



# DEPARTMENT OF THE ARMY INSPECTOR GENERAL

## 2021 SENIOR OFFICIAL FRONT OFFICE TRAINING BOOKLET



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## I. Introduction

### Purpose

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The intent of this booklet is to provide senior leaders and their staff with a collective training tool and resource that prepares them to correctly make informed decisions and take actions based on regulations and policies.



***“As Senior Officials, you are held to a higher standard with enhanced responsibilities and visibility; therefore, it is imperative that you take time to learn what right looks like and always lead by example. Senior Leaders and their front office should use this booklet as a tool to do just that...understand that perception is often viewed as truth by others. Trust them and they will trust you.”***

LTG Leslie C. Smith  
66th Inspector General of the Army

### Background

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In 2016, the Department of the Army Inspector General (DAIG) developed this training tool in response to the 2016 Secretary of the Army initiative that focused on the prevention of senior official misconduct. The goal of this tool was to provide senior officials (SO) and their staff with vignettes inspired by real-world allegations of impropriety and leverage lessons learned from DAIG observations and investigations. In keeping with this goal, the 2021 revision provides SOs and their staff with relevant and up-to-date vignettes reflecting current trends as they relate to SO allegations.

### Scope

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The situations in this booklet discuss potential issues that may appear unclear to senior officials and front office staff—in essence it focuses on the “grey areas” of Army policy. We have presented nine situations in this booklet, ranging from whistleblower reprisal, to travel-related scenarios, and interactions with contractors and non-Federal entities. Each situation is accompanied by situation-based discussion and thought-provoking questions. The following situations are included in this booklet:

- Situation 1. Reprisal.
- Situation 2. Involvement with a Non-Federal Entity (NFE).
- Situation 3. Official Travel (Spouse/Military Air (MILAIR)).
- Situation 4. Personal Travel in conjunction with Temporary Duty (TDY) Travel; Use of Resources/GOV-Furnished Rental Car.

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- Situation 5. Use of GOV Personnel and Resources.
- Situation 6. Command Climate/Failure to Act.
- Situation 7. Gesture of Thanks/Receipt of Gift.
- Situation 8. Contractor Interactions and Staff vs. Personal Responsibilities.
- Situation 9. Prohibited Personnel Practices.

### **Recommended Audience**

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As stated, this booklet should provide an SO and their front office (personal/support staff) with a training tool and resource they can share among themselves and with other relevant audiences. This recommended training audience includes:

- Chief of staff (COS),
- Executive officer (XO),
- Secretary of the General Staff,
- Aide-de-camp,
- Enlisted aide,
- Administrative assistant/secretary,
- Staff judge advocate/command ethics advisor,
- G-8/resource management representative,
- Command inspector general, and
- Protocol officer/non-commissioned officer in charge.

### **Important Disclaimers**

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This booklet does not establish policy, nor is it directive in nature. It should not be used as a substitute for Army-mandated ethics training, staff research or a legal opinion.

## II. Situation 1: Reprisal

The following situation explores the subject of whistleblower reprisal, a complex topic governed by a wide range of statutes and policies. SOs may be familiar with the idea of reprisal, but oftentimes, they are unaware of how their actions may “cross the line.” Before reading the situation, review the following concepts to better understand how the SOs’ actions would most likely lead to substantiation.<sup>1</sup>

**A. Definition of Whistleblower Reprisal.** In accordance with Section 1034, Title 10, United States Code (USC) (10 USC 2034), Whistleblower Reprisal is the act of taking (or threatening to take) an unfavorable personnel action or withholding (or threatening to withhold) a favorable personnel action because the Service member made or was thought to have made a protected communication (e.g., lawful communication reasonably believed to be true by the complainant) to:

1. Members of Congress;
2. Inspectors general (IGs);
3. DOD audit, inspection, investigation, or law enforcement organizations;
4. Any person or organization in the chain of command;
5. Any other person designated pursuant regulations or established administrative procedures to receive such communications (e.g., Equal Opportunity, Safety Office, etc.); or
6. As part of a court-martial proceeding, specifically, complaints of sexual assault or sexual harassment.

**B. The Four Elements of Proof.** Key to understanding Whistleblower Reprisal is understanding the four elements of proof a Whistleblower Reprisal investigator must consider in the course of their investigation.

**1. Element #1. Protected Communication: Did the complaint make, or was perceived to have made, a “protected communication”?** A protected communication can be verbal, written, or electronic and even includes statements that a complainant is simply preparing to make a protected communication (e.g., “I am going to write my congressman.”). For a Whistleblower Reprisal investigation to be substantiated, the answer for Element #1 must be **“Yes.”**

**2. Element #2. Personnel Action:** Was there an unfavorable action, the threat of an unfavorable personnel action, the withholding of a favorable personnel action, or the threat of withholding a favorable personnel action<sup>2</sup> made against the complainant?

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<sup>1</sup> This is a highly simplified discussion of a complex topic that is governed by a wide range of statutes and policies. DO NOT use this discussion as a legal/regulatory/policy reference.

<sup>2</sup> Defense Directive 7050.06, “Military Whistleblower Protection,” defines a “personnel action” as, “any action taken on a Service member that affects, or has the potential to affect, that member’s current position or career. Such actions include promotion; disciplinary or other corrective action; transfer or reassignment; a performance evaluation; decisions concerning pay, benefits, awards, or training, relief and removal; separation; discharge; referral for mental

Did the suspect take, or threaten to take, any personnel action against a member of the Armed Forces that affects, or has the potential to affect, the member's current position or career? For a Whistleblower Reprisal investigation to be substantiated, the answer for Element #2 must be "**Yes.**"

**3. Element #3. Knowledge:** Did the suspect of the Whistleblower Reprisal allegation know about the Protected Communication made by the complainant before they took the personnel action? For a Whistleblower Reprisal investigation to be substantiated, the answer for Element #3 must be "**Yes.**"

**4. Element #4. Causation:** Would the same personnel action(s) have been taken, withheld, or threatened absent the Protected Communication? Would the suspect have taken, threatened to take, withheld or threatened to withhold the same personnel action absent the Protected Communication made by the complainant? This is often the question that determines the outcome of the investigation. It is often the most difficult question to determine, as it requires the investigator to make a conclusion about the suspect's state of mind regarding the personnel action in question. To do this the investigator must consider all of the following:

- The reason the suspect took the personnel action.
- The suspect's motive for the personnel action.
- The timing between the Protected Communication and the personnel action.
- Was there disparate treatment in how the suspect dealt with other Soldiers in similar situations?

For a Whistleblower Reprisal investigation to be substantiated, the answer for Element #4 must be "**No.**"

### SITUATION

An SO is conducting a “Senior Slate” review with his/her staff considering future moves for lieutenant colonels (LTCs) in their organization with the XO, the deputy commander (general officer), the command sergeant major (CSM), and the G-1. The G-1 begins the review with LTC Smith whom they are considering for a move into a key developmental position within the organization. At that point, the SO interrupts the G-1 with the following, “Bob, I think we need to hold off on discussing a move for LTC Smith at this time. I realize that based on her record, she is a top-tier candidate for this job; heck, as of last week I would have said she was hands down the front-runner for the position. However, Colonel (COL)(P) Hatman approached me yesterday with some troubling news. He alleges that LTC Smith has been working to undermine his command.”

At this point the deputy adds, “Roger. I heard the same thing from COL(P) Hatman after the awards ceremony on Monday. Apparently, he (COL(P) Hatman) is convinced that the congressional inquiry that came down last week about the 123d<sup>3</sup> Training Group was motivated by a conversation LTC Smith had with Representative Taylor during the congressional delegation in June, and that he was going to ‘look into it all.’ COL(P) Hatman seemed pretty upset and asked if we could hold off on any moves until he was sure of where LTC Smith’s loyalties truly lie.” At this point the meeting is interrupted by a priority phone call, and the SO tells all present they will reconvene after lunch.

### Situation-based discussion

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After reviewing the above situation, discuss the following questions to further understand how the SO’s actions could result in substantiation for Whistleblower Reprisal.

A. If you were the XO, and you were reviewing the meeting with the CSM later that afternoon would anything worry you? Do the conclusions reached comply with all relevant statutes/DOD instructions (DODIs) and ARs? Do you see any larger issues at work here other than a simple reassignment?

B. If the SOs in this scenario ultimately decided to hold off on moving LTC Smith, and you were the XO testifying under oath months later as part of a Whistleblower Reprisal investigation how would you answer the following questions?

1. Did LTC Smith make, or was she perceived to have made a “Protected Communication”?

“Apparently, he (COL(P) Hatman) is convinced that the congressional inquiry that came down last week about the 123d Training Group was motivated by a conversation LTC Smith had with Representative Taylor during the congressional delegation in June...”

Answer: “Yes.” (Element #1. Protected Communication)

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<sup>3</sup> Fictional, battalion-sized organization assigned to COL (P) Hatman’s Command.

2. Did LTC Smith have a favorable personnel action withheld?

“I think we need to hold off on discussing a move [into a key developmental bullet] for LTC Smith at this time.”

Answer: “Yes.” (Element #2. Personnel Action)

3. Did the SOs know about the Protected Communication made by the complainant before they took the unfavorable personnel action?

“COL(P) Hatman approached me yesterday with some troubling news,” **and**, “I heard the same thing from COL(P) Hatman after the awards ceremony on Monday. Apparently, he is convinced that the congressional inquiry that came down last week about the 123d Training Group was motivated by a conversation LTC Smith had with Representative Taylor during the congressional delegation in June.”

Answer: “Yes.” (Element #3. Knowledge)

4. Does the preponderance of credible evidence establish that the SO(s) would have withheld the same favorable personnel action absent the protected communication?

“I realize that based on her [LTC Smith’s] record, she is a top-tier candidate for this job; heck, as of last week I would have said she was hands down the front-runner for the position.”

Answer: “No.” (Element #4. Causation)

**Bottom Line:** In this scenario, the preponderance of credible evidence would likely establish that all three SOs (the commander, the deputy, and COL(P) Hatman) committed Whistleblower Reprisal by withholding LTC Smith’s favorable personnel action because of a protected communication she made to a Member of Congress.

While the previous situation clearly describes a case of whistleblower reprisal, some situations—like the following one on involvement with non-Federal entities (NFEs)—are less clear-cut. As you read and discuss it, think about how the SO’s actions, while well-intentioned, may lead to the perception of preferential treatment.



### III. Situation 2: Involvement with a Non-Federal Entity (NFE)

The following situation discusses the complexities surrounding SOs' interaction and involvement with NFEs. SOs should always use caution when interacting with NFEs, because personnel and outside sources may view their interactions as a sign of endorsement or preference.

SITUATION
An SO asked his staff to review an email entitled, "End of Year Business," which he intended to send via his official email account. In this email, the SO discusses a variety of topics, and near the end of the email the SO mentions the local contributions made by the Association of Community Members Supporting the Army (ACMSA <sup>4</sup> ). The email states, "The impact of ACMSA on our local military community is undeniable. In the past year, the local chapter of ACMSA provided 70 local Army families with \$25,000 in emergency assistance. Their national organization has tirelessly advocated for better military pay and benefits. I believe that part of being a professional is giving back to the community. Giving to organizations like ACMSA is a great place to start." At the conclusion of the email, the SO mentions accepting an invitation to be the keynote speaker at ACMSA's upcoming Army Birthday Dinner & Silent Auction, and then says, "I look forward to shaking your hand in the reception line for this worthy event." At the bottom of the email, there is a hyperlink to the ACMSA membership/fundraising coordinator. When the XO clicks the hyperlink, he sees a picture of the SO in his Army uniform followed by his official rank, name, and current DOD position (under the SO's name was his official email address). In addition to this information, the webpage also references the SO as the ACMSA state membership drive co-chair.

#### Situation-based Discussion

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After reviewing the situation, discuss the following questions to better understand the intricacies surrounding SO involvement with NFEs.

A. Is this draft email appropriate and compliant with all relevant statutes, DODIs, and ARs, or does it appear to "cross the line" and endorse an NFE?

No, it is not appropriate, and yes, it does "cross the line" and appears to endorse an NFE. Although the SO doesn't say it outright, it is clear he is encouraging membership and or donations to ACMSA. The SO, in his official capacity, is **prohibited** from encouraging his subordinates to join a specific NFE (JER/DOD 5500.07-R, par. 3-209). In addition, the SO should **not** have included the email for the local ACMSA membership/fundraising coordinator (see 5 CFR 2635.101(b)(8)).

B. Is it okay for an SO to encourage subordinates to become members in an NFE?

No. An SO is free to encourage NFE membership/fundraising in his/her personal capacity to his/her friends but **not** subordinates (see 5 CFR 2635.702(a)-(b)). Even if the SO had only addressed his personal friends in the message, it would **not** be appropriate to send the email via a Government email account.

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<sup>4</sup> A fictional organization aimed at advocating (not an advocating lobbyist) to Congress for various military causes.

C. Is it appropriate for the SO to greet attendees as they arrive at the ACMSA Army Birthday Dinner and Silent Auction?

No. Having the SO greet individuals as they arrive at an NFE event, (e.g., “stand in the reception line”), which involves fundraising, gives the appearance that ACMSA is using the SO as a “draw” to the fundraising event, which is prohibited by ethics rules (5 CFR 2635.808 and JER 3-210).

D. Is it appropriate for the SO to give an official speech at the ACMSA Army Birthday Dinner and Silent Auction?

Yes, but with limitations. The ethics rules at 5 CFR 2635.808(a)(3) and the JER (DOD 5500.07-R, par. 3-210 & 3-211) allow DOD employees to speak at events sponsored by NFEs when, among other factors, “the speech expresses an official DOD position in a public forum in accordance with public affairs guidance.” However, because this is a fundraising event, the SO should consider the perception issues that could arise from speaking at the dinner, even if it is on an official topic. The SO should always obtain a written ethics opinion before proceeding.

E. Should the SO mention ACMSA fundraising/membership goals in his official speech?

No. Ethics rules prohibit active and visible participation in fundraising for a private organization. The SO may deliver an official speech only as discussed above (5 CFR 2635.808 and JER 3-210 and 3-211).

F. Was the use of the SO’s image, name, rank/duty title, and official email on the ACMSA webpage acceptable?

No. Use of the SO’s name and rank is likely permissible, but use of the current duty title implies governmental sanction or endorsement (5 CFR 2635.702(b) and (c) and 807(b)). Also, the SO should not be using his official email address for NFE membership or fundraising activities.

## **Process for Handling SO Engagement with NFEs**

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When a front office receives an invitation for an SO to attend/speak at an NFE-sponsored event, DAIG suggests reviewing the following chart or creating your own process for handling invitations that fall in this category.

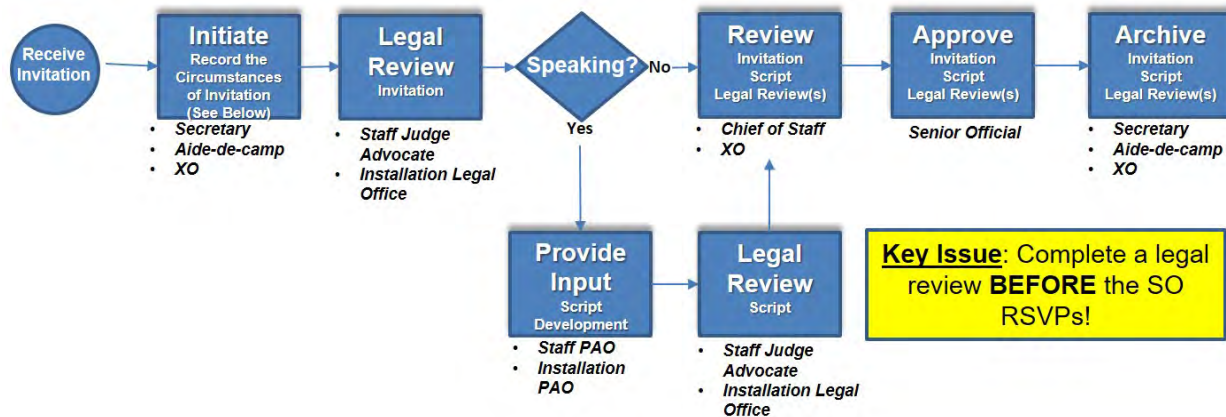


Figure 1. NFE-Sponsored Event Process

## Record the Circumstances of the Invitation

Invitations to attend NFE-sponsored events should be formally recorded and evaluated as potential gifts. After the front office receives the invitation, they should record the circumstances of the invitation using the below checklist. Always include a legal review before confirming attendance or participation. When gathering information, we suggest you consider the following:

1. Gather information about the NFE-sponsored event (e.g., defense contractor, tax exempt status, NFE membership criteria) knowing that after gathering this information, the SO may, or may not be able to attend the event.
2. Is NFE offering to pay the SO's attendance and meal fees? If so, how much are the fees?
3. Is NFE inviting the SO's spouse/significant other?
4. Is NFE asking the SO to speak at the event? On what topic? Will the SO be in uniform?
5. Is the event free, or is there an attendance fee? If the SO can (and does) attend the event in a personal capacity, he/she may have to report the gift of free attendance on the Office of Government Ethics (OGE) Form 278e if it exceeds the gift-reporting threshold. (For more information, see OGE 278e instructions, <https://www.oge.gov/Web/278eGuide.nsf/Content/Chapter~OGE+Form+278e.>)
6. Is NFE offering to pay any travel costs?
7. Is the event open to the general public or only to a select audience?
8. How many, or are any other DOD speakers on the agenda?
9. What admission fees, if any are being charged to the other attendees?

## **Points of Discussion: Receipt of an Invitation to Attend or Speak at an NFE-Sponsored Event**

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### **G. Issues/problems may arise if the SO:**

1. Fails to consult a legal advisor to evaluate requests for logistical support to NFEs. (For more information, see DOD JER 3-211.)
2. Accepts a gift of attendance at a widely attended NFE event (in a personal capacity) without reporting it on the OGE 278e as required, or without first getting a written legal review/memo and approval to attend. (For more information, see OGE 278e instructions.)
3. Accepts a gift of travel expenses from an NFE without obtaining proper approval. (For more information, see 31 USC 1353 and DOD JER Chapters 3 & 4.)
4. Wishes to speak at an NFE conference; however, the majority of speakers are Army personnel.
5. SO and front office staff should also consider if the invitation came from an Army office or official rather than from the NFE itself, without evidence of Secretary of the Army-level co-sponsorship approval.

### **H. Appropriate speaker support for NFE-entity events:**

If an NFE has invited an SO to speak, and if he/she has agreed to do so, the staff must further consider the following requirements/restrictions.

