acceptable to charge or pay an “all inclusive” registration fee covering both personal expenses (e.g., food) and appropriated fund expenses (e.g., administrative support). However, only the expenses that may properly be charged to appropriations may be reimbursed on a DD 1351. For example, entertainment and gift expenses should not be included on any reimbursement receipt.

#### 9. Membership in Professional Organizations.

a. Individual Memberships. Agencies generally may not use appropriated funds to pay membership fees for individual employees in a private organization. 5 U.S.C. § 5946 (2003).

b. Agency Memberships. Section 5946 does not prohibit agencies from purchasing a membership in a private organization on behalf of the agency. E.g., Coast Guard Membership Fees, 1986 U.S. Comp. Gen. LEXIS 1035 (B-221,569) (June 2, 1986) (unpublished); Federal Law Enforcement Training Center, 1984 U.S. Comp. Gen. LEXIS 773 (B-213,535) (July 26,

CECC-G

SUBJECT: General Guidance for Common Fiscal Questions

1984) (unpublished); Payment of Agency's Membership Fees in Private Organization, 61 Comp. Gen. 542 (1982); Comptroller General Warren to the Administrator of Veterans' Affairs, 24 Comp. Gen. 814 (1945). Agencies may use appropriated funds to obtain an agency membership if the "membership would be of primary benefit to the agency and if the agency determines that such membership is necessary to carry out its statutory functions." Coast Guard Membership Fees, 1986 U.S. Comp. Gen. LEXIS 1035, at \*2-3. Further, the purchase of an agency membership is permissible "only when the agency can establish that the membership will contribute substantially to the fulfillment of its mission." *Id.* at \*3 (citing Payment of Agency's Membership Fees in Private Organization, 61 Comp. Gen. at 545).

(1) The determination that an agency membership in a particular professional organization helps fulfill agency purposes and goals does not need to be made at any particular level in the agency. I do recommend, however, that the determination be made in writing.

(2) An agency may not avoid the statutory prohibition against using appropriated funds to pay for individual memberships simply by characterizing individual memberships as an agency membership. *E.g.*, Acting Comptroller General Yates to Lt. Col. R.A. Lockwood, Department of the Army, 32 Comp. Gen. 15 (1952).

(3) Agency memberships should be assigned to offices, titles, or positions, such that, if an individual leaves a position, the membership stays with the position and does not follow the individual. In this regard, memberships should clearly indicate that they are held by the governmental entity and assigned to a specific position within that entity. To aid in the receipt of mailings, informational e-mails, and the like, it is permissible to identify an office by symbol or provide an individual e-mail address. However, the agency membership must not represent in any way that the membership is held in an individual capacity.

(4) As with attendance at and participation in non-Federally sponsored meetings, any proposed agency membership should comply with the Dickey Memorandum, *supra*, at Para. 4.c. Care should be taken to ensure that the number of memberships purchased and representatives designated is commensurate with representing USACE's interests in the private organization.

(5) Advance Payment of Dues. It is permissible for agencies to pay membership fees at the time of joining the organization. This will not constitute an advance payment in violation of 31 U.S.C. § 3324, as the Comptroller General has reasoned that the agency purchases and receives the membership at the time it joins. GAO Red Book, *supra* at 4-195.

10. Other Support to Professional Organizations. The following guidelines apply to participation in meetings of professional organizations. The ethics rules governing relationships with professional organizations, including in non-meeting contexts, are set forth in greater detail in Chapter 3 of the JER.

CECC-G

SUBJECT: General Guidance for Common Fiscal Questions

a. DoD agencies may not provide preferential treatment to any professional organization, even if the organization espouses DoD goals or supports the military community.

(1) Support provided to one organization must be given to all similar organizations, if requested.

(2) DoD agencies may not officially endorse specific professional organizations or their activities. They may, however, co-sponsor events with professional organizations consistent with the criteria discussed in paragraph 3, above.

b. Employees may not be coerced, influenced, or compelled to join specific professional organizations or to participate in their activities. Agencies may *encourage* their employees to join, support, and participate in professional organizations, *without reference to specific organizations*, and may use official channels to notify employees of professional organization activities.

c. Conflicts of interest, whether actual or apparent, must be avoided.

(1) A DoD employee may not be appointed as liaison to a professional organization if the employee is an officer, director, or other official of the organization.

(2) Agencies may not participate in membership drives, fundraisers, or management of professional organizations.

(3) DoD employees may not participate in any official government action affecting the finances of professional organizations to which they serve as liaisons.

d. Speakers, panel members, and other participants in professional organization conferences may be provided. Employees may also be appointed as liaisons to professional organizations, provided there is a significant and continuing DoD interest to be served.

11. Use of Morale, Welfare, and Recreation (MWR) Funds. It may be possible to use MWR funds for certain extracurricular, public affairs, relationship building, community outreach, and similar activities that cannot be paid for with appropriated funds. However, USACE does not presently have MWR funds to use for this type of activity. If USACE desires to implement an MWR program for these types of activities, the program must be funded and conducted in accordance with AR 215-1, Morale, Welfare, and Recreation Activities and Nonappropriated Fund Instrumentalities (25 October 1998).

