

Training Policy Handbook Authorities and Guidelines

OPM

Office of Workforce
Relations

Office of Human
Resource Development

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The text of this document may be found in the Training Forum of the OPM bulletin board, at 202-606-4800.

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INTRODUCTION

Agencies have always had the authority to administer their own training programs -- the law, funding authority, and related federal requirements. This document serves as a single reference to legal information impacting employee training.. It covers the essential legal information needed for Human Resource Development (HRD) professionals and managers to make decisions on the management and implementation of training programs for agency personnel. Specifically, it highlights important legal references and citations from documents such as:

- ◆ the *Government Employees Training Act (GETA)*;
- ◆ Executive Orders;
- ◆ regulations;
- ◆ merit principles and equal employment opportunity considerations; and
- ◆ Comptroller General Decisions.

The information presented is general in nature and must be interpreted within the context of individual agency policies and circumstances. It is organized in two ways:

- 1) the legal foundation for Federal human resource development programs; and
- 2) legal references by subject area.

SUMMARY OF THE LEGAL FOUNDATION OF TRAINING

(in order of importance from left to right)

<p>Government Employees Training Act (GETA)</p>	<p>Chapter 41 of title 5, United States Code (5 U.S.C. 41)</p>	<p>Executive Orders (Exec. Order)</p>	<p>Parts 410 and 412 of title 5, Code of Federal Regulations (5 C.F.R.)</p>
<p>The <i>Government Employees Training Act</i>, passed in 1958, created the framework for agencies to plan, develop, establish, implement, evaluate, and fund training and development programs designed to improve the quality and performance of the workforce.</p> <p>The Act was codified into chapter 41 of title 5, U.S. Code.</p> <p>The Act has been amended many times since 1958, including by the Federal Workforce Restructuring Act of 1994.</p>	<p>The U.S. Code is a codification (information that is ordered systematically) of those sections of legislative acts that prescribe action by Federal agencies.</p> <p>Laws (Acts) are codified shortly after their passage by Congress and published in the appropriate title to the U.S. Code.</p> <p>Title 5, U.S. Code is dedicated to human resource issues. It is organized into various chapter headings, with chapter 41 addressing "Training" in the Federal service.</p>	<p>Executive orders provide agency heads with additional presidential direction on how the law is to be used.</p> <p>Exec. Order No. 11348 (1967) provides agency heads and the U.S. Office of Personnel Management with additional information on how GETA is to be carried out. It was amended by Exec. Order No. 12107 (1978).</p> <p>The order emphasizes the importance of using effective interagency training programs to meet common needs across Government and requires that employees be selected equitably for training.</p>	<p>The C.F.R. is a codification of the general and permanent rules published in the <i>Federal Register</i> by the executive departments and agencies of the Federal Government.</p> <p>Part 410 of 5 C.F.R. represents the general and specific policies and requirements for training in Government agencies. Part 412 of 5 C.F.R. addresses developing executives, managers, and supervisors.</p> <p>NOTE: Both part 410 and 412 of 5 C.F.R. were substantially amended in 1996.</p>

**LEGAL
FOUNDATION
FOR TRAINING**

The legal foundation for the Federal human resource development program is captured in the following documents:

**The Government
Employees Training
Act (GETA)**

The *Government Employees Training Act (GETA)* became law in 1958 giving Federal agencies general authority for employee training. Among its many provisions, this law authorized the use of non-Government training resources to meet identified training needs which otherwise could not be met with existing Governmental programs and facilities.

Before the enactment of GETA, some agencies carried out in-house training as part of their management function, other agencies had Congressional authorization to provide non-Government training, still others were seeking that authorization.

GETA establishes a flexible framework for the training and development of the Federal workforce. Specifically, it allows agencies to fund employee training to assist in achieving their mission and performance goals by improving employee and organizational performance. Amended in 1994, the Act permits agencies to take advantage of the existing training marketplace, Government or non-Government.

**Provisions of GETA
not Codified but
Relevant to Human
Resource
Development
Program
Administration**

Paragraphs (1), (2), and (3) of section 2 of GETA are not codified (they serve as background information rather than mandate action) in title 5 of the United States Code (5 U.S.C.) but are extremely important to an understanding of the law's intent. They declare the policy of the United States Congress and capture the purpose and intent of human resource development today:

(1) "[I]t is necessary and desirable in the public interest that self-education, self-improvement, and self-training be supplemented and extended by Government-sponsored programs for the training of such employees in the performance of official duties and for the development of skills, knowledge, and abilities which will best qualify them for performance of official duties;

(2) [S]uch programs are to be continuous in nature, shall be subject

to supervision and control by the President and review by the Congress, and shall be so established as to be readily expandible in time of national emergency; [and]

(3) [S]uch programs shall be designed to lead to:

- (A) improved public service,
- (B) dollar savings,
- (C) the building and retention of a permanent cadre of skilled and efficient Government employees well abreast of scientific, professional, technical, and management developments both in and out of Government,
- (D) lower turnover of personnel,
- (E) reasonably uniform administration of training, consistent with the missions of the Government departments and agencies, and
- (F) fair and equitable treatment of Government employees with respect to training."

Title 5, United States Code, Chapter 41

Chapter 41 of title 5, United States Code (5 U.S.C. 41), codifies the provisions of GETA, and makes available to Federal agencies a management tool for increasing efficiency and effectiveness in Government. It places responsibility for human resource development specifically with the head of each agency. The agency head is responsible for ensuring that the training needs of the organization are identified and programs established to meet those needs.

In general, authority granted by the law is sufficiently broad and flexible to enable an agency to provide whatever training is necessary to meet mission requirements.

Under the law, agencies may conduct human resource development activities full or part-time, on or off-duty, day or evening, or any necessary combination of these. Training can be provided by:

- ◆ the agency itself;
- ◆ another Government agency;
- ◆ a school;
- ◆ a manufacturer;
- ◆ a professional association;
- ◆ other competent persons or groups in or out of Government;

- and/or
- ◆ developmental work assignments such as details, rotations, mentoring, etc.

It can be carried out by correspondence, classroom work, conferences, workshops, supervised practice, or combinations of such methods. Agencies can pay all or part of the expenses of authorized training. Payment can be made directly to the facility (in advance, if need be), or the employee can be reimbursed if attendance was authorized in advance.

Agencies Covered
Under the Law

Chapter 41 of title 5, U.S.C. applies to the following agencies:

- ◆ an Executive department;
- ◆ an independent establishment;
- ◆ a Government corporation subject to *chapter 91 of title 31, U.S.C.*;
- ◆ the Library of Congress; and
- ◆ the Government Printing Office. (*5 U.S.C. §4101(1) (1997)*).

Chapter 41 of title 5, United States Code, does not apply to:

- ◆ a corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors;
- ◆ the Tennessee Valley Authority (*5 U.S.C. §4102 (1997)*); and
- ◆ the U.S. Postal Service and the Postal Rate Commission, *U.S. Postal Reorganization Act, Public Law (Pub. L.) No. 91-375 (1970)*.

Employees Covered
Under the Law

Employees covered under the law include:

- ◆ an individual employed in or under an agency covered by the law; and
- ◆ a commissioned officer of the National Oceanic and Atmospheric Administration (NOAA).

Based on U.S. Office of Personnel Management (OPM) interpretation, part-time and temporary employees are covered by this law.

This chapter does not apply to:

- ◆ an individual (except a commissioned officer of the National Oceanic and Atmospheric Administration) who is a member of the uniformed services during a period which he is entitled to pay under section 204 of title 37;
- ◆ a member of the U.S. Foreign Service; and
- ◆ an individual appointed by the President, unless the individual is specifically designated by the President for training. See 5 *U.S.C. §4102 (1997)*.