1. SO can speak at an NFE conference if legal requirements are met, Army conference policy is followed, he/she serves as logistical support to the event, or “the speech expresses an official DOD position in a public forum in accordance with public affairs guidance” (DOD 5500.07-R, par. 3-211a or c)).
2. SO may not be able to speak at the conference if it costs more than \$804 to attend, and more than 20 percent of the speakers are DOD, or if it costs less than \$804 and the percentage of DOD speakers is more than 50 percent. In all cases, we recommend a thorough legal review.
3. SO may be able to speak at a fundraiser as long as he/she makes an official speech, does not participate in fundraising, does not serve as a draw (e.g., does not ask for donations and does not stand in the receiving line), and does not appear to endorse the NFE. (5 CFR 2635.808 and DOD 5500.07-R)
4. SO and spouse/significant other may be able to accept a gift of registration fees/meal if SO is speaking.
5. Security and policy review of the speech is required in certain instances; consult DODI 5230.29 and AR 360-1. See also <https://dodsoco.ogc.osd.mil/ETHICS-TOPICS/Travel-and-Transportation/Toolbox-Travel-and-Transportation/>.

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As the previous situation showed, SOs and their staff must consider all aspects of a situation before deciding whether an SO can take an action(s). The following situation on official travel (spouse/Military Air (MILAIR)) further demonstrates the importance of reviewing plans and following all rules and regulations as they apply to a situation and potential courses of action (COAs).

## IV. Situation 3: Official Travel (Spouse/Military Air (MILAIR))

SOs are often required to travel as part of their commitment to serve, yet travel can be surprisingly complicated and lead to issues that, if handled incorrectly, can lead to problems for SOs. The following situation discusses several travel-related issues as they relate to MILAIR and spouse travel. While reviewing the scenario, please note that even though the staff prepared these courses of action, the SO is always responsible for making the correct travel decisions, because in the end he/she is held accountable when a DOD/Army policy is violated.

### SITUATION

An SO, stationed in the Southwest, is invited to attend the Army Soldier and Family Resilience Conference (ASFRC) (a “service-endorsed” conference/training event) in Washington, DC. The conference organizers asked the SO’s spouse to participate in several working groups/training events (all included in the conference agenda) related to discussing ways to expand job opportunities for Army Family members through community outreach. The spouse, an unaffiliated civilian, will be in Kansas City, MO, at a family reunion before the conference.

The SO asks the staff to develop a few courses of action (COAs) to consider before he/she makes a decision to attend the event. The SO’s staff produces the following travel COAs.

1. MILAIR round trip: Use MILAIR to fly the SO to Fort Leavenworth, KS, to pick up his/her spouse (traveling on a non-reimbursable, non-interference based) and continue on MILAIR to Washington, DC. After the event, return both to their home station also using MILAIR. The staff justified this COA because of the reduced cost (no cost to organization) and scheduling (it’s more convenient for the SO’s schedule than commercial travel given layovers for connecting flights).
2. Commercial air round trip: Fly the SO to the conference and return using commercial air. Fly the SO’s spouse from Kansas City, MO, to Washington, DC, and then back to home station. The staff justified this COA as “other spouse travel,” and by citing an invitational travel authorization (ITA) from the conference sponsor.

### Situation-based Discussion

After reading the above situation, review the following questions to determine if these COAs are appropriate, and if they comply with all relevant statutes/DODIs and ARs?

A. Who must approve the SO spouse’s official travel?

Every instance of spouse travel is considered an “exception to policy.” In the above-mentioned situation, this conference/training event has been designated as “Service endorsed,” which is a process that requires DCS, G–3, Training Directorate endorsement and SECARMY approval. Thus the SO’s spouse may travel at the U.S. Government’s expense as an authorized exception to policy.

B. Is the MILAIR COA viable and supportable?

No. (See below for a further explanation.)

C. Who can approve the SO's MILAIR request?

In accordance with (IAW) DODD 4500.56 and DODI 4500.43, in most cases, an official who is "one organizational level higher," must approve a MILAIR request. This generally means that an SO cannot "self-approve" this request, unless he or she is the SECARMY or CSA.

Justification:

Using MILAIR because it is more convenient for the SO is not a valid justification. IAW DODD 4500.56 and DODI 4500.43, an SO must show why commercial air and or ground resources cannot meet mission requirements before using MILAIR.

D. Unauthorized Diversion:

Even if the SO received valid justification and approval for MILAIR from one organization level higher, stopping in Fort Leavenworth to pick up the SO's spouse would be an unauthorized diversion and is not on a "noninterference basis."

E. Is the Commercial Air COA viable and supportable?

Yes, because this is a "Service-endorsed" course/briefing, and the SO's spouse has been issued an invitational travel authorization by the conference organizer, this is considered as "other spouse travel," and the spouse can travel on an independent basis.

## MILAIR Travel/Spouse Accompaniment Process

When determining whether MILAIR and or spousal travel is feasible, DAIG suggests following the process below, or creating your own.

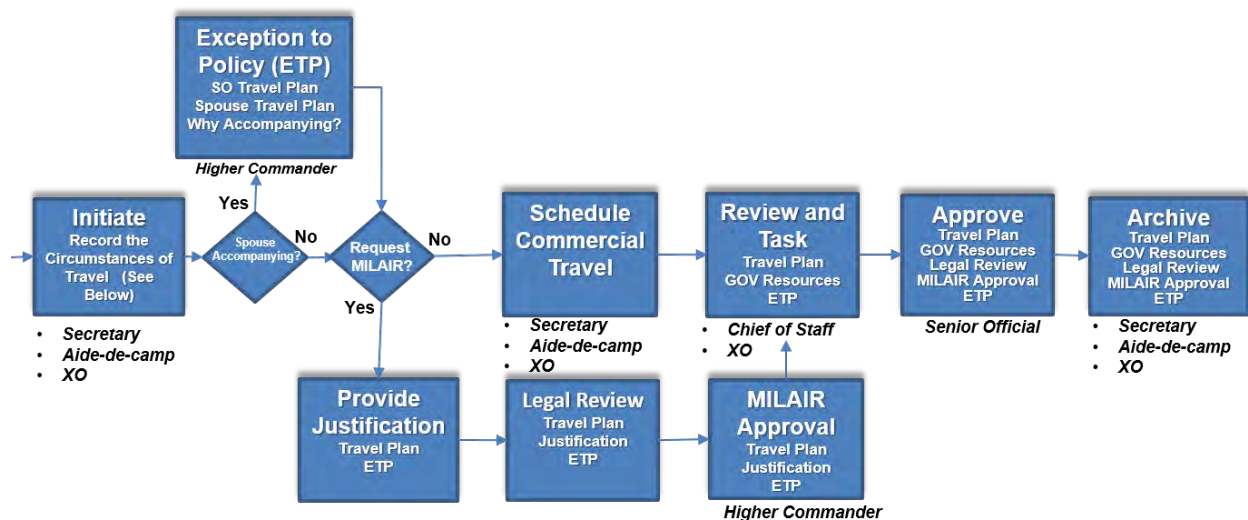


Figure 2. MILAIR Travel/Spouse Accompaniment Process

## **Record the Circumstances of Travel:**

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- A. Is the SO requesting to travel via MILAIR for official travel? If so, why?
- B. Why is commercial air not a viable option to meeting mission requirements (e.g., pandemic, timing, location, mission, etc.)
- C. Is the SO's spouse accompanying him/her? If so, under what circumstances? (e.g., invitational travel, "unofficial travel," etc.)
- D. Will spousal travel interfere with, cause deviations to, or modify the SO's travel plans?

## **Points of Discussion: Use of MILAIR for Official Travel**

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- A. Common issues/problems:
  - 1. SO wants to use MILAIR for official travel without proper approval/justification.
  - 2. SO wants to bring his/her spouse on MILAIR for official travel.
  - 3. Attempt to justify MILAIR based on the size of the traveling party and not through justification of the SO's needs.
  - 4. Policy concerning joint and combatant command use of operational and operational support aircraft differs considerably from what is outlined here. (See DOD 4500.56 (change 5) for details.)
- B. Use of MILAIR must be IAW regulatory guidance.
  - 1. SO may be able to use MILAIR for official travel if it is cost-effective or mission critical, with proper approval.
  - 2. SO may be unable to have his/her spouse accompany them on MILAIR.
  - 3. SO may be able to have his/her spouse accompany him/her on MILAIR if accompanying spouse's travel is authorized as an exception to policy. The SO may also be able to have his/her spouse accompany him/her on a space-available basis in a mission non-interference (reimbursable) status only. See DODD 4500.56 (Incorporating Change 5, 3 April 2019), and Army Directive 2017-05 (Secretary of the Army Policy for Travel by Department of the Army Senior Officials).

Remember that while there is no requirement for spousal travel to receive a legal review, it is highly encouraged to avoid any potential issues/problems.

For more information on travel and transportation, visit:  
<https://dodsoco.ogc.osd.mil/ETHICS-TOPICS/Travel-and-Transportation/Toolbox-Travel-and-Transportation/>.



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As the previous situation proved, SO travel can be fraught with complexities that require discussion and review by a legal entity as well as someone at a higher echelon. The following situation discusses issues that may arise from an SO taking personal travel while on TDY status. Just as you did in this situation, while reviewing the next situation discuss why the SO's actions may/may not comply with relevant statues, ARs, DOD policies, and JTR.

## V. Situation 4: Personal Travel in conjunction with Temporary Duty (TDY) Travel; Use of Resources/Government-Furnished Rental Car

The following situation describes several potential issues related to TDY travel; specifically, airport transportation, personal travel, and the use of a Government-furnished rental car as means for taking personal travel. While SOs can engage in personal activities/travel while on TDY, they should always make detailed plans in advance and have a lawyer closely review them. Additionally, while personal activities after duty hours while on TDY are permitted, the traveler must arrange for and pay for this personal activity at personal expense.

### SITUATION

An SO is planning to travel with his command sergeant major (CSM) on TDY from OCONUS to CONUS for an Army-approved conference that is set to end on a Friday at 1230 hours. The SO is scheduled to speak at the conference and then attend two working groups. One working group is scheduled for Friday morning. Due to the lack of flights, the itinerary calls for the SO and CSM to stay overnight after the last conference event. The only other flight option would mean missing the Friday conference activities to arrive at the airport for an 0830 flight. The SO's authorizations include lodging, a rental car, and the conference fees.

The day before the trip, the SO and his XO are reviewing the schedule for the next few days. The SO summarizes his travel plans as follows.

"Shannon (the XO), we've already covered the conference schedule, so let's just review our travel plans. CSM Thomas and I fly out at 0800 hours. I was just going to drive to the airport myself, but since CSM Thomas and I both live on post, he volunteered to drive both of us. CSM Thomas is going to swing by my quarters in his POV at 0500 hours and pick me up on the way to the airport. I will offer to cover the cost of the gas, but you know CSM Thomas, he never takes me up on it. We have a direct flight, and I will pick up the rental car at the airport. We fly back Saturday, and I plan to ride home with CSM Thomas. Fairly straightforward except for having to stay over Friday night because of the lack of available flights. There is one silver lining about the lay-over—my brother lives about 25 miles from the conference hotel. Once the conference wraps up, I plan to use the rental car to drive up to his place and buy him dinner."

### Situation-based Discussion

After reading the situation above, review the following questions to determine if the SO's actions comply with all relevant statutes, DODIs, and ARs, and JTRs.

#### Discussion on use of Government Vehicle (GOV)/Non-Tactical Vehicle for Airport Transportation

A. Was it appropriate for the SO to ride in CSM Thomas's POV [privately owned vehicle] to and from the airport?

Per 5 CFR 2635 .302(b), the SO can only do so if he/she reimburses the staff member (at market rates) for the gift of convenience (his/her time/gas, etc.) or if the CSM

receives mileage for the POV travel to and from the airport (with authorizing official approval, both travelers could claim mileage and parking, or commercial transportation costs for travel to and from the airport on their travel vouchers, but only one should file if both ride in the same POV). There is also a potential perception issue where observers might think that the subordinate was “volun-told” to give the SO a ride to the airport. When considering this option, the SO and staff should consider:

- Is the airport located where other means of transportation (e.g., DOD or public transportation) are unavailable?
- If other means of transportation are available, do they meet mission requirements? (i.e., is public transportation available for a flight departing at 2300 hours?)

Bottom line—avoid this situation.

B. Would it have been proper if CSM Thomas had obtained a GOV and picked the SO up from his/her quarters on the way to the airport?

Probably not. Exceptions exist when they are “necessary because of emergency situations or to meet security requirements, terminals are located in areas where commercial methods of transportation cannot meet mission requirements in a responsive manner, [...] because other methods of transportation cannot reliably or adequately meet mission requirements, based on a case-by-case factual assessment.” However, in most cases Army policy doesn’t allow this. Always get a legal review before using a GOV for domicile to duty/transportation hub. (For further clarity, see AR 58-1, par. 2-3i and 2-3j.)

C. Would it make a difference if CSM Thomas and the SO had met at the headquarters and departed for the airport in a GOV?

Maybe. Under limited circumstances, as outlined in AR 58-1 (Management, Acquisition, and Use of Motor Vehicles), par. 2-3i, as authorized in the Pentagon area and in accordance with DOD Administrative Instruction (AI) 109 and SECARMY Memorandum (Non-Tactical Vehicle Policy Guidance), 27 September 2019, it may be permissible to use a GOV/NTV for transportation to a commercial or military transportation terminal. SOs and their staff should keep in mind that cost to the Government is never a consideration when making AR 58-1 or DOD AI 109 determinations. Always obtain a legal review before using a GOV for transportation to a transportation hub.

DOD AI 109 stipulates that if DOD personnel in the Pentagon area are required to take transportation for official business, they should use the following methods below, in the order shown, to the extent that they meet mission requirements.

<b><u>During Normal Published Duty Hours:</u></b>	<b><u>Before or After Normal Published Duty Hours:</u></b>
1. DOD-scheduled shuttle service.	1. DOD-scheduled shuttle service.
2. Scheduled public transportation (rail or bus).	2. Scheduled public transportation (rail or bus).
3. DOD vehicle.	3. Voluntary use of POV on a reimbursable basis.
4. Voluntary use of POV on a reimbursable basis.	4. Taxicab/Uber/Lyft on reimbursable basis.
5. Taxicab/Uber/Lyft on reimbursable basis.	5. DOD vehicle.

### **Discussion on personal travel in conjunction with TDY**

In the above-described situation, if the SO chooses to visit with his/her relatives, he/she and his/her staff should consider the following questions.

A. What expenses can the SO pay for using their GOVCC on Friday evening?

The SO can pay for their own dinner (not the relative's, even if SO intends to use per-diem funds to "pay back" the GOVCC account when SO submits a travel voucher), the SO's lodging, and the gasoline used for the Government-furnished rental car (when used for official purposes).

B. Can the SO use the Government-furnished rental car to visit a relative?

Not in this instance, given the mileage involved, even if the rental car had unlimited mileage, or if the SO uses his personal funds to pay for the rental car gas used Friday night. The bottom line is a 25-mile drive to see a relative is not an official function, and the SO cannot use government funds to support this trip. However, the SO may be able to use the rental car if the relative's house was 3 miles away instead of 25. Short deviations that support "subsistence, health, or comfort" may be allowed, but as noted, get a legal opinion first.

C. What actions could the SO take to ensure their visit to the relative adheres to regulations/standards?

Ask the relative to come visit/pick up the SO in a POV, or the SO could rent a separate vehicle, using personal funds (and not his/her GOVCC), to drive to the relative's location.

D. Could any perception issues arise from the SO's trip to see his/her relative?

Yes. Even though the personal staff know that the time of the return flight was dictated by conference activities and airline schedules, an outside observer might perceive the SO extended the trip for a day to visit their relative. Drafting a memorandum for record (MFR) might address this issue.

It is also important to note that if an SO decides to combine personal travel/activities with his/her TDY, the primary purpose of the travel must be official. Additionally, SO could travel early or extend official travel, but he/she must take leave during the personal activity portion. The SO is also personally responsible for any additional costs that results from rescheduling commercial air travel and lodging to accommodate the personal activity. Most importantly, the SO cannot use his/her GOVCC to pay for a hotel room during the personal activity with the intention of paying the Government back

during the TDY settlement process. This would still be considered using Government funds for personal activities. DAIG strongly recommends the SO check out of the hotel and pay with the GOVCC, then check back into the hotel using a personal payment method for the duration of the personal activity. This will result in two invoices, one related to Government activities and a second related to personal travel/events.

## Process for Reviewing Personal Travel

When reviewing an SO's travel plan, DAIG suggests following the process below, or creating your own.

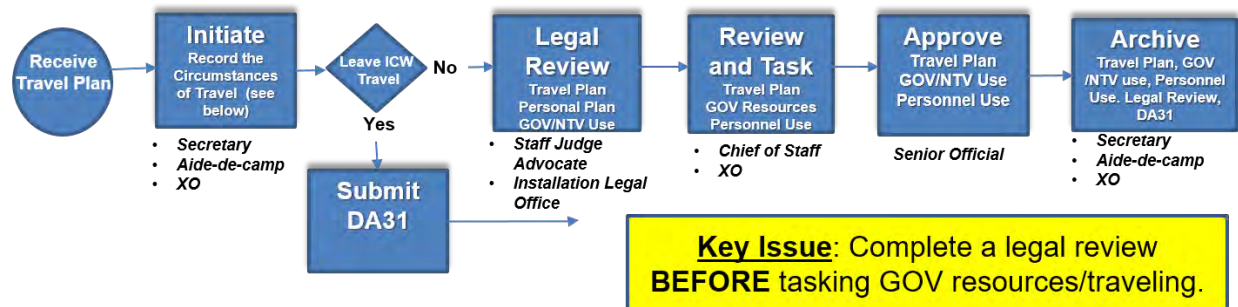


Figure 3. Process for Reviewing Personal Travel

## Record the Circumstances of the Official Travel

- A. What official event(s) are scheduled?
- B. What personal activities are scheduled?
- C. Will attendance at personal events impact/modify the travel plan? (If yes, proceed with extreme caution.)
- D. Can attendance at personal events be perceived as impacting/modifying the travel plan? (consider an MFR)
- E. Will the SO take leave in conjunction with TDY?
- F. How will the SO get to and from the airport? (Consult AR 58-1, par. 2-3i, and DOD AI 109 before tasking GOV individuals/equipment to support)
- G. When does the SO plan to use the GOV-provided rental vehicle, and where?
- H. What will the SO use their GOVCC to pay for?

The previous situation and accompanying discussion raised the subject of SO travel in conjunction with TDY. It also briefly discussed use of resources in relation to travel to and from domicile to airport. The following situation further discusses the use of resources and the actions staff can and cannot take in support of an SO.

## VI. Situation 5: Use of GOV Personnel and Resources

The following situation discusses the SO's use of personal staff; specifically, what is appropriate and what is not. While reviewing this scenario, the SO and his/her staff should understand that improper use of Government personnel's time is similar to their improper use of any other Government resource (e.g., equipment, supplies, etc.).

### SITUATION

An unmarried SO was just injured in a way that will prevent him/her from driving for a significant period of time. Once the SO is released from the hospital, he/she must attend daily physical rehabilitation/therapy requirements at a civilian clinic located 15 miles from the installation. The SO's XO has assembled the staff to "figure out how we are going to take care of the SO to allow him/her to focus on the mission."

