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From: Deputy Assistant Judge Advocate General (Administrative Law)  
To: Ethics Counselors and Judge Advocates

Subj: ETHICS-GRAM 05-08 - CONFERENCES AND TRAINING

Encl: (1) ASN(FMC) memo of 18 Apr 03  
(2) OSD(A&M) memo of 29 Nov 01  
(3) SECNAV memo of 8 Jan 02  
(4) Sample memo for conferences/meetings  
(5) Sample memo for training  
(6) Sample memo for JFTR U4510  
(7) Decision tree - Training  
(8) Decision tree - Conferences

1. Purpose. This ethics-gram provides general guidance for commands planning conferences and training.

2. Background. On January 27, 2003, the Comptroller General issued an opinion stating the General Services Administration (GSA) may not authorize agencies to use appropriated funds to provide light refreshments to individuals not in a travel status attending a Government-sponsored conference.<sup>1</sup> The Assistant Secretary of the Navy (Financial Management & Comptroller) (ASN(FMC)) followed this opinion with enclosure (1), noting "[e]ffective immediately, appropriated funds are not authorized to pay for light refreshments at conferences." Additionally, this memo reminded commands, "absent affirmative statutory authority, conference fees may not be collected and used to offset the cost of the conference or to reimburse or supplement the appropriation from which the conference is funded."<sup>2</sup> This memo caused commands to re-examine how they organize and fund conferences. This ethics-gram is intended to assist judge advocates with analyzing conference and training issues.

3. Discussion. Commands often seek to reduce the cost of sponsoring a conference by charging attendees a "conference fee." This fee might include anything from food, lodging, use of the facility, or reproducing conference materials. The problem with this arrangement lies primarily in 31 U.S.C. § 3302(b), more commonly referred to as the Miscellaneous Receipts Act (MRA).

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<sup>1</sup> Use of Appropriated Funds to Purchase Light Refreshments at Conferences, 2003 WL 174196 (Comp. Gen.).

<sup>2</sup> See also National Institutes of Health - Food at Government-Sponsored Conferences, 2005 LEXIS 42 (Comp. Gen.) (noting an agency may not charge conference attendees a fee to defray the cost of providing meals).

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a. MRA

(1) The MRA states "an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim."<sup>3</sup> The Comptroller General has consistently interpreted the MRA to require agencies to deposit all funds received for use of the United States in the general fund of the Treasury as miscellaneous receipts, unless otherwise authorized. Failure to comply constitutes an improper augmentation of the agency's appropriation.<sup>4</sup>

(2) Applying this statute to conference planning, problems arise when conference sponsors incur expenses (e.g., reproduction of conference materials; contracting with a facility for meeting rooms, hotel rooms, meals, and light refreshments) and then collect funds from individual attendees to defray these costs. In accordance with the MRA, these collected funds must be deposited into the Treasury and are not available for disbursement to satisfy contracts. Commands sometimes seek to avoid such issues by having the conference facility collect fees due under the contract. ASN(FMC) notes this practice fails to address the underlying problem because monies paid to satisfy the conference sponsor's contract are ultimately paid to the Government, whether directly or indirectly, and must be forwarded to the Treasury.

(3) One means to avoid this problem is for the conference sponsor to contract only for those services that will be paid from the sponsor's appropriated funds. Costs to be borne by attendee commands could be excluded from the contract. A variation of this method is for the contracting officer to negotiate a clause requiring the facility to collect lodging fees directly from attendees (rather than the Government collecting funds on behalf of the lodging facility). Upon arrival at the conference, attendees may pay the facility directly (and not toward fulfillment of a contract) without implicating the MRA.

b. Regulatory Guidance. In addition to the statutory mandate, conference planners must also consider DOD and DON policy. The Office of the Secretary of Defense (Administration and Management) (OSD(A&M))

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<sup>3</sup> 31 U.S.C. § 3302(b) (2005).

<sup>4</sup> See 22 Comp. Dec. 379, 381 (1916) (stating, "It could hardly be made more comprehensive as to the moneys that are meant and these moneys are required to be paid 'into the Treasury.' This does not mean that the moneys are to be added to a fund that has been appropriated from the Treasury and may be in the Treasury or outside. It seems to me that it can only mean that they shall go into the general fund of the Treasury which is subject to any disposition which Congress might choose to make of it. This has been the holding of the accounting officers for many years. [Citations omitted.] If Congress intended that these moneys should be returned to the appropriation from which a similar amount had once been expended it could have been readily so stated, and it was not."), available at Principles of Federal Appropriations Law, vol. II, ch. 6; See also 1991 U.S. Comp. Gen. LEXIS 1523; 67 Comp. Gen. 353 (1988); 62 Comp. Gen. 678 (1983); 5 Comp. Gen. 289 (1925).