Other Laws That Affect Training

Congress often enacts laws that, while not amending *chapter 41 of title 5, U.S.C.*, affect agency human resource development programs and employees subject to them.

For example, *section 347 of the Department of Transportation and Related Agencies Appropriations Act of 1996, Pub. L. No. 104-50 (1995)*, exempted the Federal Aviation Administration from most provisions of title 5 of the United States Code, including the training provisions in *chapter 41 of title 5, U.S.C. (1997)*.

Section 9 of the *Ryan White CARE Amendments Act of 1996, Pub. L. No. 104-146 (1996)* prohibits requiring any Federal employee to attend or participate in an acquired immune deficiency syndrome (AIDS) or a human immunodeficiency virus (HIV) training program, except for training necessary to protect the health and safety of the Federal employee and the individuals served by such employees.

Important laws that affect training are included in the section of the handbook on legal references by subject area.

Executive Order No. 11348

In 1967, President Johnson signed *Exec. Order No. 11348*, which was later amended by *Exec. Order No. 12107 (1978)*. This order provides agency heads and OPM with additional presidential direction on how training law is to be carried out.

The order delegates Presidential authority to approve employee training provided by a foreign government or international organization to agency heads, but requires consultation with the

Department of State prior to the first use of the training facility and periodically thereafter but not less often than every three years. It also directs agency heads to:

- ◆ plan, program, budget, operate, and evaluate training programs;
- ◆ foster employee self-development and recognize self-initiated performance improvements;
- ◆ provide training for employees without regard to race, creed, color, national origin, sex, or other factors unrelated to the need for training;
- ◆ establish and make full use of agency facilities for training employees;
- ◆ extend agency training programs to employees of other agencies and assign agency employees to interagency training whenever this will result in better training, improved service, or savings to the Government; and
- ◆ establish interagency training facilities in areas of substantive competence as arranged by the Office of Personnel Management.

The order delegates Presidential authority for training under 5 *U.S.C. 41* to the U.S. Office of Personnel Management (OPM) and directs that agency to provide the following assistance to the Federal agencies:

- ◆ advice and counsel on improvement of training programs;
- ◆ assistance in developing sound training programs;
- ◆ identification of areas in which interagency training is needed;
- ◆ coordination of interagency training;
- ◆ development and maintenance of a system to provide training data for use by OPM in its advisory role;

- ◆ dissemination of findings resulting from research in training technology; and
- ◆ exceptions for agencies or employees from various provisions of the training law.

**Title 5, Code of
Federal Regulations,
part 41**

Title 5, Code of Federal Regulations, part 410 (5 C.F.R. 410) is a codification of the general and permanent rules published in the *Federal Register* on training. Part 410 of the C.F.R. establishes

regulations that Federal agencies are to follow in carrying out their training programs. Part 410 addresses the following topics related to training:

- ◆ General Provisions
- ◆ Planning for Training
- ◆ Establishing and Implementing Training Programs
- ◆ Paying for Training Expenses
- ◆ Accepting Contributions, Awards, and Payments From Non-Government Organizations
- ◆ Evaluating Training
- ◆ Reports

5 C.F.R. part 410 was restructured and revised in 1996 to reflect changes to *chapter 41 of title 5, United States Code*. The current rules provide agencies additional flexibility, reduce restrictions on training, and make training a more responsive management tool.

**Federal Agencies
Impacting the
Human Resource
Development
Program**

U.S. Office of
Personnel
Management (OPM)

The following is a description of four key Federal agencies impacting the administration of training programs.

The U.S. Office of Personnel Management (OPM) carries out its leadership responsibilities for the Governmentwide human resource development program by:

- ◆ developing guidance that establishes program direction and impact, thereby encouraging a more consistent and effective approach to human resource development Governmentwide that complies with laws, rules, and regulations;
- ◆ identifying methods for aligning human resource development strategies and activities with agency strategic plans so that human resource development philosophy, policy, and goals support the accomplishment of the organizational mission;
- ◆ identifying state-of-the-art, research-based, cost-efficient models, strategies and activities for accomplishing human resource development objectives that can be tailored to the

complexity and variety of missions within the Federal Government;

- ◆ identifying needs for interagency training and either conducting training or arranging for agencies with substantive competence to do so;
- ◆ coordinating interagency training conducted by and for agencies (including those excepted by *5 U.S.C. §4102(a) (1997)*);
- ◆ encouraging the development of training partnerships among Federal agencies, national professional and educational institutions, and others to realize cost-efficiency and avoid duplication of effort;
- ◆ providing technical assistance to Federal agencies to help them carry out their responsibilities; and
- ◆ promoting and conducting informational exchange programs that encourage the development of sound programs and financial plans for human resource development, with particular attention to planning, programming, budgeting, operating, evaluating, and improving human resource development programs Governmentwide.

U.S. Office of Management and Budget (OMB)

The U.S. Office of Management and Budget (OMB) impacts directly on Federal human resource development through funding and financial control mechanisms. Agency budget reviews frequently identify human resource development resource shortfalls or excesses that must be resolved in the budget review process. OMB also issues various directives that influence agency human resource development functions. Nearly all OMB directives on staffing, finances, travel, and outside contracting will directly or indirectly affect agency management decisions on human resource development.

U.S. General Services Administration (GSA)

The U.S. General Services Administration (GSA) influences human resource development by the direction and control exercised on the

management of items necessary to accomplish employee training and development. These items include procurement, travel, space, and forms of technology (for example, computers and related services).

U.S. General
Accounting Office
(GAO)

In its oversight role, the U.S. General Accounting Office (GAO), a part of the legislative branch, provides Congress with objective reviews of agency programs, together with recommendations for strategic intervention. These reviews lead to policy and procedure changes that make human resource development more effective. GAO also assists Government agencies in interpreting laws governing the expenditure of public funds. GAO opinions about what constitute lawful training expenditures are issued as Comptroller General decisions.

**LEGAL
REFERENCES BY
SUBJECT AREA**

**Academic Degree
Training**

This section outlines by subject area the regulations and laws which impact the Federal human resource development program.

Section 4107(a) of title 5 of the United States Code (U.S.C.) (1997) prohibits training to obtain an academic degree in order to qualify for appointment to a particular position or for the sole purpose of providing an opportunity to an employee to obtain one or more academic degrees. See subsection 410.308(a) of title 5, Code of Federal Regulations (C.F.R.) (1997).

However, 5 U.S.C. §4107 was amended in 1990 to allow Federal agencies to train in mission critical situations without regard to the general academic degree constraint. Agencies have the authority to provide training to attain an academic degree when it will aid in the recruitment or retention of employees in occupations in which the Government has or expects a shortage of qualified personnel, especially in occupations involving critical skills. Agencies must follow the regulations in 5 C.F.R. §410.308(b) (1997) when implementing this exception to the prohibition on academic degree training, including training for personnel in acquisition positions.

**Assignment to
Training**

An employee assigned to training during normal duties is considered on duty for the period of the training, and no charge is made to leave. Even though the employee pays for the training, no charge is made to leave if the training is authorized to meet a performance improvement need. Employees may pay for their own training, because training law allows agencies and employees to share the costs of authorized training (5 U.S.C §4109(a) (1997)).

**Continued Service
Agreements**

Each agency head determines the conditions for requiring employees to agree to continue in service after completing training, e.g., 180 hours or more of Government or non-Government training. An employee selected for training subject to a service agreement must agree in writing with the Government *before* assignment to training to continue in service for a period at least equal to three times the length of the training period. 5 U.S.C. §4108(a)(1) (1997). If the employee leaves the Government before the agreed upon amount of service, the agency has the right to require repayment for the amount of time not served. *Id. at (b) and (c).*

The head of an agency may waive in whole or in part the agency's right of recovery if it is shown that the recovery would be against equity and good conscious or against the public interest. *Id. at (c)*. For example, if an employee who is under a continued service agreement decides to voluntarily leave Federal service due to an impending reduction-in-force, the agency may determine that waiving its right to recovery would be in the public interest and release the employee from the agreement.