The staff war-gamed the situation and made the following recommendations to the SO:

- Hospital Transportation: Once the SO is released from the hospital, the aide-de-camp will use the organization's GOV to retrieve the SO from the hospital and then drive him/her back to headquarters.
- Transportation to and from work: Since the SO is not authorized domicile-to-duty transportation, the XO has instructed the SO's secretary to arrange for a vehicle for hire to pick him/her up at home at the same time every morning. Whenever the SO is ready to leave in the evening, the secretary would then call and arrange to have a vehicle for hire waiting to drive him/her home. The secretary would also coordinate with the SO each evening and call for/reserve a vehicle for hire for any "off-duty" travel the SO needed to accomplish before the beginning of the next duty day.
- Medical appointments: For the daily physical therapy appointments, the XO tasked the aide-de-camp to drive the SO back and forth using the organization's GOV.
- Errands: For miscellaneous errands the SO needs to accomplish (laundry, groceries, lunch, etc.), the XO encouraged the staff to "pitch in and help the SO out," but "only do so if you were planning to go to that location anyway."

### Situation-based Discussion

After reading the situation, review the following questions to determine if the recommendations outlined above are appropriate and if they comply with all relevant statutes, DODIs, and ARs.

Is the staff's plan, as briefed in the scenario, IAW Army/DOD policy?

A. The aide-de-camp picking the SO up from the hospital.

No (see below).

B. The secretary arranging for transportation to and from work.

No (see below)

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C. The aide-de-camp ferrying the SO to and from medical appointments.

No (see below).

D. The staff (not aide-de-camp) running occasional errands.

No (see below).

The bottom line is an SO should avoid accepting voluntary services from personal staff/aides-de-camp for personal (non-official) purposes. Voluntary services from personal/staff/aides are gifts of convenience, which the SO must reimburse at market rates. Additionally, as mentioned in situation 4, accepting these services can create perceptions of coercion both inside and outside the staff. The bottom line is that IAW U.S. Code, Comptroller General opinions (e.g., commuting to work is the personal responsibility of the Federal employee), and DOD 5700.07-R (see below), most of the actions the XO outlined in the plan violate a statute/policy.

JER/DOD 5500.07-R, par. 3-303, "Because of the potential for significant cost to the Federal Government, and the potential for abuse, DOD employees, such as secretaries, clerks, and military aides, may not be used to support the unofficial activity of another DOD employee in support of non-Federal entities, nor for any other non-Federal purposes." [except in a few limited circumstances not involving this scenario].

## Use of Resources for Personal Activities

After receiving a task from an SO, DAIG suggests following the process below as a guide or creating your own.

\*Note: The roles and responsibilities of XOs, secretaries, or other staff officers are separate and distinct from that of an aide-de-camp or enlisted aide. An XO, secretary, or other staff officer **cannot** be used for an SO's personal tasks. Depending on the circumstances, an SO **may** use an aide-de-camp or enlisted aide for personal tasks that serve a necessary military purpose/directly relate to the SO's official duties and responsibilities.

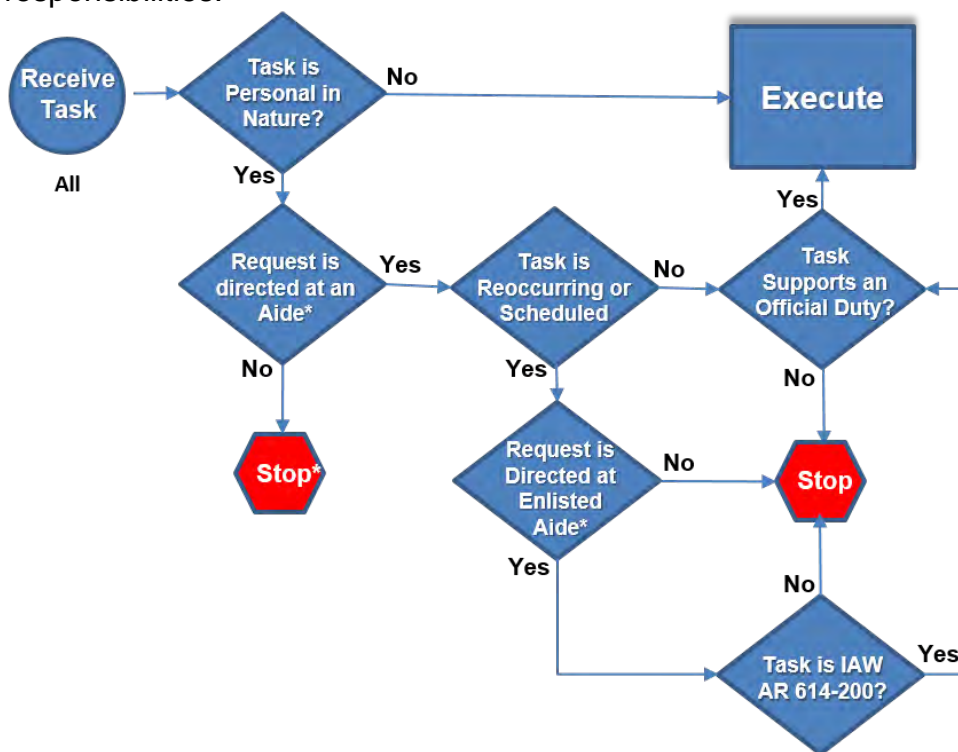


Figure 4. Process for Use of Resources for Personal Activities

While the previous situation discussed SO's proper use of resources, the following situation describes an SO's failure to act and a possible command climate issue. Both situations show the importance of engaged leadership as well as taking time understand the effects of certain actions.



## VII. Situation 6: Command Climate/Failure to Act

The following situation discusses an SO's failure to act in response to results from a command climate survey that a subordinate brigade commander recently conducted on their organization. While reviewing the scenario, think about how a subordinate commander's actions/lack of actions may directly affect an SO.

### SITUATION

An SO is meeting with his CSM and a subordinate brigade commander to review the results of a command climate survey the subordinate brigade commander recently conducted on their organization.

"Sir, I never liked these surveys much, which is why this is the first one I've conducted after 20 months in command, but I have to say that, with the exception of a few bad apples, this was a very positive result."

After summarizing the encouraging high points of the survey results, the subordinate commander moved on to 'the bad news':

"Sir, unfortunately with the good comes the bad. There were several comments that appeared on the survey that just make the organization look bad. Many of them seem to center around that incident last September where a certain NCO got her feelings hurt at the Organizational Ball. One anonymous comment, probably by SSG Thomas or one of her disciples, says that, 'Several female Soldiers and NCOs were singled out, harassed and called, insulting/sexist names by several male NCOs and officers at the Organizational Ball.' Sir, I was there, and this didn't happen, and I told SSG Thomas this when she asked to see me last month under the open-door policy where she said basically the same thing. She even had it all written out and tried to leave a copy with me.

"Sure there was some horseplay and good-natured ribbing, but nothing threatening, nothing I haven't already heard in the halls of the headquarters a time or two. I wish SSG Thomas would just let this drop and move on...it's starting to make me think she needs to be moved to a less-visible job where her newly minted bad attitude won't impact the organization as much."

### Situation-based Discussion

If you were the CSM in this room, would this conversation bother you? If, after the subordinate commander left, the SO asked you, "sergeant major, what do you make of all that?" What would you say to the SO? If you were the SO would you have taken any immediate actions after the conclusion of the brigade commander's briefing? Additionally, please review the following questions:

A. Does the commander decide whether a command climate assessment is warranted and when it should be scheduled?

No. AR 600-20 (Army Command Policy), Appendix E, specifies a Command Climate Assessment must be completed within 60 days of assuming command and annually thereafter.

B. Should the SO accept that the events at the Organizational Ball described by the anonymous survey were just “good-natured ribbing and some horseplay,” and therefore, excusable?

1. No. IAW AR 600-20, “Hazing, bullying, online misconduct, and other acts of misconduct, undermine trust, violate our [Army] ethic, and negatively impact command climate and readiness.”<sup>5</sup> When SSG Thomas complained of harassment at the open-door meeting, the brigade commander had an obligation to act on this information. IAW AR 600-20, “when commanders are apprised of complaints or accusations against military personnel, they are expected to inquire into the matter and attempt a resolution. When a written complaint or accusation is received against military personnel, COs of units will take action [...]”

2. In addition to taking action, once the brigade commander learned of the alleged misconduct, he/she is always required to demonstrate exemplary conduct. IAW 10 USC 7233 and AR 600-20, par. 1-6d, “All commanding officers and others in authority in the Army are required:

- To show in themselves a good example of virtue, honor, patriotism, and subordination;
- To be vigilant in inspecting the conduct of all persons who are placed under their command;
- To guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Army, all persons who are guilty of them; and
- To take all necessary and proper measures, under the laws, regulations, and customs of the Army, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.”

3. Additionally, SOs should be mindful where civilian employees are concerned. AR 690-12 (Equal Employment Opportunity), Appendix D, requires management officials who receive a complaint from an employee to initiate an investigation of the allegation regardless of whether the harassment rises to the level of being severe or pervasive. Supervisors and managers will promptly address allegations of harassment with the employees directly involved in the incident along with any witnesses who might have first-hand information.

C. Does it matter that this was a social setting and not in the workplace?

No. IAW AR 600-20, “Harassment is prohibited in all circumstances and environments, including off-duty and unofficial unit functions and settings.”

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<sup>5</sup> See AR 600-20 for the Army’s definition of bullying and discriminatory harassment.

D. Would there be an issue if the brigade commander were to act on his plan and, “moved [SSG Thomas] to a less-visible job”?

Yes. If the brigade commander acted on his plan, SSG Thomas could make a complaint against the brigade commander for Whistleblower Reprisal (as illustrated in situation 1) and or Retaliation (AR 600-20, par. 5-13), and an investigation would most likely occur.

E. Does the brigade commander have a responsibility to maintain a positive command climate?

Yes. IAW AR 600–20 par. 1-6c, “Commanders and other leaders will treat their subordinates with dignity and respect at all times and establish a command and organizational climate that emphasizes the duty of others to act in a similar manner toward their subordinates in accomplishing the unit mission.” And later in par. 6-2a, “Commanders and organizational leaders will foster and maintain positive command climates. A positive command climate is an environment free from personal, social, or institutional barriers that prevent Soldiers from rising to the highest level of responsibility for which they are qualified. Soldiers are evaluated on individual merit, performance, and potential.”

F. Are there indications in this vignette that the brigade commander may have a command climate issue...or worse?

Yes. Even though the majority of the results from the command climate assessment seemed “very positive,” there are indications of poor command climate, especially among female Soldiers. However, beyond just command climate issues, there are also indicators (“...nothing I haven’t already heard in the halls of the headquarters a time or two.”) that this brigade commander may have allowed a hostile work environment to develop within his headquarters. IAW AR 600–20, par. 6-2b-c, “The Army will provide an environment that is free of unlawful discrimination. Discrimination occurs when someone, or a group of people, is harassed, intimidated, insulted, humiliated, or is treated less favorably than another person or group, because of their race, color, sex (to include gender identity), national origin, religion, or sexual orientation. It includes use of disparaging terms with respect to a person’s race, color, sex (to include gender identity), national origin, religion, or sexual orientation which contributes to a hostile work environment. When discrimination is alleged, commanders will take immediate and appropriate action to investigate the allegations and correct any unlawful discriminatory practices. In substantiated cases, commanders will consider appropriate disciplinary action.”

## **SO Relevance**

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After reading the situation, and reviewing the questions and answers above, you may wonder how it applies to an SO. It is important to understand that once the SO becomes aware of the circumstances surrounding the Organizational Ball, SSG Thomas’s allegations, and the brigade command climate survey, he/she has the same obligation

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to act. If the SO decides to not act, he/she will also likely be in violation of all AR 600-20 provisions outlined above.

While the previous situation discussed potential issues with command climate and failure to act, the following situation pivots toward senior leaders' acceptance of a gift and necessary actions an SO and their staff should take if they receive a gift/gesture of thanks during their service.

## VIII. Situation 7: Gesture of Thanks/Receipt of Gift

The following situation discusses potential issues related to accepting unsolicited gifts. While reviewing the scenario, note that the CSM's and SO's actions may lead to the perception of preference for a specific vendor and be non-compliant with relevant statutes, ARs, and DOD policies.

### SITUATION

A nominative CSM wanted to procure new Personal Protection Equipment (PPE) for Soldiers working on a pandemic response mission. She assembled a team of NCOs who reviewed the requirement, and after research, identified three commercially available options that met guidelines established by the Centers for Disease Control. After reviewing the recommended options, the CSM selected one, but directed the team to review the matter with legal, G-4, and G-8. None of the offices identified any concerns with purchase. As a result, the GOVCC holder for the command's front office used the GOVCC to purchase \$2,400 worth of PPE from the selected vendor.

A week after the PPE was delivered, the retailer sent the GOVCC holder an unsolicited gift of a Tactical Assault Pack (with a list price of \$65 in the retailer's catalog) as a gesture of thanks for the order. The vendor included a note with the assault pack that said, "With thanks to the [organization] command team for another order. Stay safe!" The GOVCC holder gave the assault pack to the CSM, since it was the CSM's idea to make the initial purchase. The CSM and the commander (an SO) decided to use the assault pack to carry briefing products and snacks during official travel.

### Situation-based Discussion

After reading the situation, do you think the actions of the card holder, the CSM, and the commander comply with all relevant statutes, DODIs, and ARs?

A. Can the organization, CSM, or commander accept and use the assault pack during official travel?

1. IAW 5 CFR 2635.204, key to this discussion are the circumstances surrounding the offer of the gift of the tactical assault pack.

a. If the gift of the tactical assault pack was part of a widely available promotion offered to the public (or other commercial purchasers, e.g., "Buy \$300 from our catalogue and receive a free tactical assault pack!"), then the organization can accept the tactical assault pack, but it is considered Government property, just like the PPE.

b. If the gift of the tactical assault pack was offered to members of a group or class in which membership is related to Government employment, or if the same offer is broadly available to large segments of the public through similar-sized organizations (e.g., "All Active Military and Veterans," or "All state and Federal Government entities"), then the organization can accept the assault pack, but it is considered Government property, just like the PPE.

c. If the gift was offered due to one's official position, or on a basis that favors those of higher rank or rate of pay (i.e., because of their rank or position), then the tactical assault pack is an improper gift and should be returned to the vendor.

2. In terms of using the gift, since it appears that the vendor did not offer the tactical assault pack to the public at large, nor did they offer it to a membership-based group, the commander and CSM cannot use the gift. Additionally, since the vendor offered the gift based on rank or position (e.g., "With thanks to the [organization] command team"), the tactical assault pack is an improper gift that must be returned to the vendor. The commander and or the CSM cannot retain or use the gift.

B. Since the CSM cannot accept the gift, what should the GOVCC card holder do with the assault pack?

The GOVCC card holder should give/mail the assault pack back to the vender with a polite explanation as to why they cannot accept it.

## Process for Receiving Gift/Disposition

When an SO receives a gesture of thanks or gift, DAIG suggests following the below chart or creating your own process.

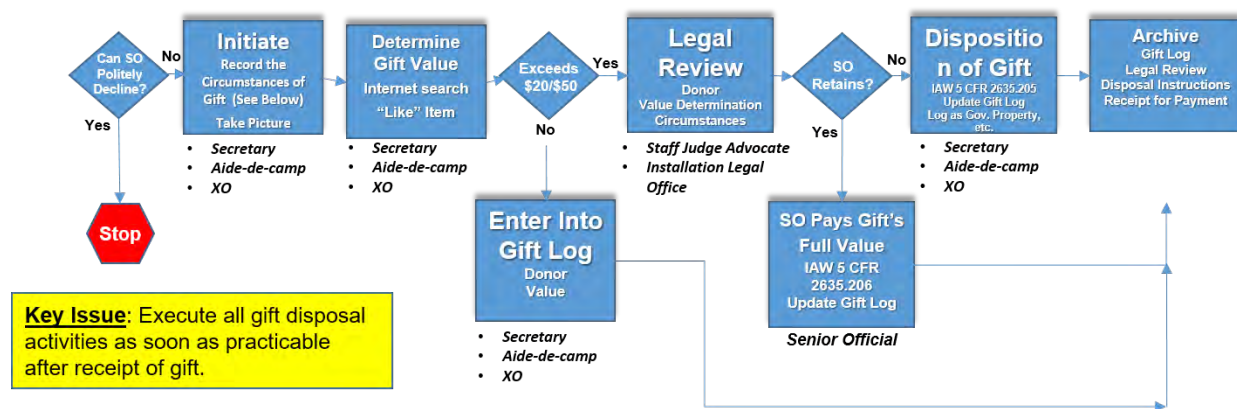



Figure 5. Gift Receipt/Disposition

## Suggested Gift Log Format<sup>6</sup>

Donor and Gift	Picture of Gift	Donor Category	Value of Gift	Legal Analysis	Disposition of Gift
Donor: IMCOM Chapter of the Field Artillery Association Event: Luncheon Date: 29 Nov 20 Gift: Admission Fee	N/A	NFE Not a prohibited source	\$55.00	Acceptable under 5 CFR 2635.204g, employee assigned to speak at an NFE-sponsored event on behalf of the agency. Gift to agency so not OGE 278 reportable	Accepted
Donor: Egyptian Chief of Staff Event: The Inspector General's (TIG) official visit to troops stationed in South West Asia Date: 15 Mar 20 Gift: Gold bracelet for TIG's spouse		Foreign Government Official	\$800.00	Gift exceeds \$415 limit on gifts from foreign governments. IAW DODD 5500.7-R, para. 2-300; 5 USC 7342; DODD 1005.13; Title 41, CFR parts 101-49 and 101-45; and GSA Federal Management Regulation part 102-42.	Coordinate with the Office of the Administrative Assistant to the Secretary of the Army Gifts Point of Contact
Donor: Event: Date: Gift:					

The previous situation discussed how senior leaders should interact with outside sources; specifically, when an outside source presents an SO with a gift or gesture of thanks. The following situation not only discusses use of resources, but also touches on interactions with contractors. As with the previous situations, the SO should always tread lightly when interacting with outside sources.

<sup>6</sup> Note: Issues may arise if the SO or staff accepts a gift from a prohibited source (e.g., contractors/vendors); inappropriate gifts from subordinates; and gifts or services from subordinates. Additional issues may arise if the SO or staff fails to account for gifts to his/her spouse, or if they fail to have gifts from foreign officials evaluated by a legal entity.

## IX. Situation 8: Contractor Interactions and Staff vs. Personal Responsibilities

The following situation discusses improper use of resources and an SO's interaction with a contractor who is also a close friend. Interactions like these, especially when the friend works for a prohibited source, are complex and can lead to perception issues among staff. While reviewing this scenario, think about how the staff's and SO's actions may not comply with relevant statutes, ARs, and DOD policies.

### SITUATION

An OCONUS-based SO has assembled his/her staff to discuss a busy week, which ends with the SO and his/her spouse's official travel to the Army Soldier and Family Resilience Conference (ASFRC) (a "service-endorsed" conference/training event) and the Association of Community Members Supporting the Army (ACMSA\*) Annual Conference being held simultaneously in Washington, DC. After reviewing all of the current hot topics, the SO goes around the room to capture any alibis/additional issues:

SJA: "Sir, no issues for the staff. On a personal note, after sitting down with your spouse and reviewing your finances, I have finished filling out your OGE 278e [Public Financial Disclosure]. If you could log onto the Integrity program and digitally sign it, we can knock it out for this year."