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issued enclosure (2), a memo entitled "Fiscal Responsibility in Containing Conference Costs" on November 29, 2001. This memo directs service secretaries, the Chairman of the Joint Chiefs of Staff, and Commanders of Combatant Commands to designate conference approval authorities to evaluate requests prior to approval. This review must, at a minimum, (1) consider whether the conference is necessary for mission accomplishment, (2) compare the cost differences in prospective sites, and (3) limit attendance to the minimum number of personnel required. This memo also directs that conferences not take place at sites where attendees would need to claim actual expenses in excess of normal per diem rates. In accordance with enclosure (2), on January 8, 2002, SECNAV issued enclosure (3), delegating conference approval authority and reiterating the need to minimize conference costs, ensure best value for the Government, and keep costs within normal per diem rates. In June 2002, CNO reissued OPNAVINST 5050.24F, the governing conference instruction for commands falling under his cognizance. Paragraph 5 details factors to consider in planning a conference and paragraph 6 identifies approval authorities.

c. Food and Lodging for Local Attendees. Local attendees face additional restrictions. Absent specific authority, the Government may not use appropriated funds to provide food and lodging to Government employees at their permanent duty station (PDS) because such expenses are considered personal.<sup>5</sup> There are, however, several limited exceptions and issues warranting further discussion.

(1) Nonseparable expense. Some facilities charge a fee for use that includes provision of food. If this fee is non-separable, meaning the facility would not break the food out as a distinct expense and the Government would be charged the same fee with or without the food, appropriated funds may be used to rent the facility and all attendees may partake of the food provided.<sup>6</sup>

(2) Section U4510, Joint Federal Travel Regulations (JFTR). This provision authorizes military members reimbursement for meals and quarters when the authorizing/order issuing official determines the member is required to, among other things, procure meals/quarters from commercial or nonappropriated funds sources and the member is TDY within the local area of the PDS but outside the PDS limits. Appendix A defines the PDS as the ship or corporate limits of the city/town in which the member is stationed. If neither of these parameters applies, the base may serve as the PDS. For example, a conference is held at the Washington Navy Yard (WNY) in Washington, DC, and includes two working lunches. In this instance the WNY is the PDS. The order-issuing official may determine individuals locally assigned but working outside

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<sup>5</sup> See 72 Comp. Gen. 178 (1993); 65 Comp. Gen. 508 (1986); 60 Comp. Gen. 181 (1981); 53 Comp. Gen. 457 (1974); 47 Comp. Gen. 657 (1968).

<sup>6</sup> See 66 Comp. Gen. 350 (1987); 38 Comp. Gen. 134 (1958).

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the WNY (e.g. the Pentagon located in Arlington County, Virginia) are required to attend the lunches as part of the conference and authorize reimbursement. On the other hand, attendees assigned to the WNY may not be reimbursed. This analysis is not driven by whether the event is a meeting/conference or training; therefore, it may be relied upon in either situation. However, the Joint Travel Regulation contains no similar provision so this analysis applies to military not civilian employees.

(3) 5 U.S.C. § 4110

(a) This statute authorizes use of appropriated funds to pay for expenses associated with a civilian employee's attendance at a meeting/conference,<sup>7</sup> when that meeting/conference is not routine and purely internal to the agency.<sup>8</sup> The Comptroller General has interpreted this provision to enable payment for meals when necessary to ensure the employee receives the full benefit of the meeting/conference. The Matter of Gerald Goldberg, et al. - Meals at Headquarters Incident to Attendance at Meeting, and its progeny, set forth a four-prong test to determine when this requirement has been met.<sup>9</sup> This test requires the agency to find: (1) the meal is part of a formal meeting or conference including substantial functions separate from the meal;<sup>10</sup> (2) the meal is incidental to the meeting/conference; (3) attendance at the meal is necessary for full participation in the meeting/conference; and (4) the employee is not free to partake of meals elsewhere without missing essential formal discussion on the purpose of the meeting. This analysis is limited to meals and specifically excludes lodging expenses.<sup>11</sup> Routine, purely internal, Government-sponsored meetings and conferences

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<sup>7</sup> "Appropriations available to an agency for travel expenses are available for expenses of attendance at meetings which are concerned with the functions or activities for which the appropriation is made or which will contribute to improved conduct, supervision, or management of the functions or activities." 5 U.S.C. § 4110 (2005).

<sup>8</sup> See 68 Comp. Gen. 606 (1989) (In denying meal payment to attendees of quarterly supervisor meetings, the Comptroller General noted "there is a clear distinction between the payment of meals incidental to formal conferences or meetings, typically externally organized or sponsored, involving topical matters of general interest to governmental and nongovernmental participants, and internal business or information meetings primarily involving the day-to-day operations of government."). See also National Institutes of Health - Food at Government-Sponsored Conferences, 2005 LEXIS 42 (Comp. Gen.) (noting "[m]eetings discussing business matters internal to an agency or other topics that have little relevance outside of the agency do not constitute formal conferences").