Copyright Laws

Copyright laws are an important consideration when developing and or disseminating training materials. *Title 17 of the United States Code* addresses the scope of copyright law. It specifically states that copyright protection under this title is not available for any work of the U.S. Government. However, the Government is not precluded from receiving and holding copy-rights transferred to it by reassignment, bequest, or otherwise.

Fair Use of Copyrighted Material

Except for the provisions of *Title 17*, the *fair use* of a copyrighted work for purposes such as criticism, comment, news, reporting, teaching, scholarship, or research is not an infringement of copyright law. The factors to be considered when determining whether the use in any particular case is a *fair use* include:

1. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
 2. the nature of the copyrighted work;
 3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 4. the effect of the use upon the potential market for or value to the copyrighted work. *See 17 U.S.C. §107 (1997)*.
-

Copying in Non-Profit Educational Settings (Books and Periodicals)

As stated in the Association for Educational Communications and Technology's (AECT) *Official Fair-Use Guidelines*, a single copy may be made from books and periodicals by or for an instructor for use in the classroom or for preparation to teach a class. Multiple copies may be made by or for the instructor giving the course for classroom use and discussion, provided that:

Obtaining Permission

1. the copying is for a single course; and
2. there is insufficient time to request permission for a reprint.

When it is necessary to obtain permission for copying of material, AECT recommends that the requesting organization provide the following information to the copyright owner:

1. Title, author, and/or editor, and edition of material to be duplicated;
2. Exact material to be used, giving amount, page numbers, chapters and, if possible, a photocopy of the material;
3. Number of copies to be made;
4. Use to be made of duplicated materials;
5. Form of distribution (classroom, newsletter, etc.);
6. Whether or not the material is to be sold; and
7. Type of reprint (ditto, offset, typeset).

This is normally a time-consuming process that must be planned far in advance of the use of copyright materials.

**Equal Employment
Opportunity
Concerns and Merit
Principles**

Federal organizations are required to include in their equal employment opportunity plans provisions for training and education programs designed to provide opportunities for employees to advance and perform at their highest potential. This provision does not change existing, or provide new, training authority for organizations, but does influence the direction of training. *See 42 U.S.C. §2000e-16(b) (1997).*

Selection and
Assignment for
Training

Agencies' training programs must consider all employees fairly. Procedures for the selection of employees for training must meet the following requirements:

1. The head of each agency shall provide training for employees without regard to race, creed, color, national origin, sex, disability, or other factors unrelated to the need for training. *See Executive (Exec.) Order No. 11348 §302 (1967), as amended.*
2. The head of each agency shall prescribe procedures as are necessary to ensure that the selection of employees for training is made without regard to political preference, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their

privacy and constitutional rights as provided by merit system principles set forth in *5 U.S.C. 2301(b)(2)*. See *5 C.F.R. §410.302(a)(1) (1997)*.

Merit Promotion
Procedures

Agency merit promotion procedures must be followed in selecting employees for training that is primarily to prepare trainees for advancement and that is not directly related to improving performance in their current positions. For example, merit promotion procedures apply to training:

1. to prepare an employee for a promotion; and
2. whose purpose, or effect, is to allow an employee to meet, in whole or in substantial part, minimum educational requirements set by the U.S. Office of Personnel Management (OPM), or other training required for assignment to a different position with higher promotion potential.

Under the authority of *5 U.S.C. §4103*, and consistent with merit system principles set forth in *5 U.S.C. §2301(b)(1) and (2)*, an agency may provide training to non-temporary employees that in certain instances may lead to promotion. An agency must follow its competitive procedures under *5 C.F.R. part 335* when selecting a non-temporary employee for training that permits noncompetitive promotion after successful completion of the training. See *5 C.F.R. §410.307(b) (1997)*.

Consideration of
Employees with
Disabilities

An agency must ensure that employees with a physical or mental disability are equally considered in the selection and assignment of employees to training. *29 C.F.R. §1614 (1996)* covers nondiscrimination procedures that govern Federal employment and training for people with disabilities.

Prohibition Against
the Selection of
Training Facilities that
Deny Access

Agencies are prohibited by law from using a training facility that discriminates in the admission or treatment of students because of race, color, sex, religion, or national origin. See *5 C.F.R. §410.302(a)(3) (1997)*. Agencies must also ensure that discrimination does not result from use of training facilities that deny access on other grounds, such as lack of "reasonable accommodation" of people with disabilities. See *5 C.F.R.*

§410.302(a)(2) (1997) and Presidential Memorandum to the Office of Personnel Management, June 2, 1977.

Accessibility of
Training Facilities

Agencies may pay expenses necessary to make training accessible to employees with disabilities under 5 U.S.C. §4109 (1997). For hearing-impaired employees, agencies may pay for interpreters. For the visually impaired, agencies may pay for readers and tapes or braille learning materials.

Under 5 U.S.C. §3102(d) (1997), agencies may pay for individuals to accompany or aid employees with disabilities traveling on official business (including travel for training) within prescribed OPM and U.S. General Services Administration salary, travel and per diem rates for Federal employees.

OPM has determined that it will make every practical effort to ensure that its interagency training programs are accessible to participants with disabilities. OPM pays the cost of readers and interpreters for Federal employees attending its interagency training programs. Agencies must notify OPM of the employee's need for assistance when registering an employee for program. Notification should occur at least four weeks prior to the beginning of the program.

**Employees with
Disabilities**

This section addresses considerations impacting employees with disabilities.

Rehabilitation Laws

Each agency in the executive branch is required by the *Rehabilitation Act §501, 29 U.S.C. §791(b) (1996), and the Vietnam Era Veterans' Readjustment Assistant Act §403, 38 U.S.C. §4214 (1996)*, to implement affirmative action plans for the hiring, placement, and advancement of people with disabilities. The plans should include a description how the special needs of disabled employees are being met and the methods used to accommodate these individuals. These provisions do not expand the training authority, but influence the direction of training.

Section 504 of the Rehabilitation Act of 1973 states that each agency has a responsibility to ensure that an individual who has a disability has equal access to the agency's programs and activities. This includes making available auxiliary aids such as computer text

readers, braille materials, audio recordings, amplified telephones, telecommunication devices for the hearing impaired, and others as are appropriate and reasonable. The regulations that require agencies to make reasonable accommodations to the known physical or mental limitations of an employee with a disability are located in *29 C.F.R. §1614 (1996)*.

**Ethical Issues
Related to Training**

Public officials have a responsibility to maintain the public's trust and confidence in the integrity of Government officials and Federal programs and operations. Because of the many ethics statutes and regulations, the Office of Government Ethics (OGE) requires that ethics training be conducted under the guidance and direction of the designated agency ethics official (DAEO), either in person by someone whom the DAEO has determined is knowledgeable in this area (referred to in OGE's training regulation, *5 C.F.R. Part §2638*, as a "qualified individual"), or through use of materials approved by the agency ethics official.

Legal Citations
Impacting Ethical
Issues

The Standards of Ethical Conduct for Employees of the Executive Branch, *5 C.F.R. Part 2635*, also issued by OGE, places restrictions upon Federal Executive branch officials' participation in, attendance at, appearance of official sanction of, or endorsement of non-Federal training conferences and other meetings and activities. *See 5 C.F.R. §§ 2635.203(g), 2635.204(g), 2635.502, 2635.701 - 2635.705, and 2635.801 - 2635.808 (1997)*.