Aide-de-Camp: "Sir, I think I have a handle on why your Government Travel Card is maxed out, the Level 25 reviewer for your last CONUS Defense Travel System Voucher returned the voucher with some questions about the rental car. I used your card (CAC) to log onto your account to tweak the voucher, but it's going to take a week or so to get your settlement. Since we were already using the Centrally Billed Account to purchase your spouse's airline ticket due to her attendance at ASFRC, I went ahead and used it to buy your airline ticket as well."

Secretary: "Sir, I received a call from LTG(R) Tom Watson to ask if you could drop by when you are in Washington for the ACMSA\* Annual Conference. LTG(R) Watson suggested meeting up at the Dynamo Corporation's reception at the Hilitz Hotel on Friday night. He said that as the chief operating officer, he could certainly swing you a ticket to the reception so he can hear from you if the Dynamo contractors were hitting it out of the park for you like he had expected. LTG(R) Watson also said that he wanted to buy you and Pat (SO's Spouse) dinner later that evening, "So you can both tell lies about how great you were as young captains together in Germany." I know you two go way back, so I have penciled the reception in on your itinerary."

### Situation-based Discussion

After you've read the situation, review the following questions to determine if the staff solutions outlined above are appropriate and comply with all relevant statutes, DODIs, and ARs.

A. May the SJA fill out the OGE 278e for the SO and his/her family as described in the situation?

**Yes. An SO may appoint an aide or legal advisor as a delegee to complete the report. However, the filer is ultimately responsible, however, for all information contained, or**



missing, from this report. If there is a problem with the OGE 278e, the SO is responsible—it doesn't matter who "helped" fill it out.

B. May the SO's aide-de-camp log into a system using the SO's CAC?

No. Sharing personal accounts/PINs—in this case the SO's pin to his/her CAC—is prohibited IAW AR 25-2.

C. Is it the responsibility of the SO's aide-de-camp to complete DTS-related activities for the SO?

DTS is a personal responsibility. The SO, not the aide-de-camp, would be responsible for any DTS travel irregularities of his/her account. Also, DOD policy and the JTR require GOVCC users to charge official travel expenses to the card and not to a Centrally Billed Account.

D. May the SO attend the reception with the Dynamo Corporation's chief operating officer?

Yes, with limitations. If the food offered does not comprise a meal and alcohol is not offered, then the SO may legally accept this offering. If the food comprises a meal or alcohol is included, provided the contractor does not offer more than \$20 worth of drinks/refreshments per person (or provided the commercial price of the reception ticket is not over \$20), and provided that the SO will not accept more than \$50 worth of gifts from the contractor (meaning the contractor company as well as its employees) during the calendar year, the SO can attend the reception and accept the free drinks/refreshments. However, just because the SO **can** does not mean he/she **should**. It is never inappropriate to refuse a gift from a prohibited source (e.g., a DOD contractor). Here, since the SO oversaw a project performed by the DOD contractor in question, it is likely prudent and appropriate for the SO to decline the offer to attend the reception or receive the associated free drinks/refreshments since it could create the perception that the SO is, or could be, biased in favor of the DOD contractor whose project he/she oversaw. In this case, it's also possible that if the SO provided feedback on the Dynamo contractors' job performance, the SO would be improperly sharing non-public information with the contractor.

E. Can the SO go to dinner with his old friend LTG(R) Tom Watson?

Yes, with limitations. The invitation to dinner seems to be a social, not business-related event; a personal relationship is sometimes an exception to the limits on accepting gifts from prohibited sources (such as DOD contractors). However, LTG (R) Watson is still a prohibited source so for appearance purposes the SO should not accept more than \$20 worth of drinks/refreshments from the contractor, or more than \$50 worth of gifts from the contractor (meaning the contractor company as well as its employees) during the calendar year. In this case, the SO could go to dinner with an old friend, but the SO and his/her spouse should not discuss contract-related business, and they should decline LTG(R) Watson's offer to buy dinner, instead paying for both their meals using personal funds.

**Bottom Line:** Meetings with DOD contractors, even if they happen to be personal friends, can create issues with perception and preference. This is especially true when they “buy dinner,” present gifts, etc. **Proceed with extreme caution and always obtain a legal review.**

F. Would an issue arise if, at dinner, LTG(R) Watson asked the SO about his post-retirement plans and if the SO responded that working for the Dynamo Corporation as a senior project manager was a possibility in the future?

It is crucial for the SO to recognize at what point they are, “seeking employment” vis-à-vis this dinner. Federal employees trigger the financial conflict of interest statute (18 USC 208) and the ethics rules (5 CFR 2635.601-606), which result in potential conflicts of interest, if they are “seeking employment.” This statute prohibits participating personally and substantially in any particular matter that will have a direct and predictable effect on an NFE with which a Federal employee is “seeking employment.” A Federal employee is likely “seeking employment” when he/she makes an unsolicited communication regarding potential future employment, engages in negotiation for employment, or responds to an unsolicited communication regarding possible employment other than to make an immediate and clear rejection.

**Bottom Line:** Though this dinner is a social occasion, if the discussion turns to the possibility of future employment with a prohibited source (Dynamo Corporation) the SO may cross the line into “seeking employment,” in which case he/she must disqualify himself/herself from personal and substantial participation in any particular matter pertaining to that prohibited source, unless the SO clearly and immediately rejects any offers of employment.

## Process for Recording a Meeting Request with a Contractor



Figure 6. Meeting Request Process

## **Record the Circumstances of the Request**

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A. Is the SO/organization currently involved in any contracts with the contractor's firm?

B. Is the SO/organization soliciting, or considering solicitation, of a contract that might involve the contractor's firm?

C. What does the contractor want to discuss with the SO? Solicitation? Complaint? Employment?

D. If the meeting pertains to a solicitation of the contractor's products, is the SO willing to meet with the other competing contractors as well?

E. Will the meeting create the perception of favored treatment of the contractor or the firm?

Always consult with a legal advisor before accepting a meeting with a prohibited source.

The previous situation and discussion examined an SO's use of resources and interaction with a contractor. The following and final situation discusses prohibited personal practices as they relate to civilian hiring practices. As with all of the situations discussed in the booklet, it is important for an SO and his/her staff to comply with all relevant statutes, ARs, and DODIs.

## X. Situation 9. Prohibited Personnel Practices

The following situation discusses prohibited personal practices as they relate to the hiring of DA Civilians. Civilian employment is a complex topic that is governed by a wide range of statutes and policies. SOs can easily “cross the line” when it comes to civilian hiring practices; therefore, they should tread lightly and frequently consult with subject matter experts.

### SITUATION

An installation recently received funding allowing the garrison commander to hire new Department of the Army Civilians to staff a new program that the installation senior commander has been advocating. The senior commander, excited by the prospects to shape this brand-new program, has asked the garrison commander (the hiring authority for the new positions) to meet with him, the chief of staff, and the command sergeant major to discuss the timeline for establishing this new capability.

The senior commander began the meeting with the following guidance:

“Ed (garrison commander), I want to rapidly establish this new office. Do not allow these new hires to get bogged down in bureaucracy. Do whatever you can to streamline the process, like finding a way to make these all direct hires and skipping the whole hiring panel step. In short, I need you to move out—I want butts-in-seats in weeks not months.

“This is a new program, and I think it needs new thinking. It shouldn’t be a landing zone for Soldiers looking for a retirement job or the ‘next step’ in some reassigned Department of the Army Civilian’s 20-year career. We need fresh faces that will bring best practices from the civilian world into our planning. I think we need to look for young professionals with 3 to 5 years’ experience in industry to fill these positions and perhaps one or two high speed mid-career NCOs that decided to leave the service but still want to serve. You know, like SSG (R) Perfection from your office, Ed. I know he had to leave the Army due to a family issue, but I would absolutely love to see Mr. Perfection sitting behind one of these new desks. In fact, I saw him downtown last week so I know he is still local...maybe you can reach out and encourage him to apply. It can’t be that hard to create a position description that looks for skills that Mr. Perfection already has in abundance.

I also want to see a diverse workforce that ‘looks like our Soldiers’ in this new office. We need to make sure at least one hire is African American and one hire is Hispanic. I also don’t want to see an office full of men. If a female Soldier walks into this office and sees anything less than 30 percent of the desks filled by females, they are not going to use this office to seek out help.”

### Situation-based Discussion

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If you were the chief of staff, and you were reviewing the meeting with the CSM later that afternoon, would anything about this guidance worry you? Do you feel the senior commander’s guidance is correct and appropriate?

A. Is it possible for the garrison commander to find, “a way to make all these direct hires and skip the whole hiring panel step”?

Unlikely. Title 5 USC 9905 grants direct hire authority for certain, specific competitive service positions in DOD. If an organization, or a particular type of position within that organization, is not currently designated as having direct hire authority, you probably

cannot “make it happen” just because you want to fill the position quickly. If your organization does have direct hire authorities, proceed with caution. The absence of the usual “guardrails” (e.g., impartial panels, “the rule of three”, etc.) in the hiring process can lead to perceptions/accusations of favoritism, preferential treatment, or other abusive hiring practices.

B. Is it appropriate for the senior commander to direct the hiring authority to not consider “Soldiers looking for a retirement job,” or existing Department of the Army Civilians for these positions?

No. IAW 5 USC 2302(b)(6) (Prohibited Personnel Practices), any Government employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

C. Is it appropriate for the senior commander to direct the hiring authority to give preference to “young professionals”?

No. IAW 5 USC 2302, giving preference to “young” applicants would injure the prospects of older applicants and is thus prohibited.

D. Is it appropriate for the senior commander to attempt to strongly influence the garrison commander into hiring Mr. Perfection into one of the new positions?

No. Once again, IAW 5 USC 2302(b)(6), giving preference to Mr. Perfection would injure the prospects of all other applicants and is thus prohibited. Also, 5 CFR 2635.101, par. (b)(8) is clear that the senior commander must act impartially and not give preferential treatment to any private organization or individual. Paragraph (b)(14) further states that the senior commander “shall endeavor to avoid any action creating the appearance that they are violating the law or the ethical standards set forth in this part.” Thus, even the **appearance** of impropriety in hiring Mr. Perfection can result in a finding of misconduct against the senior commander.

E. Is it appropriate for the senior official to instruct the garrison commander to create a position description that favors the “skills that Mr. Perfection already has in abundance”?

No. Once again, 5 CFR 2635.101 makes it clear that the senior commander must act impartially and not give preferential treatment to any private organization or individual. Custom designing a position description to create an advantage for Mr. Perfection is preferential treatment.

F. Is it appropriate for the senior commander to direct the hiring of one African American and one Hispanic individual into the new position?

No. Although seeking a diverse workforce is not impermissible, diversity must be accomplished consistent with existing law and policy. It doesn’t matter that the senior

commander is seeking “diversity,” they cannot direct that, “race, color, religion, sex, national origin, reprisal, disability, age, sexual orientation, gender identity, [or] status as a parentage” be used as criteria for, or against, hiring a particular candidate (5 USC 2302(b)(6) and AR 690-12, par. 1-6).

G. Is it appropriate for the senior commander to direct the hiring of at least 30 percent females into new positions?

No. Once again, it doesn't matter that the senior commander's intent is to obtain a balance between male and female employees in the office. 5 USC 2302 and AR 690-12 prohibit the senior commander from using sex as criteria for hiring or not hiring a candidate.

## Civilian Hiring Process

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### A. Common Issues/Problems.

1. SO is unfamiliar with 5 USC 2302(b)(6) (Prohibited Personnel Practices) and 5 CFR, Section 2635.101 (Basic Obligation of Public Service).

2. SO and staff are unfamiliar with Civilian Personnel Advisory Center practices and requirements.

3. SO attempts to steer the hiring process to favor a skilled or valued (by the SO) job candidate, “for the good of the organization.”

4. SO attempts to steer the hiring process to favor an individual whom they may know from current or prior assignments (e.g., “SFC Knowsall is retiring and we need to retain his skill set in the organization”).

5. Lack of clear communication across the organization to prevent the “appearance” of preferential treatment.

### B. Hiring Civilian employees must always adhere to statutory/regulatory guidance.

1. SO should never make adjustments to the hiring process that are designed (or appear to be designed) to benefit a certain job applicant.

2. Title 5 USC 2302(b)(6) (Prohibited Personnel Practices) states, “(b) Any employee who has authority to take, or direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority... (6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.”

3. 5 CFR 2635.101 states in par. (b)(8) that employees shall act impartially and not give preferential treatment to any private organization or individual. Paragraph (b)(14) states, “employees shall endeavor to avoid any action creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have

been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.”

## Summary

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The situations in this booklet describe various potential issues that may appear unclear to senior officials and their front office staff. After reviewing and discussing each situation, an SO and his/her staff should have a better understanding on how to navigate these situations and take appropriate actions. We hope you will use this booklet as a tool, but strongly advise you to engage early and often with the appropriate personnel and entities, including a legal entity (e.g., staff judge advocate/command ethics advisor). As noted in the introduction, this booklet does not establish policy, nor is it directive in nature. It should not be used as a substitute for Army-mandated ethics training or staff research and a legal opinion. Should you or your staff have questions related to this booklet, please reach out to the writers/editors of this publication at [usarmy.pentagon.hqda-otig.list.tmt-saig-editor@mail.mil](mailto:usarmy.pentagon.hqda-otig.list.tmt-saig-editor@mail.mil).

## **Appendix: References**

### **Situation 1: Whistleblower Reprisal**

- 5 USC 2302
- 10 USC 1034
- 10 USC 1587
- 10 USC 2409
- PPD-9, Change 3.
- DOD Directive 1401.03, "DoD Nonappropriated Fund Instrumentality (NAFI) Employee Whistleblower Protection," 13 June 2014
- DODD 7050.06, "Military Whistleblower Protection," 17 April 2015
- Defense Federal Acquisition Regulation (DFAR), Subpart 203.9
- Army Regulation (AR) 20-1 (The Inspector General System), 23 March 2020
- AR 600-20 (Army Command Policy), 24 July 2020
- Assistance and Investigations Guide, Part Two, Chapter 9

### **Situation 2: Involvement with a Non-Federal Entity (NFE)**

- 31 USC 1353
- 5 CFR 2635.101 (b)(8)/.702(b)/.808
- Joint Ethics Regulation (JER) (3-210/3-211)/DOD 5500.07-R
- DOD Instruction (DODI) 5230.29, "Security and Policy Review of DoD Information for Public Release," 14 April 2017
- DODI 4515.13, "Air Transportation Eligibility," 23 October 2020
- AR 360-1 (The Army Public Affairs Program), 25 May 2011
- <https://dodsoco.ogc.osd.mil/ETHICS-TOPICS/Travel-and-Transportation/Toolbox-Travel-and-Transportation/>

### **Situation 3: Official Travel**

- DOD Directive 4500.56, "DoD Policy on the Use of Government Aircraft and Air Travel," 14 April 2009, IC [Interim Circular] 5, 3 April 2019
- JER/DOD Directive 5500.07-R
- DODI 1315.09, "Utilization of Enlisted Aides (EAS) on Personal Staffs of General and Flag Officers (G/FOS)," 6 March 2015, IC 1, 1 December 2017
- DODI 4500.43, "Operational Support Airlift (OSA)," 18 May 2011
- DOD Administrative Instruction 109, 31 March 2011, IC 1, 22 May 2017



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- <https://dodsoco.ogc.osd.mil/ETHICS-TOPICS/Travel-and-Transportation/Toolbox-Travel-and-Transportation/>
- AR 58-1 (Management, Acquisition and Use of Motor Vehicles), 23 March 2020
- AR 600-8-10 (Leaves and Passes), 3 June 2020
- Army Directive 2017-05 (Secretary of the Army Policy for Travel by Department of the Army Senior Officials)

### **Situation 4: Personal Travel**

- 5 CFR 2635
- JER/DOD 5500.07-R
- DODI 1315.09, "Utilization of Enlisted Aides (EAS) on Personal Staffs of General and Flag Officers (G/FOS)," 6 March 2015, IC 1, 1 December 2017
- DOD Administrative Instruction 109, 31 March 2011, IC, 1, 22 May 2017
- Joint Travel Regulation: <https://www.defensetravel.dod.mil/Docs/perdiem/JTR.pdf>
- AR 58-1 (Management, Acquisition and Use of Motor Vehicles), 23 March 2020
- AR 600-8-10 (Leaves and Passes), 3 June 2020
- OMB Circular No. A-126, "Improving the Management and Use of Government Aircraft"

### **Situation 5: Use GOV Personnel and Resources**

- 5 CFR 2635
- JER/DOD 5500.07-R
- DODI 1315.09, 6 March 2015, IC 1, 1 December 2017
- AR 614-200 (Enlisted Assignments and Utilization Management), 25 January 2019

### **Situation 6: Command Climate/Failure to Act**

- 10 USC 7233
- AR 600-20

### **Situation 7: Gesture of Thanks/Receipt of Gift**

- 5 CFR 2635 (202, 206, 302)
- JER/DOD 5500.07-R
- DODD 1005.13, "Gifts and Decorations from Foreign Governments," 19 February 2002

**Situation 8: Contractor Interactions and Staff vs. Personal Responsibility**

- 18 USC208
- 5 CFR 2635
- JER/ Regulation/DOD 5500.07-R
- AR 25-2 (Army Cybersecurity), 4 April 2019
- Federal Acquisition Reg. and Supplements

**Situation 9: Prohibited Personal Practices**

- 5 USC 9905
- 5 USC 2302(b)(6)
- 5 CFR 2635.101
- AR 690-12 (Equal Employment Opportunity and Diversity)

Annex: 2021 Senior Official Front Office Exportable Training Package (Briefing Templates)

## **Annex: Department of the Army Inspector General 2021 Senior Official Front Office Exportable Training Package (Briefing Templates)**

The following briefing slides are provided to assist in the presentation of this material in a classroom environment. Facilitators who wish to download a pdf version of this Annex may do so by visiting the Army Publishing Directorate at:

<https://armypubs.army.mil/default.aspx>. You can locate the booklet and separate Annex by clicking on “Publications,” → “Administrative” (on the left-hand side of the page), scrolling down/and clicking on “Principal Official Guidance,” and finally by scrolling down and clicking on “The Inspector General.” Since this is a CUI document; ensure all CUI protocols (marking, encryption, handling, distribution, etc.) are followed.

Additionally, if you’d like a separate PowerPoint version of this Annex, please reach out to USARMY Pentagon HQDA OTIG Mailbox SAIG AI Office at [usarmy.pentagon.hqda-otig.mbx.saig-ai-office@army.mil](mailto:usarmy.pentagon.hqda-otig.mbx.saig-ai-office@army.mil)

Our hope is that you and your team will use these slides as an opportunity to engage in meaningful and thought-provoking conversation about the situations presented in these slides. Please note that this training tool does not establish policy, nor is it directive in nature. It should not be used as a substitute for Army-mandated ethics training or staff research and a legal opinion.

