

training in non-Federal Government facilities or attendance at a meeting;

(iii) An appropriate deduction is made from any payment by the Federal Government to the DoD employee for their official travel entitlement;

(iv) The contribution, award, or payment is not a reward for services to the non-Federal source;

(v) Acceptance of the contribution, award or payment would not reflect unfavorably on the DoD employee's ability to perform his duties in a fair and objective manner, nor otherwise compromise the integrity of any Federal Government action; and

(vi) The travel approving authority approves the acceptance of the contribution, award or payment in writing.

(3) *Payments from multiple sources.* When more than one organization participates in making a single contribution, award, or payment, only the organization that selects the recipient and administers the funds from which the contribution, award, or payment is made will be considered the source.

(4) *Reporting.* (i) Financial disclosure reporting individuals must report acceptance of these travel benefits if the fair market value of those benefits reaches the reportable amount.

(ii) Travel benefits accepted under 5 U.S.C. 4111 shall be reported by the travel-approving authority directly to the DoD component DAEO or designee within 30 days after completion of travel. These reports shall include, at a minimum, the information required for the semiannual reports by the JFTR, Paragraph U7908 and JTR, Paragraph C4908.

(d) *Receipt and disposition of foreign gifts and decorations (5 U.S.C. 7342).* DoD employees may accept travel and travel-related expenses from a foreign government in accordance with 32 CFR part 95.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, Apr. 24, 1995]

§ 84.12 DoD guidance.

(a) *Acceptance of incidental benefits.* There are two basic principles DoD employees must consider in determining whether they may accept benefits offered incident to their official travel.

See DoD travel rules (e.g., DoD Directive 4500.9¹⁷).

(1) *Federal Government property.* Anything that does not fall within a gift exception or exclusion under 5 CFR part 2635, subpart B, or 5 CFR 3601.101-3601.108, which is received by a DoD employee as a result of official travel, belongs to the Federal Government, regardless of the source of the funding.

(i) Travel coupons, tickets, promotional items of more than nominal value, frequent flyer mileage credits, and most other benefits received by DoD employees from non-Federal sources (e.g., airlines, rental car companies, hotels) incident to their official travel belong to the Federal Government. They may not be used for personal purposes.

(ii) If possible, such benefits will be turned over to the appropriate official. See JFTR, Paragraph U2010B, JTR, Paragraph C1200, 41 CFR part 301 and 41 CFR 101-25.103.

(2) *Gifts from outside sources.* Benefits offered to a DoD employee from a non-Federal source incident to official travel that cannot be used for official purposes must be treated as gifts to the DoD employee. DoD employees may not accept such gifts if acceptance would violate 5 CFR part 2635, subpart B.

(b) *Examples of benefits considered Federal Government property—(1) Frequent flying mileage credits.* Frequent flyer mileage credits earned as a result of official travel are the property of the Federal Government. They shall not be used except in connection with official travel. Credits are used in connection with official travel either by redeeming them for airline tickets which are used for official travel or by using them for travel upgrades while on official travel (e.g., airline seat upgrades, rental car upgrades, hotel upgrades). First consideration should be given to the former. When mileage credits for official and personal travel have been commingled in the same account, only those credits or points that clearly can be shown to have been derived from personal travel may be used for future personal travel. All other points in the account belong to the Federal Government.

¹⁷ See footnote 4 to § 84.7(d).

(2) *Other awards to users of travel services.* Travel companies sometimes give away merchandise, or award points toward merchandise or other prizes, to users of their services. If the travel services used are paid for by the Federal Government, any resulting award belongs to the Federal Government (e.g., if a DoD employee renting a car for official business is offered either a calculator or points toward a larger prize, both would belong to the Federal Government).

(c) *Examples of benefits treated as gifts to an individual—(1) Travel upgrades.* Travel upgrades are commonly offered for such travel accommodations as airline seats, rental cars, and hotel rooms. Some travel upgrades are given on the spot without any prearranged entitlement. Others are provided pursuant to some prearranged entitlement, such as a coupon. DoD employees on official travel may accept benefits such as an airline seat upgrade to first class, a luxury rental car in place of a compact, or a hotel room with a view instead of an interior room, for official use as long as there is no extra charge to the Federal Government to obtain the upgrade (see 5 CFR 2635.204(c)), subject to the following:

(i) *On the spot upgrades.* DoD employees may accept an upgrade offered on the spot under circumstances in which such upgrades are generally available to the public or at least to all Federal Government employees or all military members. For example, a travel company may provide upgrades to remedy overbooking or overcrowding, due to a shortage of smaller cars, or simply for customer relation purposes; or upgrades may be offered to all military members in uniform. No upgrade may be accepted, however, if it is provided on the basis of the DoD employee's grade or position. Upgrades resulting from involuntary "bumping" while on official travel may not be used for personal travel. See 5 CFR 2635.202(a)(2);

(ii) *Use of upgrade certificates (other than those obtained for frequent flyer miles).* Some travel companies distribute coupons for free travel upgrades as a promotional offer. DoD employees may accept and use such coupons if they are realistically available to the general public (e.g., widely available

coupons usable by bearer) or to all Federal Government employees or all military members (e.g., coupons available to any Federal Government employee for official travel). DoD employees may not use coupons provided on the basis of their grade or position.