31 U.S.C. §1353 (1997) and 5 U.S.C. §4111 (1997) restrict travel payments and contributions toward training expenses which may be accepted by a Federal agency or employee, respectively. Prior approval from a designated high level agency official is required, often following a consultation with, or review by, the designated agency ethics official. Federal employees should consult their agency ethics official to determine whether a considered action would be permissible under Federal ethics standards.

18 U.S.C. §209 (1997) and 5 C.F.R. §2635.807(a) (1997) generally prohibit a Federal employee from accepting payment from any source other than the United States in connection with the performance of the employee's official duties, including attendance at training meetings or conferences, and teaching, speaking, and writing that relates to the employee's official duties. This includes

the acceptance of compensation for teaching, speaking, and writing while on annual leave since the individual is still a Federal employee in active pay status.

In 1995 the Supreme Court held that a ban on the acceptance of honoraria by employees below GS-16 violated the First Amendment. Although the Court was unwilling to strike down the *5 U.S.C. app §501(b)* in its entirety, the Office of Legal Counsel at the Department of Justice determined that the Court's ruling essentially nullified the honoraria prohibition for all government employees. Consequently, government employees, including those in the Senior Executive Service, may receive honoraria subject to the aforementioned regulations.

The acceptance of gifts (including travel expenses) and decorations from a foreign government, or from an international or multinational organization which is composed of representatives of foreign Governments and the United States, is prohibited under the Constitution without prior consent from Congress. In *5 U.S.C. §7342 (1997)*, Congress granted limited authority for Federal employees to accept some gifts and travel reimbursements under certain specified conditions. Federal employees should consult their agency ethics official and obtain the necessary agency approval prior to accepting any gift or reimbursement from a foreign government or an international or multinational organization.

After-hours
Employment

Federal employees interested in after duty-hours employment should contact their agency ethics official before accepting such a position to ensure that there is no evidence of potential or actual conflict of interest with the employee's Government duties.

**Expenses Related to
Training Other
Than Employee Pay**

The following is intended to guide agencies in: 1) ensuring equitable treatment of all employees; and 2) applying sound fiscal management principles to paying training expenses. The sections address expenses not related to an employee's pay. Training law permits an agency to pay all, some, or none of the expenses of employee training.

Advance Payment of
Necessary Expenses

An agency has the authority to authorize advance payment of expenses such as tuition, per diem, travel, and other expenses essential to training as long as there is some mechanism to protect

the Government's interest, such as reimbursement if the training is not completed or passed. *See 31 U.S.C. §3324 (1997), 5 U.S.C. §4109(a)(2) (1997), and 41 Comp. Gen. 626 (1962).*

Fees, Services, and
Facilities

(a) Catering expenses,
meals and
refreshments

As a general rule, appropriated funds cannot be used for personal expenses such as meals and refreshments, unless specifically authorized by statute. However, two exceptions exist in the *Government Employees Training Act: 5 U.S.C. §4109 (1997)*, training expenses, and *5 U.S.C. §4110 (1997)*, expenses of meetings and conferences. Costs may be properly charged as training expenses under *5 U.S.C. §4109* or as travel expenses under *5 U.S.C. §4110*. There is no specific limitation on the amount per meal or snack which the agency may incur. (*Comp. Gen. B-244473 (January 13, 1992)*)

Training exception: Food may be provided at Government expense for employees attending authorized training as a necessary expense under *5 U.S.C. §4109 (1997)* when provision of that food is necessary to achieve the training program's objectives (*49 Comp. Gen. 185 (1968)*). However, an agency must determine that the provision of food is necessary for employees to obtain the full benefit of the training. *See Comp. Gen. B-244473 (January 13, 1992) and Comp. Gen. B-270199 (August 6, 1996)*. Three conditions apply:

1. the meal or refreshments must be incidental to the training program;
2. attendance at the meal or refreshment break must be necessary for full participation in the program; and
3. the employee cannot be free to take the meal or refreshment break elsewhere. (*65 Comp. Gen. 143 (1985), as amended*)

Meetings exception: Food may be provided in connection with the attendance of government employees at meetings and conferences under *5 U.S.C. §4110 (1997)*. The test for applying section 4110, however, is that the food is provided at a formal conference or meeting involving topical matters of general interest to governmental and nongovernmental participants, rather than at a routine business meeting primarily involving day-to-day agency

operations and concerns. *See 68 Comp. Gen. 604 (1989) and Comp. Gen. B-270199 (August 6, 1996).*

Catering expenses: The cost of catering services (luncheons, dinners, and coffee breaks) furnished by a hotel to a training conference held pursuant to 5 U.S.C. §4110 (1997) is payable as a training expense when these services are necessary to achieve the objectives of the training conference, such as establishing an environment which requires, stimulates, and fosters

communication among participants and interaction among participants as often as possible. (*50 Comp. Gen. 610 (1971)*)

Meals covered by registration fees: When meals or coffee breaks are provided for in a registration fee for training, the cost of a meal or the coffee break occurring during the training session may be paid under 5 U.S.C. §4109 (1997) regardless of whether the training program is held at or away from the employee's duty station.

Meals not covered by registration fees: When a meal or coffee break is not provided for in a training registration fee, the cost of the meal or the break occurring during a training session held at the employee's duty station may be paid when conditions for the exception under 5 U.S.C. §4109 (1997) are met.

(b) Examinations,
licenses and
certifications

Because a Federal employee is responsible for obtaining the qualifications necessary to perform the duties of his or her position, an agency may not pay or reimburse the employee for the cost of examinations, licenses, or certifications, even if required by the state where the Federal employee works. *See Comp. Gen. B-235727 (February 28, 1990).* For example, an agency may not pay the costs for:

1. law school tuition or bar admission fees (*61 Comp. Gen. 357 (1982)*);
2. professional certificates required as a qualification for the employee's position (*Comp. Gen. B-248955 (July 24, 1992)*);
3. professional accreditation (*46 Comp. Gen. 695 (1967)*), including certification as a Government Financial Manager (*Comp. Gen. B-260771 (October 11, 1995)*); or

4. state licenses required for an employee to perform Federal duties (*Comp. Gen. B-218964 (November 26, 1985)*) unless Federal law expressly requires Federal agencies to comply with state regulations (*Comp. Gen. B-252467 (June 3, 1994)*). If compliance with state requirements is mandated by statute, an agency may, at its discretion, spend appropriated funds to reimburse its employees for licensing or certification fees required to perform their duties.

In limited cases, the cost of training to *prepare* an employee for an examination, such as for licensing or certification, is payable when the employee is already qualified for the position held. The costs of the examination and related travel and per diem expenses associated with the taking of that examination are *not* payable under the training law. *See 55 Comp. Gen. 759 (1976)*. Exceptions are when:

1. the examination serves as a diagnostic tool to determine deficiencies in knowledge and skills needed by an employee in the performance of official duties; or
2. the cost of the examination is a part of the cost of a training program.

(c) Library and laboratory services

The necessary cost of library and laboratory services are payable under *5 U.S.C. §4109 (1997)* when they are an integral part of the course or program of study or are required by the academic institution as part of the tuition and matriculation fees.

(d) Lodging and meals at place of duty

The head of an agency is authorized to cover all expenses *necessary* for a training event under *5 U.S.C. §4109 (1997)*.

If the agency requires all participants of a training course to stay in a local hotel while in training, a *per diem allowance* at headquarters may be authorized as a *necessary training expense*. In *39 Comp. Gen. 119 (1959)*, an employee assigned to take a two-week training course at the employee's place of duty was allowed to receive reimbursement or advance payment for expenses connected with the use of a local hotel while in training.

(e) Purchase or rental of books, materials,

Agencies may pay for a magazine subscription used in a training course or program of study under *5 U.S.C. §4109(a)(2)(E) (1997)*.