*Department of the Army Inspector General*

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**Department of the Army  
Inspector General**

**2021 Senior Official Front Office  
Exportable Training Package**

OGC Review: 14 July 2021  
OTJAG Review: 20 July 2021





## Purpose

- Provide a collective training tool and best practices gathered from Department of the Army Inspector General (DAIG) observations.
- Avoid common pitfalls associated with personal/support staff actions.
- Provide vignettes inspired by real-world allegations of impropriety.
- Leverage lessons learned from DAIG observations and investigations.
- Provide a resource to prepare senior leaders and their staff to correctly make informed decisions based on regulations and or policy.



## \*Background



- Many problems and issues arise from the actions of a senior official's (SO) personal staff; most are due to the desire to accomplish the mission and ignorance of the rules and regulations.
- There are no ARs or Army doctrinal references that address "Senior Official Front Office Operations."
- A training resource is needed—not an all-encompassing package—but one that will facilitate/drive discussion and understanding of issues that can lead to allegations (or perceptions) of impropriety.



\*Note, this training package is a revision and replacement for DAIG's 2016 SO Front Office Exportable Training Package. This version contains updated and new vignettes, as well as updates to relevant policies, regulations, instructions, etc.

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## Important Disclaimers

**This training package is NOT:**

- Establishing or changing Army policy.
- Directive in nature.
- A substitute for Army-mandated ethics training events.
- To be used as a substitute for staff research or a legal opinion.

**The training package is:**

- Representing **Army** policy and the implementation of DOD/Statutory guidance, but does **NOT** necessarily apply to Joint Commands or other Services.
- Designed to address a **narrow range** of ethical/policy issues often encountered by personal/support staff.

**CRITICAL NOTE:** This package is based on the Army's interpretation of several current statutes, DOD directives, Army regulations (ARs) and policies. Always ensure you are using the most current Army/DOD guidance **before** making a recommendation/decision regarding the issues discussed in this product.

## Things to Consider



- What formal training has your aide/executive officer (XO)/chief of staff (COS) received?
- When was the last time your personal staff conducted collective training on “Front Office Operations”?
- On your “worst” day, are you confident that your staff would advise you not to do something because it violates policy?
- Does your personal staff understand where the “red-lines” are? Are you sure?
- Trust your instincts to tell you when something is wrong. However, use of effective processes and standard operating procedures will minimize misinterpretation.





## Recommended Audience



The intent of this training package is to provide an SO and their front office (personal/support staff) with a collective training event, led/moderated by the SO.

The recommended training audience follows:

- COS,
- XO,
- Secretary of the General Staff,
- Aide-de-camp,
- Enlisted aide,
- Administrative assistant/secretary,
- Staff judge advocate/command ethics advisor,
- G-8/resource management representative,
- Command inspector general, and
- Protocol officer/NCOIC.





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- Use of GOV or Rental Car on Official Travel

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Situation 8: Contractor Interactions and Staff vs. Personal Responsibility

Situation 9: Prohibited Personnel Practices



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## Situation 1: Reprisal



An SO is conducting a “Senior Slate” review with his/her staff considering future moves for lieutenant colonels (LTCs) in their organization with the XO, the deputy commander (general officer), the command sergeant major (CSM), and the G-1. The G-1 begins the review with LTC Smith who is being considered for a move into a key developmental position within the organization. At that point, the SO interrupts the G-1 with the following, “Bob, I think we need to hold off on discussing a move for LTC Smith at this time. I realize that based on her record, she is a top-tier candidate for this job; heck, as of last week I would have said that she was hands down the front-runner for the position. However, COL (P) Hatman approached me yesterday with some troubling news. He alleges that LTC Smith has been working to undermine his command.”

At this point the deputy adds, “Roger. I heard the same thing from COL(P) Hatman after the awards ceremony on Monday. Apparently, he (COL(P) Hatman) is convinced that the congressional inquiry that came down last week about the 123d Training Group\* was motivated by a conversation LTC Smith had with Representative Taylor during the congressional delegation in June, and that he was going to “look into it all.” COL(P) Hatman seemed pretty upset and asked if we could hold off on any moves until he was sure of where LTC Smith’s loyalties truly lie.” At this point, the meeting is interrupted by a priority phone call, and the SO tells all present they will reconvene after lunch.

**Please Discuss:** If you were the XO, and you were reviewing the meeting with the CSM later that afternoon would anything worry you? Do the conclusions reached comply with all relevant statutes/DOD instructions (DODIs) and ARs? Do you see any larger issues at work here other than a simple reassignment?



\* Fictional battalion-sized organization assigned to COL(P) Hatman’s Command.

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## Reprisal Discussion\*



**1. Background:** For this scenario, it is essential that you understand the concepts outlined below.

**a) Definition of Whistleblower Reprisal.** In accordance with Section 1034, Title 10, United States Code (10 USC 1034), Whistleblower Reprisal is the act of taking (or threatening to take) an unfavorable personnel action or withholding (or threatening to withhold) a favorable personnel action because the Service member made or was thought to have made a protected communication (e.g., lawful communication reasonably believed to be true by the complainant) to:

- Members of Congress;
- Inspectors general (IG);
- DOD audit, inspection, investigation, or law enforcement organizations;
- Any person or organization in the chain of command;
- Any other person designated pursuant to regulations or established administrative procedures to receive such communications (e.g., Equal Opportunity, Safety Office, etc.); or
- As part of a court-martial proceeding, specifically, complaints of sexual assault or sexual harassment.

Note: Any communication to a Member of Congress, or an IG, no matter the topic, is a protected communication. Communication to the other listed individuals or agencies are only protected when presenting a violation of statute, regulation, rule, etc.



\*This is a highly simplified discussion of a complex topic that is governed by a wide range of statutes and policies. **DO NOT** use this slide as a legal/regulatory/policy reference.

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## Reprisal Discussion\*



**b) The Four Elements of Proof.** Key to understanding Whistleblower Reprisal is an understanding of the four elements of proof a Whistleblower Reprisal investigator must consider in the course of their investigation:

- **Element #1: Protected Communication-Did the complainant make, or was perceived to make a “protected communication”?** A protected communication can be verbal, written, or electronic and even includes statements that a complainant is simply preparing to make a protected communication (e.g., “I am going to write my congressman.”). For a Whistleblower Reprisal investigation to be substantiated the answer for Element #1 must be **“Yes.”**
- **Element #2: Personnel Action-Was there an unfavorable personnel action, the threat of an unfavorable personnel action, the withholding of a favorable personnel action or the threat of withholding a favorable personnel made against the complainant?** Did the suspect take or threaten to take any personnel action\*\* against a member of the Armed Forces that affects, or has the potential to affect, that member’s current position or career? For a Whistleblower Reprisal investigation to be substantiated the answer for Element #2 must be **“Yes.”**

\*\*Defense Directive 7050.06, “Military Whistleblower Protection,” April 17, 2015, defines a “personnel action” as: “any action taken on a Service member that affects, or has the potential to affect, that member’s current position or career. Such actions include promotion; disciplinary or other corrective action; transfer or reassignment; a performance evaluation; decisions concerning pay, benefits, awards, or training, relief and removal; separation, discharge; referral for mental health evaluations in accordance with DOD Instruction 6490.04[...]; and any other significant change in duties or responsibilities inconsistent with the Service member’s grade.”



\*This is a highly simplified discussion of a complex topic governed by a wide range of statutes and policies. **DO NOT** use this slide as a legal/regulatory/policy reference.

## Reprisal Discussion\*



- **Element #3: Knowledge-Did the suspect of the Whistleblower Reprisal allegation know about the Protected Communication made by the complainant before they took the unfavorable personnel action?** For a Whistleblower Reprisal investigation to be substantiated the answer for Element #3 must be **"Yes."**
- **Element #4: Causation-Would the same personnel action(s) have been taken, withheld, or threatened absent the Protected Communication?** Would the suspect have taken, threatened to take, withheld or threatened to withhold the same personnel action absent the Protected Communication made by the complainant? This is often the question that determines the outcome of the investigation. It is often the most difficult question to determine, as it requires the investigator to make a conclusion about the suspect's state of mind regarding the personnel action in question. To do this the investigator must consider all of the following:
  - The reason the suspect undertook the personnel action.
  - The suspect's motive for the personnel action.
  - The timing between the Protected Communication and the personnel action.
  - Was there disparate treatment in how the suspect dealt with other Soldiers in similar situations?

For a Whistleblower Reprisal investigation to be substantiated the answer for Element #4 must be **"NO."**



\*This is a highly simplified discussion of a complex topic governed by a wide range of statutes and policies. **DO NOT** use this slide as a legal/regulatory/policy reference

## Reprisal Discussion\*



2. **Scenario Discussion.** If the SOs in this scenario ultimately decided to hold off on moving LTC Smith, and you were the XO testifying under oath months later as part of a Whistleblower Reprisal investigation how would you answer the following questions?

a) **Did LTC Smith make, or was perceived to make a “protected communication”?**

“Apparently COL(P) Hatman is convinced that the congressional inquiry that came down last week about the 123d Training Group was inspired by a conversation LTC Smith had with Representative Taylor during the congressional delegation in June.”

Answer: “**YES**” (Element#1: Protected Communication)

b) **Did LTC Smith have a favorable personnel action withheld?** “I think we need to hold off on discussing a move [into a key developmental billet] for LTC Smith at this time.”

Answer: “**YES**” (Element#2: Personnel Action)



\*This is a highly simplified discussion of a complex topic governed by a wide range of statutes and policies. **DO NOT** use this slide as a legal/regulatory/policy reference

## Reprisal Discussion\*



c) Did the SOs know about the Protected Communication made by the Complainant before they took the unfavorable personnel action? "COL(P) Hatman approached me yesterday with some troubling news," and "I heard the same thing from COL(P) Hatman after the awards ceremony on Monday. Apparently, he is convinced that the Congressional Inquiry that came down last week about the 123d Training Group was inspired by a conversation LTC Smith had with Representative Taylor during the congressional delegation in June."

Answer: "YES." (Element #3: Knowledge)

c) Does a preponderance of credible evidence establish that the SOs would have withheld the same favorable personnel action absent the protected communication? "I realize that based on her [ LTC Smith's ] record, she is a top tier candidate for this job; heck, as of last week I would have said that she was hands down the front-runner for the position."

Answer: "NO." (Element #4: Causation)

**3. Bottom Line:** In this scenario, the preponderance of credible evidence would likely establish that all three SOs (the commander, the deputy, and COL(P) Hatman) committed Whistleblower Reprisal by withholding LTC Smith's favorable personnel action because of a protected communication LTC Smith had with a Member of Congress.



\*This is a highly simplified discussion of a complex topic governed by a wide range of statutes and policies. DO NOT use this slide as a legal/regulatory/policy reference



## Whistleblower Reprisal\*



1. Common Issues/Problems: If you **ever** find yourself having this conversation with yourself or with others:

"I want to [do something unfavorable / withhold something favorable] with [Subordinate X] because they were disloyal and went behind my back by having a conversation with [Official Y]."

**Stop!**  
**Think before you act!**

2. If you act and [Official Y] is on the **long** list of individuals your subordinate has a **right** to communicate with, then you are likely committing Whistleblower Reprisal.



\*This is a highly simplified discussion of a complex topic that is governed by a wide range of statutes and policies. **DO NOT** use this slide as a legal/regulatory/policy reference.

## Situation 2: Involvement with a Non-Federal Entity (NFE)



An SO asked their staff to review an email titled, "End of Year Business," which they intend to send via official email account. In this email, the SO discusses a variety of topics, and near the end of the email the SO mentions the local contributions made by the Association of Community Members Supporting the Army (ACMSA\*). The email states, "The impact of ACMSA on our local military community is undeniable. In the past year, the local chapter of ACMSA provided 70 local Army families with \$25,000 in emergency assistance. Their national organization has tirelessly advocated for better military pay and benefits. I believe that part of being a professional is giving back to the community. Giving to organizations like ACMSA is a great place to start." At the conclusion of the email, SO mentions accepting an invitation to be the keynote speaker at ACMSA's upcoming Valentine's Day Dinner & Silent Auction and then says, "I look forward to shaking your hand in the reception line for this worthy event." At the bottom of the email, there is a hyperlink to the ACMSA membership webpage and the email address of the local ACMSA membership/fundraising coordinator. When the XO clicks the hyperlink, he sees a picture of the SO in their Army uniform followed by their official rank, name, and current DOD position (under the SO's name was their official email address). In addition to this information, the webpage also references the SO as the ACMSA state membership drive co-chairman.

**Please Discuss:** Is this draft email appropriate and compliant with all relevant statutes/DODIs and ARs?



\* A fictional organization aimed at advocating (not an advocating lobbyist) to Congress for various military causes.

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## NFE Involvement Scenario Discussion (1 of 2)



1. Does this email “cross the line” and endorse an NFE?  
**Yes.** Although SO doesn’t say it outright, it is clear that the SO is encouraging membership and or donations to ACMSA.\* The SO, in his/her official capacity, is **prohibited** from encouraging his/her subordinates to join a specific NFE (JER/DOD 5500.07-R, par. 3-209). In addition, the SO should **not** have included the email for the local ACMSA membership/fundraising coordinator (5 CFR 2635.101(b)(8)).
2. Is it okay for an SO to encourage subordinates to become members in an NFE?  
**No.** An SO is free to encourage NFE membership/fundraising in his/her **personal** capacity to his/her friends but **not** subordinates (see 5 CFR 2635.702(a)-(b)). Even if the SO had only addressed his/her personal friends in the message, it would **not** be appropriate to send the email via a Government email account.
3. Is it appropriate for the SO to greet attendees as they arrive at the ACMSA\* Dinner?  
**No.** Having the SO greet individuals as they arrive at an NFE event, (e.g., “stand in the reception line”) which involves fundraising, gives the appearance that ACMSA is using the SO as a “draw” to the fundraising event, which is prohibited by ethics rules (5 CFR 2635.808 and JER 3-210).



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\* A fictional organization aimed at advocating (not an advocating lobbyist) to Congress for various military causes.

## NFE Involvement Scenario Discussion (2 of 2)



4. Is it appropriate for the SO to give an official speech at the ACMSA\* fundraising event?  
**Yes, but with limitations.** The ethics rules at 5 CFR 2635.808(a)(3) and the JER (DOD 5500.07-R, par. 3-211) allow DOD employees to speak at events sponsored by NFEs when, among other factors, “the speech expresses an official DOD position in a public forum in accordance with public affairs guidance.” However, because this is a fundraising event, the SO should consider perception issues that could arise from speaking at the dinner, even if it is on an official topic. (**The SO should obtain a written ethics opinion before proceeding.**)
5. Should the SO mention ACMSA fundraising/membership goals in his/her official speech?  
**No.** Ethics rules prohibit active and visible participation in fundraising for a private organization is prohibited by ethics rules. The SO may deliver an official speech only as discussed above (5 CFR 2635.808 and JER 3-210 and 3-211).
6. Was the use of SO’s image, name, rank/duty title, and official email on the ACMSA webpage acceptable?  
**No.** The use of SO’s name and rank is likely permissible, but use of the current duty title implies governmental sanction or endorsement (5 CFR 2635.702(b) and (c) and 807(b)). Also, the SO should **not** use his/her official email address for NFE membership or fundraising activities.



\* A fictional organization aimed at advocating (not an advocating lobbyist) to Congress for various military causes.

# Annex: 2021 Senior Official Front Office Exportable Training Package (Briefing Templates)

Department of the Army Inspector General

## Processes and Responsibilities for receipt of an invitation to attend/speak at an NFE-sponsored event

(5 CFR 2635/DOD JER/AR 360-1)



### Record the Circumstances of the Invitation:

- |   |  |
|---|--|
| <p>a) Gather Information about the NFE-sponsored event (e.g., defense contractor, tax-exempt status, NFE membership criteria).</p> <p>b) Is NFE offering to pay SO's attendance/meal fees? If so, how much are the fees?</p> <p>c) Is NFE inviting the SO's spouse/significant other?</p> <p>d) Is NFE asking the SO to speak at the event? On what topic? Will SO be in uniform?</p> | <p>e) Is the event free, or is there an attendance fee?</p> <p>f) Is NFE offering to pay any travel costs?</p> <p>g) Is the event open to the general public or only to a select audience?</p> <p>h) How many, or are any other, DOD speakers on the agenda?</p> <p>i) What admission fees, if any, are being charged to <b>other attendees</b>?</p> |
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# Annex: 2021 Senior Official Front Office Exportable Training Package (Briefing Templates)

Department of the Army Inspector General

## Points of Discussion: Receipt of an Invitation to Attend or Speak at an NFE-Sponsored Event

(5 CFR 2635/DOD JER 3-211/AR 360-1)



### 1. Common Issues/Problems:

- a) SO fails to consult a legal advisor to evaluate requests for logistical support to NFEs. (For more information, see DOD JER 3-211.)
- b) SO accepts a gift of attendance at a widely attended NFE event (in a personal capacity) without reporting it on the Office of Government Ethics (OGE) Form 278e [Public Financial Disclosure Report] as required, or without first getting a legal review/memo and approval to attend. (For more information, see OGE 278e instructions.)
- c) SO accepts a gift of travel expenses from an NFE without obtaining proper approval. (For more information, see 31 USC 1353 and DOD JER Chapters 3 & 4.)
- d) Invitation comes from an Army office or official rather than from the NFE itself, with no evidence of Secretary of the Army-level co-sponsorship approval.
- e) SO wishes to speak at an NFE conference; however, the majority of speakers are Army.
- f) SO wishes to speak at an NFE event that is a fundraiser; NFE seeks to use the SO as a draw.

### 2. Proper handling of invitations with adherence to the ethics rules:

- a) Invitations to attend NFE-sponsored events should be formally recorded and evaluated as potential gifts.
- b) All invitations to NFE-sponsored events should receive a legal review **before** acceptance.
- c) SO may, or may not, be able to attend depending on the circumstances.
- d) If SO can (and does) attend in a personal capacity, he/she may have to report the gift of free attendance on the OGE 278e if it exceeds the gift reporting threshold.
- e) If SO will participate, the invitation should also be evaluated by an ethics counselor under the DOD JER, par. 3-211.