<sup>9</sup> See Goldberg, 1980 WL 16668 (Comp. Gen.); see also 72 Comp. Gen. 178 (1993); 65 Comp. Gen. 508 (1986); 64 Comp. Gen. 406 (1985).

<sup>10</sup> See 68 Comp. Gen. 606 (1989). See also 1996 WL 442084 (Comp. Gen.); 72 Comp. Gen. 178 (1993); 68 Comp. Gen. 604 (1989).

<sup>11</sup> See Matter of: Gerald Goldberg - Lodging Expenses and Parking Fees at Headquarters Incident to Attendance at Meeting, 1981 WL 24279 (Comp. Gen.).

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should be planned so there is sufficient time for attendees to procure meals elsewhere.

(b) Chapter 41 of title 5, U.S. Code, including 5 U.S.C. § 4110, does not apply to service members<sup>12</sup> and there is no military equivalent. As a result, commands may reimburse civilian, but not military, attendees for meals at a meeting/conference satisfying the Goldberg test. Nevertheless, section U4510 provides authority for reimbursement of meals at meetings and conferences for all service members except local attendees within their PDS, when members are required to procure meals from commercial or non-appropriated funds sources.

(4) Light refreshments. Light refreshments are a special category of food and are treated differently than meals. As noted above, the Comptroller General recently issued an opinion on the use of appropriated funds to purchase light refreshments at conferences.<sup>13</sup> Through its travel regulation on conference planning, the General Services Administration (GSA) authorized Federal agencies to pay for light refreshments at official Government-sponsored conferences so long as a majority of the attendees were in a travel status. In reviewing this policy, the Comptroller General opined, although GSA may include light refreshments in its definition of subsistence for travelers, GSA does not have this same authority for individuals not in a travel status. Relying on this opinion, ASN(FMC) issued enclosure (1), a memo stating, "[e]ffective immediately, appropriated funds are not authorized to pay for light refreshments at conferences." Currently, this policy prevents commands from utilizing 5 U.S.C. § 4110 and the Goldberg test to use appropriated funds to pay for light refreshments for both military members and civilian employees, regardless of whether they are in a travel status. Arguably, this memorandum was specifically limited to conferences, however, ASN(FMC) verbally noted they intended this policy to apply equally to training events. Paragraph 3(e)(4) below outlines practical solutions to the light refreshment issue.

#### (5) Training

(a) The Government Employees Training Act (GETA), 5 U.S.C. § 4109, and its military equivalent, 10 U.S.C. § 2013, provide specific authority for the Government to fund a variety of costs associated with training. GETA defines training as "the process 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,

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<sup>12</sup> 5 U.S.C. § 4102(a)(1)(C) (2005).

<sup>13</sup> Supra note 1. GSA's General Counsel challenged this decision by undated letter to GAO's General Counsel. GAO's response is currently pending.

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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."<sup>14</sup> Like 5 U.S.C. § 4110, GETA applies to civilian employees but not service members.<sup>15</sup> In this instance, however, Congress enacted similar authority for the military at 10 U.S.C. § 2013. Both provisions authorize SECNAV to pay, or reimburse, necessary expenses of training. These expenses may include: travel and per diem; lodging; transportation and moving expenses; tuition and matriculation fees; library and laboratory services; books, materials, and supplies; and other services or facilities related to the training.<sup>16</sup>

(b) One distinction between the two statutes, however, is their applicability to training held in Government facilities. GETA simply refers to "training" while 10 U.S.C. § 2013 applies to training "by, in, or through non-Governmental facilities."<sup>17</sup> "Non-Governmental facilities" are defined as: state and foreign governments; international organizations; medical, scientific, technical, educational, research, and professional organizations; business, commercial or industrial companies; and individuals other than civilian or military personnel of the Government.<sup>18</sup> Therefore, commands sponsoring on-base training may use 5 U.S.C. § 4109 to pay necessary expenses for local civilian attendees but not 10 U.S.C. § 2013 to pay the same for local military attendees.

(c) To apply these statutes, the critical analysis lies in whether the expense is "necessary." In the case of Floyd F. Terranova, U.S. Department of Agriculture, the Comptroller General relied on the unique objectives of the training, including the need for maximum interaction and communication among participants; the nature of the meals as working sessions where problem assignments were discussed or speakers were heard; and the fact it was not feasible for participants to leave the training environment for meals because of time constraints.<sup>19</sup> Although certainly not exhaustive, this list is illustrative of appropriate considerations. Furthermore, unlike the Goldberg analysis,

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<sup>14</sup> 5 U.S.C. § 4101(4) (2005).