GSA Federal Travel Regulations determine per diem rates. Therefore, an agency may not make any payment above the applicable full per diem rate specified in those regulations. *See 41 C.F.R. §301-7 and §301-8 (1997).*

An agency may pay a reduced per diem rate or a standardized payment to employees in temporary duty training assignments. *See 5 C.F.R. §410.403(b) (1997).* If a reduced or standardized per diem rate is not authorized in advance of the travel and the fees paid to a training institution include lodging or meal costs, the agency must make an appropriate deduction from the total per diem rate payable to the employee. *See 41 C.F.R. §301-7.12 (1997).*

In *Comp. Gen. B-185374 (July 29, 1976)*, an employee was *not* authorized per diem during a period of training prior to reporting to the employee's first official duty station. The denial resulted from an agreement between agency personnel and finance officers not to pay per diem to any employee whose residence was less than 50 miles from the training site. The employee resided 18 miles from the training location. The decision was a proper exercise of agency discretion.

Transportation

(a) Transportation payment at agency discretion

Under 5 U.S.C. §4109(a)(2)(B), an agency may permit an employee selected for long-term training to choose to transport his or her dependents and household goods to the training site rather than receive per diem. This authority recognizes the occasional need for a Federal employee assigned to training at a temporary duty station to relocate his or her family to the site.

(b) Limitation on transportation expenses

The maximum allowance for the transportation of dependents and household goods to an employee under *5 U.S.C. §4109(a)(2)(B) (1997)* is based on the total per diem allowance the employee forgoes to receive the transportation benefits for his or her immediate family and effects. *See 39 Comp. Gen. 140 (1959) and 40 Comp. Gen. 714 (1961).*

The employee may receive either per diem or a transportation allowance, but not both.

GSA regulations allowing an agency to pay a limited set of

relocation allowances in connection with a temporary change of station for a period of not less than 6, nor more than 30, months, do not apply to employees assigned to training under *5 U.S.C. chapter 41. See 41 C.F.R. Part 302-1 (1997).*

Travel Costs

5 U.S.C. §4109(a)(2) (1997) provides that an employee may be reimbursed for all or part of the necessary expenses of training, including travel costs. The GSA Federal Travel Regulations determine what specific travel costs may be paid.

(a) Expenses for privately owned vehicle

Agencies may authorize and pay expenses of employees using privately owned vehicles to travel to and from training.

The authority contained in *5 U.S.C. §4109(a)(2)(A) (1997)* to pay or reimburse employees for the necessary expenses of training includes costs of using privately owned vehicles when such use is for the good of the Government. *See 5 U.S.C. §5704 (1997).*

36 Comp. Gen. 795 (1957) found that when an employee is properly authorized to use a privately owned vehicle for official business, it is within the administrative discretion of the agency to pay the employee the cost of mileage from whatever point the journey is begun. There is *no* requirement that the distance the employee would normally travel between home and headquarters be deducted from the computation. This applies irrespective of whether the employee performs duty on that day within or without the corporate limits of the headquarters city or at the headquarters office.

When travel by a privately owned vehicle is to the advantage of the United States and a parking fee is required at the training site, the parking fee is an allowable expense. *See 5 U.S.C. §5704(d) (1997).*

Interagency Training

Interagency training is used to supplement the training provided by single agencies. The purposes are to:

1. promote cost-efficiency through the use of interagency training rather than creating similar programs in multiple agencies;
2. provide a broad range of training programs by addressing common training needs Governmentwide; and

3. increase the level of quality and consistency in training across Government. *See Exec. Order No. 11348 (1967)*, as amended.

U.S. Office of
Personnel
Management
Responsibility for
Interagency Training
by Subject-Matter

OPM provides executive and management interagency training. The following authorities give OPM certain responsibilities with regard to Governmentwide training:

1. **computer security and privacy** (*Computer Security Act of 1987, Pub. L. No. 100-235 (1987)*);
2. **information resources management** (*OMB Circular A-130, Transmittal No. 3, Appendix III (February 8, 1996)*);
3. **labor-management relations** (*Exec. Order No. 11491 (1969) as amended by Exec. Order No. 12107 (1978)*);
4. **retirement counselor training** (*5 U.S.C. §8350(B) (1997)*);
and
5. **strategic planning and performance measures for executives and managers** (*Government Performance and Results Act of 1993, Pub. L. No. 103-62 (1993)*).

Federal Agency
Authority for
Interagency Training
by Subject-Matter

Selected agencies have established interagency training facilities to meet training needs that agencies have in common and which are not met by OPM. This training is offered under the authority of law, presidential directive, or as a result of coordination with OPM. These include:

1. **auditor training** provided under a *Memorandum of Understanding between OPM and the Department of Agriculture (1979)* covering training programs for Federal, State, and local government audit personnel, with the USDA Graduate School administering the program;
2. **civilian employee travel, space utilization, and property management training** provided under a *Memorandum of Understanding between OPM and the General Services Administration (1981)*;
3. **foreign language training** provided by the Department of State's Foreign Service Institute established under *22 U.S.C. §4021 (1997)*;
4. **law enforcement training** provided by the Department of Treasury's Federal Law Enforcement Training Center which was established by a Memorandum between Treasury and several other Federal agencies, including OPM;

5. **legal training** provided by the Department of Justice's Legal Education Institute established by a *Presidential Memorandum to Heads of Agencies (1979)*;
6. **procurement and acquisition training** provided by GSA under the *Federal Procurement Policy Act*, which established the Federal Acquisition Institute (*Federal Procurement Policy Act, Pub. L. No. 93-400 (1974)*); and
7. **safety training** provided by the Department of Labor's Occupational Safety and Health Administration under *Exec. Order No. 12196 (1980)*.

Fees Received for Interagency Training Programs

31 U.S.C. §1535 (1996) authorizes the inter- and intra-departmental furnishing of goods and services on a reimbursable basis and *31 U.S.C. §1536 (1996)* authorizes the crediting of such reimbursements to the appropriation charged for the performance.

Under *5 U.S.C. §4104 (1997)*, agencies may provide interagency training on a reimbursable or non-reimbursable basis. Fees received from Federal agency participants in another agency's interagency training programs may be credited to the sponsoring agency's appropriation. However, an agency may not obtain reimbursement for training if funds are already provided for interagency training in its appropriation.

Meetings and Conferences

Meetings and conferences often provide an important opportunity for learning information relevant to improving the conduct and/or management of agency programs. A Federal agency may pay an employee's expenses for attending a meeting or conference as a training expense authorized by *chapter 41 of title 5, U.S.C.* when:

1. The purpose of the conference is educational;
2. The content is relevant to improving the employee's performance;
3. Most of the conference consists of planned, organized exchanges of information between presenters and audience; and
4. The employee will derive developmental benefits through attending. *See 5 C.F.R §410.404 (1997)*.

U.S. Office of

OMB Bulletin 93-11 on Government Fiscal Responsibility and

Management and Budget and U.S. General Services Administration
Guidance on Meetings and Conferences

Reducing Perquisites (April 19, 1993), and the current GSA Federal Travel Regulations require that agencies serve the public interest by exercising strict fiscal responsibility when selecting conference sites and scheduling employee attendance. They also identify which travel expenses may be paid and/or reimbursed.

Membership in Professional Organizations

Under *5 U.S.C. §4109(b) (1997)*, the expenses of training do **not** include membership fees except to the extent that:

1. the fee is a necessary cost directly related to the training; or
 2. payment of the fee is a condition precedent to undergoing the training, as is the case with Toastmaster's International. *Comp. Gen. B-223447 (October 10, 1986)*.
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Prohibition on Payment of Individual Membership Fees

Payment of annual dues for membership in a professional organization is a personal expense, *not* reimbursable to the employee, even if the Government would benefit from the employee's development as a result of the membership. *5 U.S.C. §5946 (1997)* prohibits the use of appropriated funds for the payment of individual membership fees or dues of officers and employees of the Government, except as authorized:

1. by specific appropriation;
2. by express terms in a general appropriation; or
3. in connection with employee training or meetings under *5 U.S.C. §4109 or §4110*.