## Points of Discussion: Receipt of an Invitation to Attend or Speak at an NFE-Sponsored Event

(5 CFR 2635/DOD JER 3-211/AR 360-1)



3. **Appropriate speaker support for NFE-entity events:**
- a) SO can speak at an NFE conference if legal requirements are met, Army conference policy is followed, and he/she serves as logistical support to the event, or “the speech expresses an official DOD position in a public forum in accordance with public affairs guidance” (DOD 5500.07-R, par. 3-211a or c)).
  - b) SO may not be able to speak at the conference if it costs more than \$804 to attend, and more than 20 percent of the speakers are DOD, or if it costs less than \$804 and the percentage of DOD speakers is more than 50 percent. In all cases, we recommend a thorough legal review. SO may be able to speak at a fundraiser as long as he/she makes an official speech, does not participate in fundraising, does not serve as a draw (e.g., does not ask for donations and does not stand in receiving line), and does not appear to endorse the NFE (5 CFR 2635.808 and DOD 5500.07-R).
  - c) SO and spouse/significant other might be able to accept gift of registration fees/meal if SO is speaking.
  - d) Security and policy review of the speech is required in certain instances; consult DODI 5230.29 and AR 360-1.
  - e) See also <https://dodsoco.ogc.osd.mil/ETHICS-TOPICS/Travel-and-Transportation/Toolbox-Travel-and-Transportation/>



## Situation 3: Official Travel (Spouse/MILAIR)



An SO, stationed in the Southwest, is invited to attend the Army Soldier and Family Resilience Conference (ASFRC) (a “service-endorsed” conference/training event) in Washington, DC. The conference organizers asked the SO’s spouse to participate in several working groups/training events (all included in the conference agenda) related to discussing ways to expand job opportunities for Army Family members through community outreach. The spouse, an unaffiliated civilian, is scheduled to be in Kansas City, MO, at a family reunion just before the conference.

The SO asked the staff to develop some travel courses of action (COAs) to consider before he/she makes a decision on attending the event. The SO’s staff produces the following two travel COAs:

a) Military Air (MILAIR) round trip: Use MILAIR to fly the SO to Fort Leavenworth, KS, to pick up his/her spouse (traveling on a non-reimbursable, non-interference basis) and continue on MILAIR to Washington, DC. After the event, return both to home station also using MILAIR. The staff justified this COA because of the reduced cost (no cost to the organization) and scheduling (it’s more convenient for the SO’s schedule than commercial travel given layovers for connecting flights).

b) Commercial air round trip: Fly the SO to the conference and return using commercial air. Fly the SO’s spouse from Kansas City, MO, to Washington, DC, and then back to home station. The staff justified this COA as “other spouse travel,” and by citing an invitational travel authorization (ITA) from the conference sponsor.

**Please Discuss:** Are these COAs both appropriate and compliant with all relevant statutes/DODIs and ARs?





## Spouse Travel/MILAIR Discussion



1. **Who must approve the SO spouse's official travel?**

**Every** instance of spouse travel is considered an "exception to policy." In this example, this course has been designated as "Service endorsed," (a process that requires Army G-3 Training Directorate endorsement and SECARMY approval). Thus, the SO's spouse may travel at the U.S. Government expense as an authorized exception to policy.

2. **Is the MILAIR COA viable and supportable?**

**No**...see below.

a) **Who can approve the SO's MILAIR request ?**

In accordance with (IAW) DODD 4500.56 and DODI 4500.43, in most cases, an official who is "one organization level or higher," must approve a MILAIR request. This generally means that an SO cannot "self-approve" this request, unless he or she is the SECARMY or CSA.

b) **Justification:**

Using MILAIR because it is more convenient for the SO is not a valid justification. IAW DODD 4500.56 and DODI 4500.43, the SO must show why commercial air and or ground resources cannot meet mission requirements before using MILAIR.

c) **Unauthorized Diversion:**

Even if the SO had a valid justification and approval for MILAIR was received from one organization level higher, stopping in Fort Leavenworth to pick up the spouse would be an unauthorized diversion (stopping to pick up the spouse is **not** "non-interference").

3. **Is the Commercial Air COA viable and supportable?**

**Yes.** Because this is a "Service-endorsed" course/briefing and the SO's spouse has been issued an invitational travel authorization by the conference organizer, this is considered other spouse travel and the spouse can travel on an independent basis.



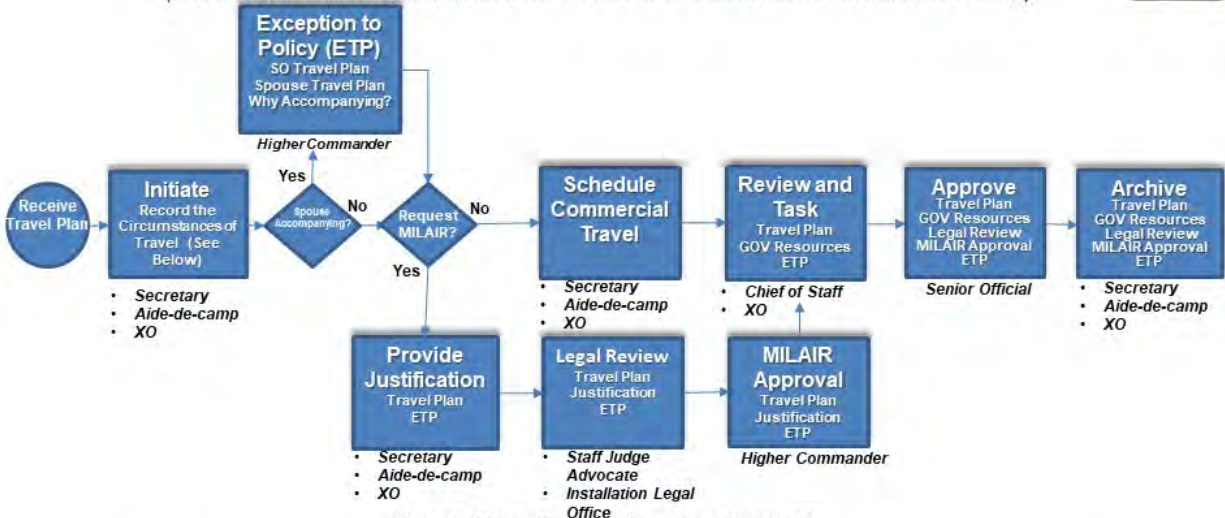
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Department of the Army Inspector General



## Use of MILAIR for Official Travel/Spouse Accompaniment on Official Travel

(31 USC 1344, 1349 /DODD 4500.56 IC 3 /OMB Circular A-126/AD 2007-01/JTR/DODI 4500.43/DODI 4515.13/AD 2007-01)



**Record the Circumstances of Travel:**

- a) Is the SO requesting to travel via MILAIR for official travel? If so, why?
- b) Why is commercial air not a viable option to meet mission requirements? (e.g., pandemic, timing, location, mission, etc.)
- c) Is the SO's spouse accompanying him/her? If so, under what circumstance? (e.g., invitational travel, "unofficial travel," etc.)
- d) Will spouse travel interfere with, cause deviations to, or modify the SO's travel plans?



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Department of the Army Inspector General

## Use of MILAIR for Official Travel

(JTR /DODD 4500.46 IC 3 (24 Jun 14)/DODD 4500.43/DODI 4515.13/AD 2007-01)



### 1. Common Issues/Problems.

- a) SO wants to use MILAIR for official travel without proper approval/justification.
- b) SO wants to bring his/her spouse on MILAIR for official travel.
- c) Attempt to justify MILAIR based on the size of the traveling party and not through justification of each SO's needs.
- d) Policy concerning joint and combatant command use of operational and operational support aircraft differs considerably from what is outlined here. See DOD 4500.56 for details.

### 2. Use of MILAIR must be IAW regulatory guidance.

- a) SO may be able to use MILAIR for official travel if it is cost effective or mission critical, with proper approval.
- b) SO may be unable to have his/her spouse accompany them on MILAIR.
- c) SO may be able to have his/her spouse accompany him/her on MILAIR if accompanying spouse travel is authorized as an exception to policy. The SO may also be able to have his/her spouse accompany him/her on a space-available basis in a mission non-interference status only. See DODD 4500.46 (Incorporating Change 5, 3 April 2019), and Army Directive 2017-05 (Secretary of the Army Policy for Travel by Department of the Army Senior Officials).



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## Spouse Accompaniment on Official Travel

(31 USC 1344, 1349 /DODD 4500.46 IC 5/OMB Circular A-126/AD 2007-01)



### 1. Common Issues/Problems:

- a) SO seeks spouse to accompany on commercial air, at Government expense, without prior approval or justification.
- b) SO seeks to bring spouse on official foreign travel without proper approval or justification.
- c) SO seeks to bring spouse on MILAIR without proper approval or justification.
- d) Perception that SO is inappropriately scheduling travel for/to accommodate his/her spouse.

### 2. Spousal travel must be IAW all rules:

- a) The SO's spouse may travel in an "accompanying spouse" status as an exception to policy. In limited circumstances, the SO's spouse may also accompany on unofficial travel, which is on a "non-interference (reimbursable)" basis (See par. 5 of DODD 4500.46, IC 3; and Army Directive (AD) 2007-01).
- b) Spouse travel should receive a prior legal review even though there is *no requirement* to do so.
- c) See also: <https://dodsoco.ogc.osd.mil/ETHICS-TOPICS/Travel-and-Transportation/Toolbox-Travel-and-Transportation/>.





## Situation 4: Personal Travel in conjunction with TDY, Use of Resources/GOV-Furnished Rental Car

An SO is planning to travel with his command sergeant major (CSM) (on TDY) from OCONUS to CONUS for an Army-approved conference that is set to end on Friday at 1230 hours. The SO is scheduled to speak at the conference and then attend two working groups. One working group is scheduled for Friday morning. Due to the availability of flights, the itinerary calls for the SO and CSM to stay overnight after the last conference event (the only other flight option would mean missing the Friday conference activities to arrive at the airport for an 0830 flight OCONUS). The SO's authorizations include lodging, a rental car, and the conference fee.

The day before the trip (after the morning huddle), the SO and his XO are reviewing the schedule for the next few days. The SO summarizes his travel plans as follows:

"Shannon (the XO), we already covered the conference schedule, so let's just review our travel plans. CSM Thomas and I fly out at 0800. I was just going to drive to the airport myself, but since CSM Thomas and I both live on post, he volunteered to drive for both of us. CSM Thomas is going to swing by my quarters in his POV at 0500hrs and pick me up on the way to the airport. I will offer to cover the cost of the gas, but you know CSM Thomas, he never takes me up on it. We have a direct flight, and I will pick up the rental car at the airport. We fly back on Saturday, and I will ride home with CSM Thomas. Fairly straight forward except for having to stay over Friday night because of flight availability. There is one silver lining about the lay-over though. My brother lives about 50 miles from the conference hotel. Once the conference wraps up, I plan on driving up to his place on Friday night to catch up and buy him dinner."

**Please Discuss:** Is the SO's plan appropriate and compliant with all relevant statutes, DODIs, and ARs? Should the SO offer to "pay for the gas" for the trip to the airport and back? Could there be any "perception" issues arising from the SO's trip to see his relative? What expenses can the SO use a Government Travel Charge Card (GOVCC) to pay for on Friday evening? Can the SO use his Government-furnished rental car to drive to the relative's home?



# Annex: 2021 Senior Official Front Office Exportable Training Package (Briefing Templates)

Department of the Army Inspector General

## Airport Transport Discussion



- 1. Was it appropriate for the SO to ride in CSM Thomas' POV to and from the airport?** Per 5 CFR 2635 .302(b), the SO can only do so if he/she reimburses the staff member (at market rates) for the gift of convenience (his time/gas, etc.) or if the CSM receives mileage for the POC travel to and from the airport (with authorizing official approval, both travelers could claim mileage and parking, or commercial transportation costs for travel to and from the airport on their travel vouchers, but only one should file if both ride in the same POV). There is also a potential perception issue where observers might believe that the subordinate was "volun-told" to give the SO a ride to the airport.
  - Is the airport located where other means of transportation (e.g., DOD or public transportation) are unavailable?
  - If other means of transportation are available, do they meet mission requirements? (i.e., is public transportation available for a flight departing at 2300 hours?)**Bottom Line—avoid this situation.**
- 2. Would it have been proper if CSM Thomas had obtained a GOV and picked the SO up at his/her quarters on the way to the airport?** **Probably not.** Exceptions exist when they are "necessary because of emergency situations or to meet security requirements, terminals are located in areas where commercial methods of transportation cannot meet mission requirements in a responsive manner, [...] because other methods of transportation cannot reliably or adequately meet mission requirements, based on a case-by-case factual assessment." However, in most cases Army policy doesn't allow this. Always get a legal review before using a GOV for domicile to duty/transportation hub. (For further clarity, see AR 58-1, par. 2-3i and 2-3j.)
- 3. Would it make a difference if CSM Thomas and the SO had met at the headquarters and departed for the airport in a GOV? Maybe.** Under limited circumstances, as outlined in AR 58-1 (par. 2-3i regarding emergencies and security requirements), as authorized in the Pentagon area in accordance with (IAW) DOD Administrative Instruction (AI) 109 (see slide 30) and SECARMY Memorandum (Non-Tactical Vehicle Policy Guidance), 27 September 2019 (see slide 32), it **may** be permissible to use a GOV/NTV for transportation to a commercial or military transportation terminal. SOs and their staff should keep in mind that cost to the Government is never a consideration when making AR 58-1 or DOD AI 109 determinations. Always obtain a legal review before using a GOV for transportation to a transportation hub.

DOD AI 109 stipulates that if DOD personnel in the Pentagon area are required to take transportation for official business, they should use the following methods below, in the order shown, to the extent that they meet mission requirements.

- During Normal Published Duty Hours: (1) DOD-scheduled shuttle service, (2) Scheduled public transportation (rail or bus), (3) DOD vehicle, (4) Voluntary use of POV on a reimbursable basis, and (5) Taxicab/Uber/Lyft on reimbursable basis.
- Before or After Normal Published Duty Hours: (1) DOD-scheduled shuttle service, (2) Scheduled public transportation (rail or bus), (3) Voluntary use of POV on a reimbursable basis, (4) Taxicab/Uber/Lyft on reimbursable basis, and (5) DOD vehicle.



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## Personal Travel in conjunction with TDY Scenario Discussion



1. **What expenses can the SO pay for using their GOVCC on Friday evening?**  
The SO can only pay for his/her **own** dinner (not the relative's...even if the SO intends to use per-diem funds to "pay back" the GOVCC account when the SO submits a travel voucher), the SO's lodging, and the gasoline used for the Government-furnished rental car (when used for official purposes).
2. **Would using a Government-furnished rental car to visit a relative be acceptable?**  
**No.** The rental car's use is limited to official purposes. A 50-mile drive to visit a relative is not official.
  - a) **Would it matter if the rental had unlimited mileage? No.**
  - b) **Would it matter if the SO uses personal funds to pay for the rental car gas used on Friday night? No.**
  - c) **What if it was 3 miles to the relative's house instead of 25 miles? Maybe.** Short deviations that support "subsistence, health or comfort" **may** be allowed...**get a legal opinion first.**
3. **What actions could the SO take to ensure their visit to the relative adhered to regulations/standards?**  
Ask the relative to come visit/pick up the SO in a POV, or the SO could rent a separate car, using personal funds (and **not** using the GOVCC), to drive to see the relative.
4. **Could any "perception" issues arise from the SO's trip to see the relative?**  
Yes. Even though the personal staff know that the timing of the return flight was dictated by conference activities and airline schedules, an outside observer might perceive the SO extended the trip a day for the sole purpose of visiting their relative. A memorandum for record (MFR) might be advisable to address this.



# Annex: 2021 Senior Official Front Office Exportable Training Package (Briefing Templates)

Department of the Army Inspector General



## Processes and Responsibilities for Airport Transport/Personal Travel in Conjunction with TDY/Use of GOV-Furnished Rental Car/Use of GOV Resources

(5 CFR 2635/DOD Joint Ethics Regulation/DODI 1315.09/Joint Travel Regulation/AR 600-8-10/AR 58-1)



### Record the Circumstances of the Official Travel:

- What official event(s) are scheduled?
- What personal activities are scheduled?
- Will attendance at personal events impact/modify the travel plan? (If yes-proceed with extreme caution.)
- Can attendance at personal events be perceived as impacting/modify the travel plan? (consider MFR)
- Will the SO take leave in conjunction with TDY?
- How will the SO get to the airport? Get home from the airport? (Consult AR 58-1, par. 2-3i and DOD Administrative Instruction 109 before tasking GOV individuals/equipment to support.)
- When does the SO plan to use a GOV-provided rental vehicle, and where?
- What will the SO use their GOVCC to pay for?

Note: Obtain legal review **before** tasking GOV individuals to support.

Note: Obtain legal review **before** travel begins.







# Annex: 2021 Senior Official Front Office Exportable Training Package (Briefing Templates)

Department of the Army Inspector General

## Use of a GOV on Official Travel to Terminals

(AR 58-1/JTR, SECARMY Memo (Non-Tactical Vehicle Policy Guidance))



<p> SECRETARY OF THE ARMY WASHINGTON</p> <p>27 SEP 2018</p> <p>MEMORANDUM FOR SEE DISTRIBUTION</p> <p>SUBJECT: Non-Tactical Vehicle Policy Guidance</p> <ol style="list-style-type: none"><li>1. Reference Army Regulation 58-1 (Management, Acquisition, and Use of Motor Vehicles), 3 April 2018.</li><li>2. This memorandum clarifies Army policy regarding the use of non-tactical vehicles (NTVs) to transportation terminals, including in the National Capital Region, by affirming the capacity of approving officials to assess whether such use is appropriate and necessary on a case-by-case basis. This guidance, which has been coordinated with the Office of the Secretary of Defense, is effective immediately.</li><li>3. Current Army policy regarding NTV use to transportation terminals is sufficiently flexible to permit broad usage decisions when factually supportable, but it has been severely constricted in practice and interpretation. Accordingly, new language will expressly affirm approving officials' exercise of reasoned discretion to determine whether NTV use to transportation terminals is appropriate.</li><li>4. Army Regulation 58-1, paragraph 3-3(c) will be modified to add subparagraph (7) to expressly authorize discretion to determine that NTV use to transportation terminals is "necessary because other methods of transportation cannot reliably or adequately meet mission requirements, based on a case-by-case factual assessment."</li><li>5. The upcoming revision to the regulation, and this interim guidance, are consistent with statutory, Office of the Secretary of Defense, and U.S. General Services Administration requirements. Appropriate NTV use will always be fact-specific and subject to scrutiny. See the enclosure for examples of appropriate and inappropriate NTV use. Decisions to use NTVs for transportation to terminals, including within the National Capital Region, will always require analysis and justification, and should be exercised by exception, not as ordinary practice. All other NTV policy provisions, including the prohibition on NTV use based solely on reasons of rank, position, prestige, or personal convenience, remain in effect.</li></ol> <p>End</p> <p> Ryan D. McCarty Acting</p> <p>DISTRIBUTION: (See next page)</p>	<p>EXAMPLES</p> <ol style="list-style-type: none"><li>1. Examples of appropriate non-tactical vehicle (NTV) use to transportation terminals include, but are not limited to:<ol style="list-style-type: none"><li>a. A sergeant major was required to attend an official meeting that went longer than planned. He would have missed his temporary duty (TDY) flight departing from the local commercial airport if he had taken public transportation.</li><li>b. A first lieutenant made a permanent change of station to Germany for the first time with her family (spouse, three children, two dogs, and many suitcases). She would have been unable to successfully navigate German public transportation if her sponsor had not picked them up in an NTV.</li><li>c. A general officer attended an official meeting requiring his participation, which he had to postpone by telephone because of the need to travel to the local commercial airport for a TDY flight.</li></ol></li><li>2. Examples of inappropriate use include, but are not limited to:<ol style="list-style-type: none"><li>a. A general officer preferred to be driven to the airport for TDY travel solely because it was more convenient than public transportation.</li><li>b. A staff sergeant did not look into public transportation options for traveling to the local airport for a scheduled, routine TDY trip, opting instead to use an NTV.</li><li>c. An Army Senior Executive Service member landed at the commercial airport at the TDY location and was picked up in an NTV for a meeting at a nearby joint base that was scheduled to occur several hours later.</li></ol></li></ol> <p>Enclosure</p>
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## Attending a Personal Activity in conjunction with Official Travel

(5 CFR 2635/DOD JER/JTR/AR 600-8-10)



1. **Common Issues/Problems:**
  - a) SO wants to travel early or extend official travel to attend a personal activity in conjunction with official travel; appropriate leave/pass provisions apply.
  - b) SO seeks to go on official travel primarily to attend personal event.
  - c) SO seeks to use a rental car to travel to the personal event.
  - d) Perception that SO is scheduling official travel simply to attend a personal event.
  