12. Personal Clothing and Equipment.

a. General Rule. Generally, government employees are required to present themselves for duty properly attired according to the requirements of their positions. As the Red book so elegantly puts it, “the government will not clothe the naked, at least where the naked are receiving government salaries.” GAO Red Book, supra at 4-215. Accordingly, absent specific statutory authority to the contrary, appropriations may not be used to purchase items that are “reasonably required as a part of the usual and necessary equipment for the work on which [government employees] are engaged or for which they are employed.” Comptroller General McCarl to the Secretary of War, 3 Comp. Gen. 433 (1924). Consequently, clothing is almost always found to be the individual employee’s responsibility. E.g., Purchase of Down-Filled Parkas, 63 Comp. Gen. 245 (1984).

b. Exceptions.

(1) Special Clothing and Equipment. Under 5 U.S.C. § 7903, appropriated funds may be used to purchase clothing if three criteria are met. First, the clothing must be “special.” That is, it must not reasonably be a part of the employee’s ordinary wardrobe. Next, the item must be for the benefit of the government and essential to the accomplishment of the work. That is, the item must not be primarily for the personal comfort or convenience of the employee. Finally, the employee must be engaged in hazardous duty connected to the nature of the desired clothing or equipment. Most cases applying this authority deny the use of appropriated funds for typical items of apparel. E.g., Department of Energy—Purchase of Running Shoes, 1989 U.S. Comp. Gen. LEXIS 732 (B-234,091) (July 7, 1989) (unpublished) (running shoes for nuclear material couriers); Department of the Army, Ohio River Division, Corps of Engineers – National Federation of Employees, Local No. 892, 63 Comp. Gen. 278 (1984) (eyeglasses); Decision of the Comptroller General, 1979 U.S. Comp. Gen. LEXIS 3054 (B-193,104) (Jan. 9, 1979) (unpublished) (umbrellas and raincoats for employees in New Orleans). More unusual items, such as safety shoes and snowmobile suits, have been approved. Internal Revenue Service—Purchase of Safety Shoes, 67 Comp. Gen. 104 (1987) (steel-toed shoes); C.E. Tipton, 51 Comp. Gen. 446 (1972) (snowmobile suits); Comptroller General Warren to E.C. Crary, Department of Agriculture, 28 Comp. Gen. 236 (1948) (insect repellent for employees working with an abnormally high density of mosquitoes). Section 7903 requires that the items be provided in kind. To Ramona Hawk, 46 Comp. Gen. 170 (1966).

(2) Uniforms. Section 7903 does not provide blanket authority for the purchase of uniforms. Comptroller General Warren to the Secretary of Commerce, 32 Comp. Gen. 229 (1952). Rather, 5 U.S.C. § 5901 authorizes agency appropriations for uniform allowances of up to \$400 per year per employee. The agency may either pay the allowance or furnish the uniform.

(3) Occupational Safety and Health Act of 1970 (OSHA). The OSHA statute requires Federal agencies to establish an occupational safety and health program and acquire necessary

CECC-G

SUBJECT: General Guidance for Common Fiscal Questions

safety and protective equipment. Appropriated funds may be used if the agency head determines the clothing is necessary under OSHA and its implementing regulations.

(4) Other. If a particular piece of clothing or equipment fails all three statutory exceptions described above, it can only be purchased if it meets the test outlined in Comptroller General McCarl to the Secretary of War, 3 Comp. Gen. at 433. To qualify under this test, the item must be such that the object of the appropriation cannot be accomplished as efficiently without the item as with it. If the employee receives the principal benefit of the equipment, or if the employee can reasonably be required to perform without the equipment, this prong is not met. The item must also not be of a type that the employee could reasonably be required to furnish as part of the equipment necessary to enable job performance. This prong requires an analysis of the nature of the equipment's use (e.g., regular vs. infrequent/emergency, individual/personal vs. organizational), and is quite similar to the analysis under section 7903.

c. Civilian Deployment Clothing and Equipment. Clothing and equipment for deploying civilians is justified under section 7903. The Central Issue Facility (CIF) lists of equipment represent agency-wide determinations as to what items of personal clothing and equipment meet the section 7903 criteria for a particular deployment to a particular locale at a particular time. This eliminates the need to examine expenditures on a case-by-case basis when a number of employees are going to the same place, at the same time, to do the same job. Every deploying employee is entitled to every item on the applicable CIF list. To this end, employees should be advised that they should not sign for equipment or depart CIF unless and until they have every item on the applicable list and are satisfied that all equipment issued fits and is in good working order. If an item does not appear on the applicable CIF list, the presumption is that the item does not meet the requirements of section 7903, and the employee must purchase the item with personal funds, unless a determination is made *in advance* by an appropriate USACE decision maker, in consultation with local counsel, that the item meets each and every requirement of section 7903. HQ USACE guidance has been reviewed by CECC and is forthcoming.

13. POC for this memorandum is Scott A. Felder, (202) 761-4931, scott.felder@usace.army.mil.



RUPERT JENNINGS  
Assistant Chief Counsel for Legislation,  
Fiscal and General Law