In some instances an individual membership is included in the conference fee and conference fee cannot be reduced by the cost of the individual membership. If the Government pays for an employee to attend the conference, the employee may accept the membership as an incidental byproduct of the meeting.

Agency Membership

Under *5 U.S.C. §5946 (1997)*, an agency may become a member of an organization and pay the required dues if it is administratively determined to be necessary in carrying out authorized agency activities. *See 52 Comp. Gen. 495 (1973)*.

Pay of the Employee

This section addresses the pay of an employee while attending agency approved training. Agencies are reminded that under title 5:

*Except as provided in 5 C.F.R. §410.402(b) (1997), no funds appropriated or otherwise available to an agency may be used for the payment of premium pay to an employee engaged in training 5 C.F.R. §410.402(a) (1997). As a general rule, under 5 U.S.C. §4109(a)(1) (1997) employees may receive **neither** overtime pay or compensatory time off for time spent in training.*

Training as Hours of Work under the Fair Labor Standards Act

The prohibition on overtime pay is *not* applicable to training treated as hours of work under OPM's regulations implementing the *Fair Labor Standards Act (FLSA)*, as amended. For employees subject to the FLSA, time spent in training or preparing for training outside regular working hours shall be considered hours of work for the purpose of computing FLSA overtime if an agency requires the training to:

1. bring performance up to a fully successful, or equivalent level; or
2. provide knowledge or skills to perform new duties and responsibilities in the employee's current position.

See also 5 C.F.R. §410.402(d)(1) (1997), 5 C.F.R. §551.423 (1997) and 29 C.F.R. §785.27 through §785.32 (1996).

Time spent in training or preparing for training outside regular working hours is **not** hours of work for employees subject to the FLSA if the training:

1. improves the employee's performance above a fully successful, or equivalent level; or
2. provides the employee with knowledge or skills required for reassignment to another position or advancement to a higher grade in another position.

See also 5 C.F.R. §410.402(d)(2) (1997) and 29 C.F.R. §785.27 through §785.32 (1996).

Compensatory Time Off Instead of Overtime

Entitlement to compensatory time off depends on entitlement to overtime pay. The title 5 prohibition on payment of overtime pay for training applies to granting compensatory time off. *See 5 C.F.R. §550.114 (1997), 5 C.F.R. §551.423 (1997), 39 Comp.*

Gen. 453 (1959) and Comp. Gen. B-249835 (January 29, 1993).

Overtime Pay for
Travel

Eligibility for overtime pay for time spent in travel to and from training is determined by law and regulations concerning hours of work. *See 5 U.S.C. §5542(b)(2) (1997), 5 C.F.R. §550.112(e) (1997) and Comp. Gen. B-165311 (November 12, 1968).*

5 C.F.R. §551.422 (1997) specifies (for FLSA overtime pay for purposes) when time spent traveling is hours of work. *See also 29 C.F.R. §785.33 through §785.41 (1996).*

For employees not covered by (exempt from) FLSA overtime pay provisions, overtime pay for travel related to training is usually prohibited. *See 5 C.F.R. §550.112(g) (1997).* Time spent in travel status away from the official duty station is *not* hours of work unless the travel results from an event that could not be scheduled or controlled administratively by the agency.

In *50 Comp. Gen. 519 (1971)*, the phrase "could not be scheduled or controlled administratively" was determined to mean "the ability of an executive agency to control the event that necessitates an employee's travel." For example, travel is considered hours of work under title 5 when it results from unforeseen circumstances such as an event that is scheduled by someone or some organization outside the Executive branch of Government. *See also 69 Comp. Gen. 545 (1990).*

However, when an outside institution contracts with the Government to conduct a training course, then the event is under the administrative control of the Government. In *Comp. Gen. B-190494 (May 8, 1978)*, an employee was denied overtime pay for travel on Sunday to attend such a training event. *See also 66 Comp. Gen. 620 (1987).*

Overtime Payment for
Work in Excess of 40
Hours

The title 5 prohibition on payment of overtime pay for training does not prohibit overtime pay for work performed in excess of 8 hours in a day or 40 hours in a week. *See 41 Comp. Gen. 477 (1962).*

**Procurement of
Training**

The following are general guidelines relating to the procurement of training. Although the head of an agency has training procurement

authority under *chapter 41 of title 5, U.S.C.*, procurement of training in most agencies is governed by GSA regulations. An individual human resource development professional or manager should consult the agency delegations of authority to determine what specific authorities he or she has.

Use of the Training
Authorization Form

Agencies may use an authorized training form to procure and certify payment of training expenses through Government or non-Government facilities. The form is certified by a training official instead of the contracting officer under a procedure negotiated by the two offices and addressed in the agency's administrative directives. *Comp. Gen. B-210334 (July 14, 1983)*.

Under typical negotiated procedures, the *Training Authorization Form (SF-182)* or equivalent is authorized for use to obligate funds, contract for training, and certify payment of approved training expenses under the following conditions:

1. the training cost of a single training event, program, or instructional service does not exceed the simplified acquisition process dollar limit established by GSA;
2. the cost is of a fixed nature, i.e., price per student or price per course, program, or service; and
3. the program, course, or instructional service is off-the-shelf and no modification or development resulting in increased cost to the Government is needed to meet the organization's needs.

The *Training Authorization Form* is also used for requesting, approving, and certifying payment for attendance at meetings, conferences, seminars, and symposia where the primary purpose is to train an employee to meet a performance improvement related need. The form is *not* used to purchase general supplies, training equipment, or non-training services.

When an agency training course or program requires new design and development, the authorized contracting officer contracts for the service on behalf of and as requested by the responsible training or management official.

Contracting with
Government
Employees

Under *GSA's Federal Acquisition Regulations*, a contract is not to be knowingly made with a Government employee (or with a business concern or other organization owned or substantially owned or controlled by one or more Government employees), except for a most compelling reason, such as when the agency's needs cannot reasonably be otherwise met. The purpose of this prohibition is to avoid any conflict of interest that might arise between:

1. an employee's interests and the performance of official duties; and/or
2. any appearance of favoritism or preferential treatment.

The fact that a Government employee's service might be less expensive than another source is not a compelling reason to contract with the Government employee according to the Comptroller General. *See 61 Comp. Gen. 65 (1981) and 48 C.F.R. §3.601 (1997).*

Contracting with
Foreign Governments
or International
Organizations

An agency head may contract with a foreign government or international organization to provide training services to agency employees after receiving advice from the Department of State before the first use of such training facility and thereafter periodically but not less often than once every three years. *See Exec. Order No. 11348 §402 (1967)*, as amended.

Delivery of Goods
and Services in a
Subsequent Fiscal
Year

Training and development expenses may be charged to the fiscal year appropriation in which the obligation is incurred regardless of the fact that the training may extend into the following fiscal year. *See 31 U.S.C. §1502(a) (1996).*

Consistent with this rule, the Comptroller General states that delivery of goods or performance of services in a fiscal year subsequent to the year in which a contract is executed does not preclude charging the earlier fiscal year appropriations with the full costs of goods or services. *See 65 Comp. Gen. 741 (1986).* Thus, when a training obligation is incurred and performance begins in one fiscal year, the entire cost is chargeable to that year, even though performance may extend into the following year. Such services are a single undertaking, properly chargeable to the fiscal year in which the training need was determined, the debt incurred,

and the performance began. *See Comp. Gen. B-233243 (August 3, 1989) and Comp. Gen. B-257977 (November 15, 1995).*

An agency also may charge a previous fiscal year appropriation for the entire cost of a training course scheduled to begin in the next fiscal year when

1. the course meets a bona fide need of the prior fiscal year;
2. scheduling of the course is beyond the agency's control; and
3. the time between procurement and performance is not excessive. *See 70 Comp. Gen. 296 (1991).*

This includes obligating its fiscal year funds in advance to pay for a two-year training program, such as the Presidential Management Intern program, where the training meets a bona fide need of the fiscal year charged. *See Comp. Gen. B-257977 (November 15, 1995).*

The Economy Act

31 U.S.C. §1535 (1996) (formerly section 601 of the Economy Act of 1932) authorizes Federal agencies to provide reimbursable services to another Federal organization that requests them when the requesting organization determines that:

1. it has funds available for the services in question;
2. the arrangement is in the Government's interest;
3. the agency or unit to fill the order is able to provide the needed services; and
4. the head of the agency decides the needed services cannot be provided as conveniently or cheaply by a commercial enterprise.