2. **Attendance at personal activities during travel must be IAW rules, and may not be at any additional cost to the Government.**
  - a) The primary purpose of the travel must be official.
  - b) SO may be able to travel early or extend official travel but will have to take leave during the personal activity portion.
  - c) SO is personally responsible for any additional costs that result from rescheduling commercial air travel and lodging to accommodate the personal activity.
  - d) Government-funded rental car usually cannot be used to support attendance at the personal activity.
  - e) **Caution!** The SO **cannot** use his/her GOVCC to pay for a hotel room during the personal activity with the intention of paying the Government back during the TDY settlement process. This would still be considered using Government funds for personal activities. It is **strongly** recommended the SO check out of the hotel and pay with the GOVCC, then check back into the hotel using a personal payment method for the duration of the personal activity. This will result in two invoices, one clearly related to Government activities and a second clearly related to personal travel/events.



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## Situation 5: Use of GOV Personnel and Resources



An unmarried SO was just injured in a way that will prevent them from driving for a significant period of time. Once the SO is released from the hospital, they must attend daily physical rehabilitation/therapy requirements at a civilian clinic located 15 miles from the installation. The SO's XO has assembled the staff to, "figure out how we are going to take care of the SO to allow them to focus on the mission."

The staff war-gamed the situation and made the following recommendations to the SO:

- a) Hospital Transportation: Once the SO is released from the hospital, the aide-de-camp will use the organization's GOV to retrieve the SO from the hospital and then drive them back to headquarters.
- b) Transportation to and from work: Since the SO is not authorized domicile-to-duty transportation, the XO has instructed the SO's secretary to arrange for a vehicle for hire to pick them up at home at the same time every morning. Whenever the SO is ready to leave in the evening, the secretary would then call and arrange to have a vehicle for hire waiting to drive them home. The secretary would also coordinate with the SO each evening and call for/reserve a vehicle for hire for any "off-duty" travel the SO needed to accomplish before the beginning of the next duty day.
- c) Medical appointments: For the daily physical therapy appointments, XO tasked the aide-de-camp to drive the SO back and forth using the organization's GOV.
- d) Errands: For miscellaneous errands the SO needs to accomplish (laundry, groceries, lunch, etc.), the XO encouraged the staff to "pitch in and help the SO out," but "only do so if you were planning to go to that location anyway."

Please Discuss: Are the recommendations outlined above appropriate and compliant with all relevant statutes/DODIs and ARs?



## Use of Resources Discussion



1. Is the XO's plan, as briefed in the scenario, IAW Army/DOD Policy?
  - a) The aide-de-camp picking the SO up at the hospital: **No.**
  - b) The secretary arranging for transportation to and from work: **No.**
  - c) The aide-de-camp ferrying the SO to and from medical appointments: **No.**
  - d) The staff (not aide-de-camp) running errands: **No.** An SO should avoid accepting voluntary services from personal staff/aide-de-camp for personal (non-official) purposes. Voluntarily services from personal staff/aides are gifts of convenience, which the SO **must** reimburse the personal staff/aide at market rates. Accepting these services can also create perceptions of coercion both inside and outside the staff.
2. **Bottom line:**

IAW the U.S. Code, Comptroller General opinions (e.g., commuting to work is the personal responsibility for all Federal employees) and DOD 5500.07-R (see below), most of the actions the XO outlined in the plan violate a statute/policy.

JER/DODD 5500.07-R, par. 3-303, "Because of the potential for significant cost to the Federal Government, and the potential for abuse, DOD employees, such as secretaries, clerks, and military aides, may not be used to support the unofficial activity of another DoD employee in support of non-Federal entities, nor for any other non-Federal purposes." [except in a few limited circumstances not involving this scenario].
3. **Perhaps the real question the staff, and the SO's supervisor, should ask is, "Why isn't the SO on Convalescent Leave"?**



## Use of Personal Staff for Personal Errands

(e.g., Get Lunch, Pick-up Prescriptions/Laundry, etc.)

(5 CFR 2635/DOD Joint Ethics Regulation/AR 614-200/DODI 1315.09)



### 1. Common Issue/Problem:

- a) SO generally cannot require personal staff to perform errands that are unrelated to performance of official duties.
- b) GOs may require aides-de-camp to occasionally perform certain errands, the performance of which would enable the GO to perform a specific official duty. For example, the GO may ask his aide-de-camp to get laundry so the GO has enough time to travel to the airport for official travel. The GO **cannot**, however, require the aide-de-camp to get laundry on a routine basis.
- c) GOs may require enlisted aides to, "perform tasks that aid the GO in accomplishing military and official responsibilities, including performing errands for the GO [ . . .]" (AR 614-200, par. 8-11).

### 2. Government personnel may only be used for official purposes.

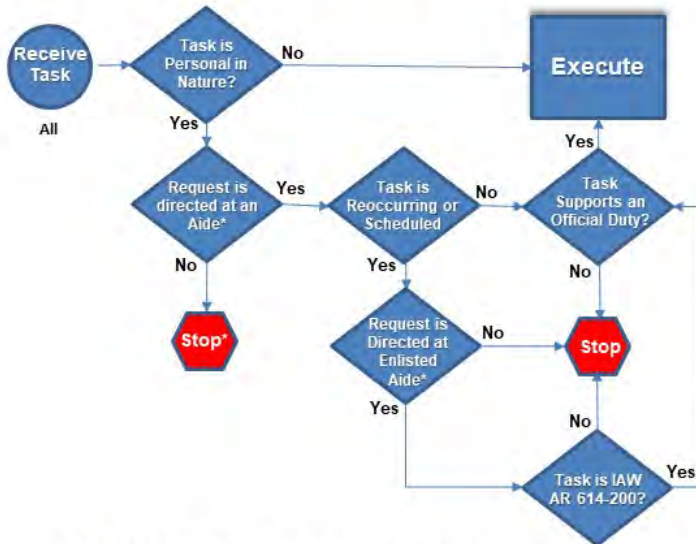
- a) AR 614-200, par. 8-11, outlines appropriate uses of enlisted aides.
- b) The GO can use administrative support services to prepare papers for association or society events, or to be published in journals if certain requirements are met (e.g., the Army derives some benefit).





## Processes and Responsibilities for use of Personal Staff for Personal Errands

(e.g., Get Lunch, Pick-up Prescriptions/Laundry, etc.)  
 (5 CFR 2635/DOD Joint Ethics Regulation/AR 614-200/DODI 1315.09)



\*The roles and responsibilities of XO's, secretaries, or other staff officers are separate and distinct from that of an aide-de-camp or enlisted aide. An XO, secretary, or other staff officer **cannot** be used for an SO's personal tasks. Depending on the circumstances, an SO **may** use an aide-de-camp or enlisted aide for personal tasks that directly relate to the SO's official duties and responsibilities.

**BOTTOM LINE:** Analyze the circumstances of the request **BEFORE** executing.



## Situation 6: Command Climate/Failure to Act



An SO is meeting with his CSM and a subordinate brigade commander to review the results of a command climate survey the subordinate brigade commander recently conducted on their organization.

“Sir, I never liked these surveys much, which is why this is the first one I’ve conducted after 20 months in command, but I have to say that, with the exception of a few bad apples, this was a very positive result.”

After summarizing the encouraging high points of the survey results, the subordinate commander moved on to ‘the bad news’:

“Sir, unfortunately with the good comes the bad. There were several comments that appeared on the survey that just make the organization look bad. Many of them seem to center around that incident last September where a certain NCO got their feelings hurt at the Organizational Ball. One anonymous comment, probably by SSG Thomas or one of her disciples, says that, ‘Several female Soldiers and NCOs were singled out, harassed and called, insulting/sexist names by several male NCOs and officers at the Organizational Ball.’ Sir, I was there, and this didn’t happen, and I told SSG Thomas that when she asked to see me last month under the open-door policy where she said basically the same thing. She even had it all written out and tried to leave a copy with me. Sure there was some horseplay and good-natured ribbing, but nothing threatening, nothing I haven’t already heard in the halls of the headquarters a time or two. I wish SSG Thomas would just let this drop and move on...it’s starting to make me think she needs to be moved to less visible job where her newly minted bad attitude won’t impact the organization as much.”

**Please Discuss:** If you were the CSM in this room, would this conversation bother you? If, after the subordinate commander left, the SO asked you, “Sergeant Major, what do you make of all that?” What would you say to the SO? If you were the SO would you have taken any immediate actions after the conclusion of the brigade commander’s briefing?



## Command Climate/Failure to Act Discussion



1. **Does the commander decide whether a command climate assessment is warranted and when it should be scheduled?** **No.** AR 600-20 (Army Command Policy), Appendix E (Command Climate Assessment) specifies commanders will conduct a Command Climate Assessment within 60 days of assuming command and annually thereafter.
2. **Should the SO accept that the events at the Organizational Ball described by the anonymous survey comment and SSG Thomas were just “good-natured ribbing and some horseplay” and therefore excusable?** **No.** IAW AR 600-20, “Hazing, bullying, online misconduct, and other acts of misconduct, undermine trust, violate our [Army] ethic, and negatively impact command climate and readiness.” When SSG Thomas complained of harassment at the open-door meeting, the brigade commander had an obligation to act on this information. IAW AR 600-20, “when commanders are apprised of complaints or accusations against military personnel, they are expected to inquire into the matter and attempt a resolution. When a written complaint or accusation is received against military personnel, COs of units will take action [...]” In addition to taking action, once the brigade commander learned of the alleged misconduct, he/she is always required to demonstrate exemplary conduct. IAW 10 USC 7233 and AR 600-20, par. 1-6d, “All commanding officers and others in authority in the Army are required:
  - To show in themselves a good example of virtue, honor, patriotism, and subordination;
  - To be vigilant in inspecting the conduct of all persons who are placed under their command;
  - To guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Army, all persons who are guilty of them; and
  - To take all necessary and proper measures, under the laws, regulations, and customs of the Army, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.”

Additionally, SOs should be mindful where civilian employees are concerned. AR 690-12, Equal Employment Opportunity, Appendix D, requires management officials who receive a complaint for an employee to initiate an investigation of the allegation regardless of whether the harassment rises to the level of being severe or pervasive. Supervisors and managers will promptly address allegations of harassment with the employees directly involved in the incident along with any witnesses who might have first-hand information.





## Command Climate/Failure to Act Discussion



3. **In addition to paragraph 2 (in the preceding slide), the brigade commander is required to demonstrate exemplary conduct.** IAW 10 USC 7233 and AR 600-20, par. 1-6.d, "All commanding officers and others in authority in the Army are required—
  - a) To show in themselves a good example of virtue, honor, patriotism, and subordination.
  - b) To be vigilant in inspecting the conduct of all persons who are placed under their command.
  - c) To guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Army, all persons who are guilty of them.
  - d) To take all necessary and proper measures, under the laws, regulations, and customs of the Army, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.
4. **Does it matter that this was a social setting and not in the workplace?** **No.** IAW AR 600-20, "Harassment is prohibited in all circumstances and environments, including off-duty and unofficial unit functions and settings."
5. **Would there be any issues if the brigade commander were to act on his plan and, "moved [SSG Thomas] to less-visible job"?** **Yes.** If the brigade commander acted on this plan, SSG Thomas could make a complaint against the brigade commander for Whistleblower Reprisal (AR 600–20, par. 5-12; see also vignette #1 of this packet) and or Retaliation (AR 600–20, par. 5-13)— and it would be very likely an investigation would occur.



## Command Climate/Failure to Act Discussion



6. **Does the brigade commander have a responsibility to maintain a positive command climate?** **Yes.** IAW AR 600–20 par. 1-6.c, “Commanders and other leaders will treat their subordinates with dignity and respect at all times and establish a command and organizational climate that emphasizes the duty of others to act in a similar manner toward their subordinates in accomplishing the unit mission.” And later in par. 6-2.a, “Commanders and organizational leaders will foster and maintain positive command climates. A positive command climate is an environment free from personal, social, or institutional barriers that prevent Soldiers from rising to the highest level of responsibility for which they are qualified. Soldiers are evaluated on individual merit, performance, and potential.”
  
7. **Are there indications in this vignette that this brigade commander may have command climate issues...or worse?** **Yes,** even though the majority of the results from the command climate assessment seemed, “very positive,” there are indications of poor command climate, especially among female Soldiers. However, beyond just command climate issues, there are also indications (“[...] nothing I haven’t already heard in the halls of the headquarters a time or two”) that this brigade commander may have allowed a hostile work environment to develop within his headquarters. IAW AR 600–20, par. 6-2b-c, “The Army will provide an environment that is free of unlawful discrimination. Discrimination occurs when someone, or a group of people, is harassed, intimidated, insulted, humiliated, or is treated less favorably than another person or group, because of their race, color, sex (to include gender identity), national origin, religion, or sexual orientation. It includes use of disparaging terms with respect to a person’s race, color, sex (to include gender identity), national origin, religion, or sexual orientation which contributes to a hostile work environment. When discrimination is alleged, commanders will take immediate and appropriate action to investigate the allegations and correct any unlawful discriminatory practices. In substantiated cases, commanders will consider appropriate disciplinary action.”





## Situation 7: Gesture of Thanks/Receipt of Gift

A nominative CSM wanted to procure new Personal Protection Equipment (PPE) for Soldiers working on a pandemic response mission. She assembled a team of NCOs who reviewed the requirement, and after research, they identified three commercially available options that met guidelines established by the Centers for Disease Control. After reviewing the recommended options, the CSM selected one, but directed the team to review the matter with legal, G-4, and G-8. None of the offices identified any concerns with the purchase. As a result, the GOVCC holder for the command's front office used the GOVCC to purchase \$2,400 of PPE from the selected local vendor.

A week after the PPE was delivered, the retailer sent the GOVCC holder an unsolicited gift of a Tactical Assault Pack (with a list price of \$65 in the retailer's catalog) as a gesture of thanks for the order. The vendor included a note with the assault pack that said, "With thanks to the [organization] command team for another order. Stay safe!" The GOVCC holder gave the assault pack to the CSM, since it was the CSM's idea to make the initial purchase. The CSM and the commander (an SO) decided to use the assault pack to carry briefing products and snacks during official travel.

**Please Discuss:** Are the actions of the card holder, the CSM, and commander compliant with all relevant statutes/DODI and ARs? Can the CSM and commander use the assault pack during official travel? If not, what should the GOVCC card holder do with the assault pack?



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**Please Discuss:** Are the actions of the card holder, the CSM, and commander compliant with all relevant statutes/DODI and ARs? Can the CSM and commander use the assault pack during official travel? If not, what should the GOVCC card holder do with the assault pack?



## Gesture of Thanks/Receipt of Gift Discussion



1. **Can the organization accept use the tactical assault pack?** IAW 5 CFR 2635.204, key to this discussion are the circumstances surrounding the offer of the gift of the tactical assault pack:
  - a) If the gift of the tactical assault pack was part of a widely available promotion offered to the public (or other commercial purchasers, e.g., "Buy \$300 from our catalog and receive a free tactical assault pack!"), then the organization can accept the tactical assault pack, but it is considered Government property, just like the ordered PPE.
  - b) If the gift of the tactical assault pack was offered to members of a group or class in which membership is related to Government employment, or if the same offer is broadly available to large segments of the public through organizations of similar size (e.g., "All Active Military and Veterans," or "All State and Federal Government entities"), then the organization can accept the assault pack, but it is considered Government property, just like the ordered PPE.
  - c) If the gift was offered due to one's official position, or on a basis that favors those of higher rank or rate of pay (i.e., because of their rank or position), then the tactical assault pack is an improper gift and should be returned to the vendor.
  
2. **So can the commander and the CSM use the tactical assault pack?** **(most likely) No.** In this case it appears the vendor **did not** offer the tactical assault pack to the public at large, did they offer it to a membership-based group. However, the vendor did offer it based on rank or position (e.g., "With thanks to the [organization] command team"), and therefore, the tactical assault pack is an improper gift and must be returned to the vendor. The commander and CSM **cannot** retain or use the gift.



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## Gesture of Thanks/Receipt of Gift Discussion



**3. Common Issues/Problems:**

- a) SO or staff accepts a gift from a prohibited source (e.g., contractors, vendors). (For more information, see 5 CFR 2635.202.)
- b) SO or staff accepts inappropriate gifts from subordinates. (For more information, see DOD JER par. 2-203 and 5 CFR 2635.302.)
- c) SO or staff accepts gifts of services from subordinates. (For more information, see 5 CFR 2635.302.)
- d) SO or staff fails to account for gifts to his/her spouse or child. (For more information, see DOD JER Chapter 3, Section 4; OGE 278e instructions.)
- e) SO or staff fails to have gifts from foreign officials evaluated by legal. (For more information, see DOD JER 2-300 and DODD 1005.13.)

**4. Proper disposition of gifts IAW ethics rules.**

- a) Gifts should be formally recorded (photographs are recommended). (see next slide for an example).
- b) Gifts **MAY** have to be paid for by the SO, returned, or proffered to the SecArmy Office of the Administrative Assistant (OAA) for possible acceptance by the Army (5 CFR 2635.206).
- c) Gift disposition should have a legal review.
- d) When determining a gift's market value or "the retail cost of similar items of like quality" (5 CFR 2635.205) (if a receipt is unavailable), a best practice would be to obtain three price estimates from major retailers and use the average price.