(2) *"Gold card" and similar memberships.* Certain airlines offer special benefits, including free upgrades, to members of their traveler incentive programs (e.g., Gold card, Key Club, etc.). Membership in these programs ordinarily is earned by accumulating a large number of travel miles during the current calendar year, or in some cases, memberships may be purchased. DoD employees who obtain eligibility under these circumstances (i.e., by purchasing a membership with their personal funds or by accumulating the necessary miles, even by official travel) may accept the membership and resulting benefits, including travel upgrades. If membership in the program is offered to DoD employees who have not met the usual requirements for membership, however, primarily because of the DoD employee's grade or position, neither the membership nor its benefits may be accepted.

(3) *Prizes in "open" and "closed" contest.* When travel companies and related organizations offer prizes in a competition that is open to the general public, so that no one must perform official travel to win, a DoD employee may keep any prize he wins, even if he happened to enter the contest only because of official travel (e.g., a DoD employee flying on official business receives the winning entry blank in an airline's contest while on the flight, but individuals not using the airline will be given the entry blank on request). Some travel companies and related organizations offer prizes in connection with official travel. The prize usually is given as a result of a drawing or some kind of contest. If competition for a prize is limited to individuals using a certain kind of travel accommodation, which in the case of the DoD employee is paid for by the Federal Government, any prize won belongs to the Federal Government (e.g., an airline provides contest entry blanks only to passengers on its planes, and the DoD employee receives the winning

entry blank while flying on official travel).

(4) *Incentives for voluntary surrender of flight reservations.* DoD employees may keep payments or free tickets received from a carrier for voluntarily giving up a seat on an overbooked flight. DoD employees on official travel may not voluntarily surrender their seats if the resulting delay would interfere with the performance of duties. The delay may not increase the cost to the Federal Government. Therefore, travel vouchers should disclose the voluntary surrender and resulting delays and leave must be taken as appropriate.

[59 FR 13214, Mar. 21, 1994, as amended at 60 FR 20030, Apr. 24, 1995]

§ 84.13 Procedures and responsibilities.

(a) The *travel-approving authority* shall:

(1) Approve or disapprove acceptance of travel benefits in kind or payments of travel expenses from non-Federal sources in accordance with § 84.11 (c) and (d);

(2) Acquire the concurrence of the DoD component DAEO or designee when approving travel benefits in accordance with the conflict of interest analysis required by 41 CFR 304-1.5;

(3) Prepare and submit a report to the DoD component DAEO or designee reporting all travel benefits over \$250 accepted in accordance with the authority granted under 31 U.S.C. 1353 as implemented in § 84.11(b);

(4) Prepare and submit a report to the DoD component DAEO or designee within 30 days after completion of travel during which travel benefits have been paid by non-Federal sources under 5 U.S.C. 4111. See § 84.11(c)(3).

(b) Each *DoD component DAEO or designee* shall:

(1) Prepare and submit semiannual reports to OGE on acceptance of payments under 31 U.S.C. 1353 due May 31 and November 30 each year. See § 84.11(b)(1)(v);

(2) Retain reports from the travel-approving authority under 5 U.S.C. 4111 for two years. See § 84.11(c)(4);

(3) Provide written concurrence for the approval of travel benefits in accordance with the conflict of interest analysis required by 41 CFR 304-1.5.

(c) Each *traveling DoD employee* shall:

(1) Provide all necessary information to the travel approving authority for a semiannual report to the DoD component DAEO;

(2) Turn in any merchandise, frequent flyer miles or other benefits as required under § 84.12(a).

Subpart E—Conflicts of Interest

§ 84.14 Office of Government Ethics Regulation.

(a) See 5 CFR part 2639, “Interpretation of 18 U.S.C. 209”

(b) See 5 CFR part 2640, “Interpretation of 18 U.S.C. 208”

§ 84.15 Guidance on 18 U.S.C. 208.

(a) *Conflicts and appearance of conflicts under 18 U.S.C. 208.* See 5 CFR part 2635, subpart D and subpart E, OGE opinions (which are available for purchase from the U.S. Office of Government Ethics, 1201 New York Avenue, NW., suite 500, Washington, DC 20005-3917), and 5 CFR 3601.105 for provisions on conflicts of interest under 18 U.S.C. 208.

(b) *Applicability to enlistees.* The provisions of 18 U.S.C. 208 and related provisions of OGE regulations do not apply to enlisted members. However, provisions similar to 18 U.S.C. 208 do apply to enlisted members as follows: [The following is a General Order] except as approved by the DoD component DAEO or designee, an enlisted member, including an enlisted special Government employee, shall not participate personally and substantially as part of his official DoD duties, in any particular matter in which he, his spouse, minor child, partner, entity in which he is serving as officer, director, trustee, partner or employee or any entity with which he is negotiating or has an arrangement concerning prospective employment, has a financial interest [end of General Order].

(c) *Waiver of 18 U.S.C. 208(a).* Pursuant to 18 U.S.C. 208(b), application of 18 U.S.C. 208(a) may be waived.

(1) The regulatory waivers for DoD under 18 U.S.C. 208(b)(2) have been preserved and are reprinted as follows (see 5 CFR 2635.402(d));