The Economy Act has also allowed agencies to:

1. admit to their training programs employees of Federal organizations not covered by GETA such as military personnel if the training is in the Government's interest and if the agency has funds available for the training;
2. admit to their training programs persons sponsored by Federal organizations not covered by GETA if the sponsoring agency pays for the training; and

3. obtain training services from another Federal agency that has obtained these services by contract.

31 U.S.C. §1535 (1996) authorizes the inter- and intra-departmental furnishing of goods and services on a reimbursable basis and *31 U.S.C. §1536 (1996)* authorizes the crediting of such reimbursements to the appropriation charged for the performance.

U.S. Office of
Management and
Budget Circular A-76

OMB Circular A-76 (August 4, 1983), Performance of Commercial Activities, requires that Federal agencies assess the costs of performing work "in-house." The circular provides guidance on how to place costs on such things as a position or service when determining if it is more economical to contract the work to outside sources. For example, an agency may decide to develop training in-house rather than contract out based on an analysis of cost factors.

The circular is designed as a tool to challenge managers to find the most efficient and effective means of doing business at competitive prices. It does *not* dictate how agencies should organize themselves or manage their programs.

**Records of Plans,
Activities, and
Expenditures**

Training law and regulations require agencies to maintain information concerning the general conduct of agency training activities for internal management purposes and for the President and Congress to discharge effectively their respective responsibilities for supervision, control, and review of these training activities.

Agencies should maintain, in the form and manner that the agency head considers appropriate, records of the following:

1. agency training plans (*5 C.F.R. §410.302(d)*);
2. training activities funded and individual employees trained (including training of Presidential appointees, academic degree training to relieve retention and recruitment problems, training to place an employee in another agency, and employees subject to continued service agreements) (*5 C.F.R. §410.311*);
3. payments made for travel, tuition, fees and other necessary training expenses (*5 C.F.R. §410.406*);
4. each contribution, award, or payment made and accepted by a

Federal employee from a non-Government source (*5 C.F.R. §410.503*); and

5. evaluations of the results of training and how well agency training activities met short and long-range program needs by occupations, organizations, or other appropriate groups (*5 C.F.R. §410.602*).

Required Training

The following outlines mandatory training for Federal employees. Each agency also has the authority to mandate additional training for its employees.

Computer Security

The importance of computer security to the agency, employees' role and responsibility in computer security, and basic agency computer security policies and procedures is a part of the periodic computer security training required by the *Computer Security Act of 1987, Pub. L. No. 100-235 (1988)*.

5 C.F.R. §930.301 - 305 (1997) requires the head of each agency to provide initial, continuing, and refresher training at the awareness level, policy level, implementation level, and performance level training for executives, program and functional managers, information resources managers, security and audit personnel, automated data processing management, operations, and programming staff, and end users.

Ethics

5 C.F.R. §2638.703(b) (1997) requires that each new agency employee be provided, within 90 days of the date of his or her entrance on duty, the ethics materials specified in *5 C.F.R. §2638.703(a) (1997)*. Agencies must also provide new employees with a minimum of one hour of duty time to either review these materials or receive ethics training.

Executives,
Managers, and
Supervisors

5 C.F.R. §412 (1997) requires agencies to systematically develop executives, managers, supervisors, and candidates for these positions. Agency programs must provide for:

1. initial training for incumbents based on the results of needs assessments;
2. continuing learning experiences, so that the individual may achieve the mastery level of proficiency for his or her current management level and position; and

3. systematic development of candidates for higher management levels, including any OPM approved formal Senior Executive Service candidate development programs.

Retraining

OPM defines retraining as training and other developmental activities that are:

1. provided to an employee to address obsolescent skills in the current position, such as in the area of technology; or
2. designed to equip an individual with knowledge and skills leading to another agency occupation or position. *See 5 C.F.R. §410.101(e) (1997).*

In the following, retraining is specific to situations where an employee is preparing for another position at agency expense. For employees affected downsizing, see *5 C.F.R. §330.601 (1997)* for information about agency Career Transition Assistance Plans.

Tax Implications

Training law requires that appropriated funds and other funds available to an agency be used for training to improve individual and organizational performance and assist in achieving an agency's mission and performance goals. *See 5 U.S.C. §4101 and 5 U.S.C. §4112(a) (1997).* In situations where agency funds are used to train an employee to perform duties in a new or different mission-related occupation, authorizing officials need to consult with appropriate agency officials to determine if the training has tax implications for the agency and the employee. *See 26 U.S.C. §127 (1997).*

**Training for
Placement within the
Same Agency**

Exec. Order No. 11348 §303 (1967), as amended, states that the head of each agency shall plan training for both short and long-range program needs by occupations and organizations. This permits agencies to train employees for other occupations based on organizational need and when vacancies exist. However, if new jobs offer more promotion potential to employees, the employees must compete to enter the training programs. These competitive processes must be consistent with merit principles and EEO considerations.

**Training for
Placement in Another**

5 U.S.C. §4103(b)(1) (1997) states that an agency may train any employee of the agency for placement in a position in another

Government Agency agency if the head of the employing agency determines that such training is in the interest of the Government.

Training for Placement Outside of Government

The Government Employees Training Act only authorizes training expenses for placement within the Federal Government. The *Job Training Partnership Act (JTPA) (Chapter 19 of title 29 U.S.C. §1501 (1996))* is the mechanism for retraining outplaced or soon-to-be outplaced employees for jobs in the private sector. The U.S. Department of Labor administers the JTPA, but state governments use Federal funds to develop and implement these retraining programs. See applicable reduction in force regulations in *5 C.F.R. §351.803(a) (1997)*.

Student Educational Employment Program

The Student Educational Employment Program combines all student hiring authorities into two components and two appointing authorities. It has two major programs:

1. the Student Career Experience Program, and
2. the Student Temporary Employment Program.

See 5 C.F.R. §213.3202(a) and (b) (1997).

Student Career Experience Program

In the Student Career Experience Program students are hired to work in their academic field such as computer programming. They are eligible for a noncompetitive conversion to a permanent Federal position upon completion of their academic course work. Agencies may use *5 U.S.C. Chapter 41 and 5 C.F.R. part 410* authorities to pay for all or part of the following expenses:

1. tuition and matriculation fees;
2. library and laboratory services;
3. materials and supplies;
4. books (purchase or rental); and
5. other services directly related to training, including travel and transportation expenses from duty stations and schools and between work experiences and study. *See 5 U.S.C. §4109 (a)(2)(B) (1997)*.

Such training is subject to the prohibition on paying for academic

degrees found in *5 U.S.C. §4107 (1997)*.

A Federal agency may require a student to sign a continued service agreement to continue employment in the Federal agency for a specified period of time before accepting tuition assistance from the agency. Service in a non-pay status is not counted toward completion of the obligation unless it is at the convenience of the agency. *See 5 U.S.C. §4108 (1997)*.