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## Suggested Gift Log Format

Donor and Gift	Picture of Gift	Donor Category	Value of Gift	Legal Analysis	Disposition of Gift
Donor: IMCOM Chapter of the Field Artillery Association Event: Luncheon Date: 29 Nov 20 Gift: Admission Fee	N/A	NFE Not a prohibited source	\$55.00	Acceptable under 5 CFR 2635.204g, employee assigned to speak at an NFE-sponsored event on behalf of the agency. Gift to agency so not OGE 278e reportable	Accepted
Donor: Egyptian Chief of Staff Event: The Inspector General's (TIG) official visit to troops stationed in South West Asia Date: 15 Mar 20 Gift: Gold bracelet for TIG's spouse		Foreign Government Official	\$800.00	Gift exceeds \$415 limit on gifts from foreign governments IAW DODD 5500.7-R, para. 2-300; 5 USC 7342; DODD 1005.13; Title 41, CFR parts 101-49 and 101-45; and GSA Federal Management Regulation of Contact part 102-42.	Coordinate with the Office of the Administrative Assistant to the Secretary of the Army Gifts Point
Donor: Event: Date: Gift:					



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## Receipt of a Gift

(5 CFR 2635.206/DOD Joint Ethics Regulation)



**Record Circumstances Surrounding the Receipt of the Gift:**

- Record the who, what, when, where and why gift was accepted by SO.
- Take picture of the gift.
- Enter gift into gift log.
- Estimate the value of the gift (online resources, local or national experts, must be U.S. value).
- Obtain legal review as soon as possible, and act on the legal review's disposition recommendations immediately.





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## Situation 8: Contractor Interactions & Staff vs. Personal Responsibilities



An OCONUS-based SO has assembled their staff to discuss a busy week, which ends with the SO and their spouse's official travel to the Army Soldier and Family Resilience Conference (ASFRC) (a "service-endorsed" conference/training event) and the Association of Community Members Supporting the Army (ACMSA\*) Annual Conference being held simultaneously in Washington, DC. After reviewing all of the current hot topics, the SO goes around the room to capture any alibis/additional issues:

SJA: "Sir, no issues for the staff. On a personal note, after sitting down with your spouse and reviewing your finances, I have finished filling out your OGE 278e [Public Financial Disclosure]. If you could log onto the Integrity program and digitally sign it, we can knock it out for this year.

Aide-de-Camp: "Sir, I think I have a handle on why your Government Travel Card is maxed out, the Level 25 reviewer for your last CONUS Defense Travel System Voucher returned the voucher with some questions about the rental car. I used your card (CAC) to log onto your account to tweak the voucher, but it's going to take a week or so to get your settlement. Since we were already using the Centrally Billed Account to purchase your spouse's airline ticket due to her attendance at ASFRC, I went ahead and used it to buy your airline ticket as well."

Secretary: "Sir, I received a call from LTG(R) Tom Watson to ask if you could drop by when you are in Washington for the ACMSA\* Annual Conference. LTG(R) Watson suggested meeting up at the Dynamo Corporation's reception at the Hilitz Hotel on Friday night. He said that as the chief operating officer, he could certainly swing you a ticket to the reception so he can hear from you if the Dynamo contractors were hitting it out of the park for you like he had expected. LTG(R) Watson also said that he wanted to buy you and Pat (SO's Spouse) dinner later that evening, "So you can both tell lies about how great you were as young captains together in Germany." I know you two go way back, so I have penciled the reception in on your itinerary."

**Please Discuss:** Are the staff's solutions, as discussed above, appropriate and compliant with all relevant statutes/DODIs and ARs?



\* A fictional organization aimed at advocating (not an advocating lobbyist) to Congress for various military causes.

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## Contractor & Staff vs. Personal Responsibility Discussion



- 1) **OGE 278e (Public Financial Disclosure):** Completion of the OGE 278e is a personal responsibility. While an SO may appoint an aide or legal advisor as a delegee to complete the report, the filer is responsible for all information contained, or missing, from this report. If there is a problem with the OGE 278e, the SO will be responsible—it doesn't matter who "helped" fill it out.
- 2) **DTS Travel:** DTS is a personal responsibility. DOD policy and the JTR requires GOVCC users to charge official travel expenses to the card and not to a Centrally Billed Account. The SO, not the aide-de-camp, would be responsible for any DTS travel irregularities in the SO's account. Also, sharing personal accounts or authenticators (passwords or PINs) is prohibited (AR 25-2, par. 4-5).

**Bottom Line:** SO actions based on poor staff work or incorrect legal opinions **DO NOT** excuse the SO of responsibility/consequences arising from their decisions.



## Contractor & Staff vs. Personal Responsibility Discussion



- 3) **May the SO attend the reception with the Dynamo Corporation's chief operating officer? Yes, with limitations.** If the food offered does not comprise a meal and alcohol is not offered, then the SO may legally accept this offering. If the food comprises a meal or alcohol is included, provided the contractor does not offer more than \$20 worth of drinks/refreshments per person (or provided the commercial price of the reception ticket is not over \$20), and provided that the SO will not accept more than \$50 worth of gifts from the contractor (meaning the contractor company as well as its employees) during the calendar year, the SO can attend the reception and accept the free drinks/refreshments. However, just because the SO **can** does not mean they **should**. It is never inappropriate to refuse a gift from a prohibited source (e.g., a DOD contractor). Here, since the SO oversaw a project performed by the DOD contractor in question, it is likely prudent and appropriate for the SO to decline the offer to attend the reception or receive the associated free drinks/refreshments since it could create the perception that the SO is, or could be, biased in favor of the DOD contractor whose project he oversaw. In this case, it's also possible that if the SO provided feedback on the Dynamo contractors' job performance, the SO would be improperly sharing non-public information with the contractor.
- 4) **Can the SO go to dinner with his old friend LTG (R) Tom Watson: Yes, with limitations.** The invitation to dinner seems to be a social, not business-related event. However, LTG (R) Watson is still a prohibited source (a DOD Contractor) so for appearance purposes, SO cannot accept more than \$20 worth of drinks/refreshments, or more than \$50 worth of gifts from the contractor (meaning the contractor company as well as its employees) during the calendar year. In this case, the SO could go to dinner with an old friend, but the SO and their spouse should not discuss contract-related business, and they should decline LTG(R) Watson's offer to buy dinner and pay for both their meals using personal funds.

**Bottom Line:** Meetings with DOD contractors, even if they happen to be personal friends, can create issues with perception and preference. This is especially true when they "buy dinner," present gifts, etc.—**Proceed with extreme caution and always obtain a legal review.**



## Contractor & Staff vs. Personal Responsibility Discussion



5. What if, at the dinner, LTG (R) Watson asked the SO about his post-retirement plans and the SO responded that working for Dynamo Corporation as a senior project manager was a possibility in the future? It is crucial for the SO to recognize at what point they are, "seeking employment" vis-à-vis this dinner. Federal employees trigger the financial conflict of interest statute (18 US Code 208), and the ethics rules (5 CFR 2635.601-607), which result in potential conflicts of interest, if they are "seeking employment." This statute prohibits participating personally and substantially in any particular matter that will have a direct and predictable effect on an NFE with which a Federal employee is "seeking employment." A Federal employee is likely "seeking employment" when he/she makes an unsolicited communication regarding potential future employment, engages in negotiation for employment, or responds to an unsolicited communication regarding possible employment other than to make an immediate and clear rejection.

**Bottom Line:** Though this dinner is a social occasion, if the discussion turns to the possibility of future employment with a prohibited source (Dynamo Corporation), the SO may cross the line into "seeking employment," in which case he must disqualify himself from personal and substantial participation in any particular matter pertaining to that prohibited source, unless the SO clearly and immediately rejects any offers of employment.



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## Meeting Request by a Contractor

(18 USC 208/5 CFR 2835/DOD Joint Ethics Regulation/Federal Acquisition Reg. and Supplements)



### 1. Common Issues/Problems:

- a) SO meets with the contractor and then improperly endorses the contractor's product.
- b) SO creates a perception of a procurement integrity violation by meeting with the contractor.
- c) SO shares non-public information.
- d) SO meets with a contractor that is a bidder or offeror in an ongoing procurement.
- e) Contract employees or employees of companies doing business with the DOD, that are also personal friends of the SO, may be problematic.

### 2. Proper handling of contractor meetings:

- a) While there is no prohibition on meeting with a contractor (especially if also a personal friend), SOs must be very careful to avoid actions that are prohibited, or could create a negative perception.
- b) The SO may want to decline the request to meet.
- c) Perceptions (both public and internal/subordinates) should be considered.
- d) Maintain a level playing field/avoid the appearance of favoritism.
- e) No inside information can be released.
- f) No endorsement.
- g) If a prohibited source makes **any** overture/offer of employment, SO must immediately and clearly reject the offer.



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## Meeting Request by a Contractor

(18 US Code § 208/5 CFR 2635/DOD Joint Ethics Regulation/Federal Acquisition Regulation and Supplements)



**Record the Circumstances of the Request:**

1. Is the SO/the organization currently involved in any contracts with the contractor's firm?
2. Is the SO/the organization soliciting, or considering soliciting, a contract that might involve the contractor's firm?
3. What does the contractor want to talk about with the SO? Solicitation? Complaint? Employment?
4. If the meeting pertains to a solicitation of the contractor's products, is the SO willing to meet with the other competing contractors as well?
5. Will the meeting create the perception of favored treatment of the contractor or firm?
6. Consult with legal advisor **BEFORE** accepting a meeting with a prohibited source.



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## Situation 9: Prohibited Personnel Practices



An installation recently received funding that would allow the garrison commander to hire new Department of the Army Civilians to staff a new program that the installation senior commander has been advocating. The senior commander, excited by the prospects to shape this brand new program, has asked the garrison commander (the hiring authority for the new positions) to meet with him, the chief of staff, and the command sergeant major to discuss the timeline for establishing this new capability. The senior commander began the meeting with the following guidance:

"Ed (garrison commander), I want to rapidly establish this new office. Do not allow these new hires to get bogged down in bureaucracy. Do whatever you can to streamline the process, like finding a way to make these all direct hires and skipping the whole hiring panel step. In short, I need you to move out—I want butts-in-seats in weeks not months.

This is a new program, and I think it needs new thinking. It shouldn't be a landing zone for Soldiers looking for a retirement job or the "next step" in some reassigned Department of the Army Civilian's 20-year career. We need fresh faces that will bring best practices from the civilian world into our planning. I think we need to look for young professionals with 3 to 5 years' experience in industry to fill these positions and perhaps one or two high speed mid-career NCOs that decided to leave the service but still want to serve. You know, like SSG (R) Perfection from your office, Ed. I know he had to leave the Army due to a family issue, but I would absolutely love to see Mr. Perfection sitting behind one of these new desks. In fact I saw him downtown last week so I know he is still local...maybe you can reach out and encourage him to apply. It can't be that hard to create a position description that looks for skills that Mr. Perfection already has in abundance.

I also want to see a diverse workforce that 'looks like our Soldiers' in this new office. We need to make sure at least one hire is African American and one hire is Hispanic. I also don't want to see an office full of men. If a female Soldier walks into this office and sees anything less than 30 percent of the desks filled by females, they are not going to use this office to seek out help."

**Please Discuss:** If you were the COS, and you were reviewing the meeting with the CSM later that afternoon would anything about this guidance worry you? Do you feel the senior commander's guidance is correct and appropriate?



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## Prohibited Personnel Practices Discussion



1. Is it possible for the garrison commander to find, “a way to make these all direct hires and skip the whole hiring panel step”? **Unlikely...**

Title 5, USC, 9905 grants direct hire authority for certain, specific competitive service positions in the Department of Defense. If an organization, or a particular type of position within that organization, is not currently designated as having direct hire authority, you probably cannot, “make it happen” just because you want to fill the position quickly. If your organization does have direct hire authorities, proceed with caution as the absence of the usual “guardrails” (e.g., impartial panels, “the rule of three”, etc.) in the hiring process can lead to perceptions/accusations of favoritism, preferential treatment, or other abusive hiring practices.

2. Is it appropriate for the senior commander to direct the hiring authority to not consider “Soldiers looking for a retirement job,” or existing Department of the Army Civilians for these positions? **No.**

IAW 5 USC 2302(b)(6) (Prohibited Personnel Practices), any Government employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment.

3. Is it appropriate for the senior commander to direct the hiring authority to give preference to “young professionals”? **No.**

IAW 5 USC 2302, giving preference to “young” applicants would injure the prospects of older applicants and is thus prohibited.





## Prohibited Personnel Practices Discussion



4. Is it appropriate for the senior commander to attempt to...strongly...influence the garrison commander into hiring Mr. Perfection into one of the new positions? **No.**

Once again, IAW 5 USC 2302(b)(6), giving preference to Mr. Perfection would injure the prospects of all other applicants and is thus prohibited. Also, 5 CFR 2635.101, par. (b)(8) is clear that the senior commander must act impartially and not give preferential treatment to any private organization or individual. Paragraph (b)(14) further states that the senior commander "shall endeavor to avoid any action creating the appearance that they are violating the law or the ethical standards set forth in this part." Thus, even the **appearance** of impropriety in hiring Mr. Perfection can result in a finding of misconduct against the senior commander.

5. Is it appropriate for the senior official to instruct the garrison commander to create a position description that favors the, "skills that Mr. Perfection already has in abundance"? **No.**

Once again, 5 CFR, 2635.101 is clear that that senior commander must act impartially and not give preferential treatment to any private organization or individual. Custom designing a position description to create an advantage for Mr. Perfection is preferential treatment.

6. Is it appropriate for the senior commander to direct the hiring of one African American and one Hispanic individual into the new positions? **No.**

Although seeking a diverse workforce is not impermissible, diversity must be accomplished consistent with existing law and policy. It doesn't matter that the senior commander is seeking "diversity," they cannot direct that, "race, color, religion, sex, national origin, reprisal, disability, age, sexual orientation, gender identity, [or] status as a parentage" be used as a criteria for, or against, hiring a particular candidate (5 USC 2302(b)(6) (Prohibited Personnel Practices) and AR 690-12 (Equal Employment Opportunity and Diversity), par. 1-6).

7. Is it appropriate for the senior commander to direct the hiring of at least 30 percent females into the new positions? **No.**

Once again, it doesn't matter that the senior commander's intent is to obtain a balance between male and female employees in the office. 5 USC 2302 and AR 690-12 prohibit the senior commander from using sex as a criteria for hiring or not hiring a candidate.



## Civilian Hiring Process



### 1. Common Issues/Problems.

- a) SO is unfamiliar with 5 USC 2302(b)(6) (Prohibited Personnel Practices) and 5 CFR, Section 2635.101 (Basic Obligation of Public Service).
- b) SO and staff are unfamiliar with Civilian Personnel Advisory Center practices and requirements.
- c) SO attempts to steer the hiring process to favor a skilled or valued (by the SO) job candidate, "for the good of the organization."
- d) SO attempts to steer the hiring process to favor an individual whom they may know from current or prior assignments (e.g., "SFC Knowsall is retiring and we need to retain his skill set in the organization").
- e) Lack of clear communication across the organization to prevent the "appearance" of preferential treatment.

### 2. Hiring civilian employees must always adhere to statutory/regulatory guidance.

- a) SO should never make adjustments to the hiring process that are designed (or appear to be designed) to benefit a certain job applicant.
- b) Title 5 USC 2302(b)(6) (Prohibited Personnel Practices) states, "(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority-(6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment."
- c) 5 CFR 2635.101 states in par. (b)(8) that employees shall act impartially and not give preferential treatment to any private organization or individual. Paragraph (b)(14) states, "employees shall endeavor to avoid any action creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts."





## References

### **Situation 1: Whistleblower Reprisal**

- 5 USC 2302
- 10 USC 1034
- 10 USC 1587
- 10 USC 2409
- PPD-9, Change 3
- DODD 1401.03, "DoD Nonappropriated Fund Instrumentality (NAFI) Employee Whistleblower Protection," 13 June 2014
- DODD 7050.06, "Military Whistleblower Protection," 17 April 2015
- DFAR, Subpart 203.9
- AR 20-1 (The Inspector General System), 23 March 2020
- AR 600-20 (Army Command Policy), 24 July 2020
- Assistance and Investigations Guide, Part Two, Chapter 9

### **Situation 2: Involvement with a Non-Federal Entity (NFE)**

- 31 USC 1353
- 5 CFR 2635.101 (b)(8)/.702(b)/.808
- JER (3-210/3-211)/DOD 5500.07-R
- DODI 5230.29, "Security and Policy Review of DoD Information for Public Release," 14 April 2017
- DODI 4515.13, "Air Transportation Eligibility," 23 October 2020
- AR 360-1 (The Army Public Affairs Program), 25 May 2011
- <https://dodsoco.ogc.osd.mil/ETHICS-TOPICS/Travel-and-Transportation/Toolbox-Travel-and-Transportation/>



# Annex: 2021 Senior Official Front Office Exportable Training Package (Briefing Templates)

Department of the Army Inspector General

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## References, con.



### **Situation 3: Official Travel**

- DOD 4500.56, "DoD Policy on the Use of Government Aircraft and Air Travel," 14 April 2009, IC [Interim Circular] 5, 3 April 2019
- JER/DOD 5500.07-R
- DODI 1315.09, "Utilization of Enlisted Aides (EAS) on Personal Staffs of General and Flag Officers (G/FOS)," 6 March 2015, IC 1, 1 December 2017
- DODI 4500.43 (Operational Support Airlift (OSA)), 18 May 2011
- DOD Administrative Instruction 109, 31 March 2011, ICI 1, 22 May 2017
- <https://dodsoco.ogc.osd.mil/ETHICS-TOPICS/Travel-and-Transportation/Toolbox-Travel-and-Transportation/>
- AR 58-1 (Management, Acquisition and Use of Motor Vehicles), 23 March 2020
- AR 600-8-10 (Leaves and Passes), 3 June 2020
- AD 2017-05 (Secretary of the Army Policy for Travel by Department of the Army Senior Officials), 18 January 2017

### **Situation 4: Personal Travel**

- 5 CFR 2635
- JER/DOD Directive 5500.07-R
- DODI 1315.09, "Utilization of Enlisted Aides (EAS) on Personal Staffs of General and Flag Officers (G/FOS)," 6 M 2015, IC 1, 1 December 2017
- DOD Administrative Instruction 109
- JER: <https://www.defensetravel.dod.mil/Docs/perdiem/JTR.pdf>
- AR 58-1 (Management, Acquisition and Use of Motor Vehicles), 23 March 2020
- AR 600-8-10 (Leaves and Passes), 3 June 2020
- OMB Circular No. A-126, "Improving the Management and Use of Government Aircraft"

### **Situation 5: Use of GOV Personnel and Resources**

- 5 CFR 2635
- Joint Ethics Regulation/DOD Directive 5500.07-R
- DODI 1315.09
- AR 614-200 (Enlisted Assignments and Utilization Management), 25 January 2019





## References, con.

### **Situation 6: Command Climate/Failure to Act**

- 10 USC 7233
- AR 600-20 (Army Command Policy), 24 July 2020

### **Situation 7: Gesture of Thanks/Receipt of Gift**

- 5 CFR 2635
- JER/ DOD 5500.07-R
- DOD 1005.13, "Gifts and Decorations from Foreign Governments," 19 February 2002

### **Situation 8: Contractor Interactions and Staff vs. Personal Responsibility**

- 18 USC 208
- 5 CFR 2635
- JER/ Regulation/DOD 5500.07-R
- AR 25-2 (Army Cybersecurity), 4 April 2019
- Federal Acquisition Reg. and Supplements

### **Situation 9: Prohibited Personnel Practices**

- 5 USC 9905
- 5 USC 2302(b)(6)
- 5 CFR 2635.101
- AR 690-12 (Equal Employment Opportunity and Diversity)