<sup>15</sup> 5 U.S.C. § 4102(a)(1)(C) (2005).

<sup>16</sup> See 5 U.S.C. § 4109(a)(2) (2005); 10 U.S.C. § 2013(b) (2005). The title 10 authority does not define "training"; however, the legislative history notes this provision was an attempt to authorize military personnel to use the same procedures as civilians for training. Therefore, it is reasonable to apply the 5 U.S.C. § 4101 definition of training to 10 U.S.C. § 2013.

<sup>17</sup> The original 1958 version of 5 U.S.C. § 4109 used the phrase "training by, in, or through Government facilities or non-Government facilities" rather than today's version which simply reads "the training."

<sup>18</sup> 10 U.S.C. § 2013(a)(2) (2005).

<sup>19</sup> 50 Comp. Gen. 610 (1971).

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5 U.S.C. § 4109, 10 U.S.C. § 2013, and Terranova may be used to justify expenditures for lodging or other related expenses.

(d) Unlike conference guidance mandating keeping costs within normal per diem rates, there is no limit to the amount authorized for training expenses other than the use of sound business judgment.<sup>20</sup> Instead, the training sponsor may stipulate the amount of the necessary training expense and this sum may include food, lodging, and any related expenses. Furthermore, under the training statutes, all local attendees, regardless of where stationed, as well as those on travel orders may be reimbursed this stipulated training expense.<sup>21</sup> Given that the training sponsor has some control over the expenses, all efforts should be made to ensure the expenses are reasonable if they exceed normal per diem rates.

d. Voucher Issues

(1) Double Reimbursement. Attendees must ensure they are not reimbursed more than once for meals provided at Government expense. This problem occurs most frequently when an attendance fee is charged and includes the cost of meals provided during the event. For example, a registration fee of \$100 is charged. This fee includes two lunches. The attendee pays the \$100 and seeks reimbursement on his/her travel voucher. This \$100 is reimbursed; however, total per diem is reduced by the two meals provided. In such cases, attendees must be sure to note on their travel voucher (block 19) the number of meals provided at Government expense.

(2) In seeking reimbursement, travelers should submit DD Form 1351-2, Travel Voucher while local attendees should use SF-1164, Claim for Reimbursement for Expenditures on Official Business.

e. Practical Tips

(1) The best means to avoid fiscal difficulties is to be proactive. Be involved with the planning process and assist the command in identifying whether the contemplated event is a conference or training. Use the agenda as a starting point. You may want to reduce this analysis to writing in a memo for the record, attaching a copy of the agenda.

(2) Ensure the conference planner/coordinator, comptroller, and legal office are all involved in the process and communicating with each other as plans develop.

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<sup>20</sup> On 17 Jul 03, Deputy Director, Navy Staff and Special Counsel to the CNO confirmed with Acting Director of OSD(A&M) the 29 Nov 01 memo mandating conference costs be kept below normal per diem applied only to meetings and conferences and not to training held pursuant to 10 U.S.C. § 2013 and 5 U.S.C. § 4109.

<sup>21</sup> See 50 Comp. Gen. 610 (1971).

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(3) Reduce decisions on reimbursement issues to writing. A memo serves the dual purpose of documenting the command's legal analysis as well as providing attendees with paperwork to append to their claim. Enclosures (4) and (5) are two sample memos, one for conferences/meetings and one for training. Enclosure (6) is a sample for analyzing application of section U4510 of the JFTR.

(4) Although you may not use appropriated funds to pay for light refreshments, careful advance planning may resolve this issue. For example, many facilities offer light refreshments as part of a non-separable package for the use of the facility. Furthermore, if attendees will be provided meals on-site, you may be able to arrange for the facility to hold out some of the allotted food from these meals and place the items out during the event (e.g., cookies from lunch). So long as additional appropriated funds are not expended on light refreshments, either of these arrangements is proper.

f. As an additional resource, the Army recently published an article entitled, A Primer: Army Conference Planning.<sup>22</sup> This article contains a wealth of information you may find helpful as you work through complex conference and training issues.

g. To help your analysis as you review conference and training issues, consult the decision trees at enclosures (7) and (8).

4. Points of contact. LCDR Aaron Rugh at DSN 664-8280, 703-604-8280, [aaron.rugh@navy.mil](mailto:aaron.rugh@navy.mil) or LT Dave Furry at DSN 664-8218, 703-604-8218, [david.furry@navy.mil](mailto:david.furry@navy.mil).

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<sup>22</sup> MAJ Michael E. J. Mueller, USA, A Primer, Army Conference Planning, 2003 Army Law. 1 (2003), available at [www.jagcnet.army.mil/laawsxxi/cds](http://www.jagcnet.army.mil/laawsxxi/cds).