Since a student under the Student Career Experience Program is eligible to be noncompetitively converted to permanent status within 120 days of completion of their academic program, the student is responsible for ensuring that he or she completes all requirements for the position, including mandatory certification, prior to the end of the 120 day conversion period.

Student Temporary
Employment Program

With the Student Temporary Employment Program, a manager may appoint students on a temporary basis to jobs that may or may not be related to the student's academic field. The intent is to provide maximum flexibility and opportunity to agencies and students that will meet varying needs on a short-term basis. An agency may use its training authority to pay for all or part of the student's *job-related* training expenses.

Government
Employees Training
Act and Veteran's
Educational
Assistance

Under *38 U.S.C. §3681 (1997)*, veterans' educational assistance cannot be used to pay for training when an employee is attending training paid for under GETA. This statute ensures that multiple payment is not made for the same training activity. For example, a Federal agency providing training under GETA to a student appointed under *5 C.F.R. §213.3202 (1997)* authority, who is also receiving veterans' educational assistance, must ensure that agency assistance is not provided for the same training. This also applies to Federal fellowships, scholarships, and grants. Such a determination is necessary to protect the Government's financial interest.

An employee would not be prohibited by *38 U.S.C. §3681 (1997)* from having one training course paid for under GETA and another course taken concurrently which is paid for under the law governing veterans' educational assistance allowances. For example, an employee could receive training in computer

programming under GETA during duty hours while receiving an allowance from the Department of Veterans Affairs for college instruction in business administration after hours during the same academic term. The computer programming course, however, *cannot* be a part of the same program of study for which the employee is receiving veterans' educational assistance.

Training Needs Assessment

Although *section 2181 of the Federal Reports Elimination and Sunset Act of 1995, Pub. L. No. 104-66 (1995)*, abolished the requirement for an agency to review the needs and requirements for training employees under its jurisdiction at least once every 3 years, planning for training is still required under *5 U.S.C. §4103 (1997). Exec. Order No. 11348 §303 (1967)*, as amended, requires heads of agency to review, at least annually, organizational, occupational, and individual needs for training. This requirement is referenced in *5 C.F.R. §410.203 (1997)*.

A systematic and continuing review of current and foreseeable organizational training needs provides a realistic basis upon which to plan, program, budget, direct and evaluate a viable training program. Such reviews consider the broader issues and forces that impact organizational and program effectiveness as well as occupational and individual training needs.

Individual training needs are assessed within the context of the organization's strategic goals in order to ensure employees' performance competency and development. Some agencies use Individual Development Plans (IDP) to document this assessment and to plan for employee training and development.

For additional information, a copy of the OPM *Training Needs Assessment Handbook* is available on the Training Forum of the OPM electronic bulletin board at 202-606-4800.

Government Performance and Results Act of 1993

The U.S. Congress passed the *Government Performance and Results Act of 1993, Pub. L. No. 103-62 (1993)*, to:

1. improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction;
2. help Federal managers improve service delivery by requiring

that they plan for meeting program objectives and by providing them with information about program results and service quality; and

3. improve internal management of the Federal Government.

The Act underscores the importance of strategic planning in the Federal Government. When an agency engages in strategic planning, it establishes goals and objectives which move it toward desired outcomes. The Act thus links strategic planning to a systematic approach for the assessment of organizational needs and to a periodic evaluation of programs, including human resource development, to meet those identified needs.

Training of Non-Government Employees

Contractors

The following is guidance on training non-Government employees. (See earlier discussion on the *Economy Act*.)

Since contractors are selected for their expertise in a subject-area, contractors may only be trained in skills they are *not* required to bring to the job. Contractors may be trained in rules, practices, procedures and/or systems that are unique to the employing agency and essential to the performance of the contractor's assigned duties, such as agency computer security procedures. However, the authority for training of contractors is not in training law. It is in the authority to administer contracts. Training of contractors is subject to the decision of the chief contracting official.

Employees of International Organizations

The Foreign Assistance Act of 1961, Pub. L. No. 87-195 (1961), as amended at 22 U.S.C. §2357(a) (1997), authorizes Federal agencies to admit employees of international organizations to agency training programs on a reimbursable basis. Agencies may retain the money received.

Private Citizens

A private citizen can be admitted to Government training programs under the following conditions set forth in *42 Comp. Gen. 673 (1963)*:

1. that person's attendance is incidental to the necessary and authorized training of Government employees; and
2. the tuition fee covering that person's attendance is deposited in the Treasury as miscellaneous receipts.

Under *31 U.S.C. §3302(b) (1997)*, any money received from outside the Government for the use of the Government must be deposited into the Treasury General Fund as miscellaneous receipts.

An agency retaining and crediting to its own appropriation moneys which should have been deposited into the General Fund has improperly augmented its appropriations.

State and Local
Government
Employees

The *Intergovernmental Personnel Act (IPA) of 1970, Pub. L. No. 91-648 (1970)*, authorizes agencies to train state and local government employees and accept reimbursements and payment for the training. See *42 U.S.C. §4742 (1997)*. The IPA authorizes the Federal agencies to:

1. admit employees of state and local governments to their training programs;
2. waive payments for training costs, if the agency wishes to; and
3. provide for temporary assignment of personnel between the Federal Government and non-Federal organizations, such as State and local governments, Indian tribal governments, certain nonprofit organizations, and domestic colleges or universities. See *5 C.F.R. part 334 (1997)*.

Payments received for training employees of state and local governments are credited to the appropriation or fund used to pay the training costs.

Volunteers

Volunteers may only be trained in procedures and/or systems that are unique to their assigned agency and essential to conducting their assigned responsibilities. Training in these areas is usually part of a volunteer's orientation into the agency.

**Use of Government
Funds for Training**

5 U.S.C. §4112 (1997) provides for the absorption of costs of agency training programs from applicable appropriations or funds available to the agency for each fiscal year, including program funds. Heads of agencies may delegate their authority to approve expenditures for training. See *Comp. Gen. B-175024 (June 1, 1972)*.

Section 624 of the Treasury, Postal Service, and General

Government Appropriations Act of 1997, as contained in section 101(f) of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, prohibits all agencies from spending appropriated funds on training that is offensive to Federal employees and unnecessary in the execution of their official duties. Congress defined inappropriate or offensive training as training that:

1. does not bear directly on an employee's official duties;
2. induces high levels of unnecessary emotional or psychological stress;
3. does not notify employees prior to training of the content and methods to be used;
4. does not have require written course evaluations;
5. contains methods or content associated with religious, quasi-religious belief systems, or “new age” belief systems (*see EEOC Notice N-915.022 (September 2, 1988)*);
6. is offensive to, or designed to change, employee' personal values or lifestyle outside the workplace; or
7. includes non-work related material on HIV or AIDS.

**Worksite
Educational
Programs**

An agency may bring non-Government educational programs to the worksite if the agency has idle training space that could be made available to an educational institution, particularly after work hours. If the Federal agency is housed in Government-owned or leased buildings controlled by the General Services Administration, arrangements of this kind are governed by *GSA's Federal Property Management Regulations. See 41 C.F.R. §101-20.400 (1997).*

FEEDBACK REQUEST

The U.S. Office of Personnel Management is committed to providing high quality products that meet the needs of our customers. Human resource development is undergoing dynamic changes in the Federal Government. In our effort to provide an informative and useful guide, some areas of interest to HR professionals, managers, employees and others may have been left out.

To evaluate the Handbook, we need your feedback. We would like to know how satisfied you are with it, how you use it in your agency, and how we may improve it.

Please take a few minutes and fax (202-606-2394) or email (jmlombar@opm.gov) your comments to us.

1. How do you (or how will you) use *The Training Policy Handbook* in your agency?
2. What do you like about the Handbook?
3. What can OPM do to improve the Handbook?

Written comments may be addressed to:

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