

Information Paper

1. SUBJECT: Official Representation Funds (.0012)**2. REFERENCES:**

- a. Department of Defense Appropriations Act, 2010, 123 Stat. 3409, Public Law 111-118, (19 December 2009) – Refer to Newest App. Act.
- b. Title 22, United States Code § 2694 (3 January 2007)
- c. Department of Defense Instruction (DoDI) 7250.13 (30 June 2009)
- d. Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 7201.01 (7 November 2006)
- e. Army Regulation 37-47 (12 March 2004)

3. PURPOSE: To provide a summary of the authorized uses of Official Representation Funds (ORF).

4. KEY CONCEPTS:

a. Background. Each year, Congress provides a certain amount of money in the Operations and Maintenance (Army) appropriation specifically for “emergencies and extraordinary expenses,” (EEE) to be used by the Secretary of the Army. A portion of that money is in turn designated for use in extending official courtesies to high-level officials from both the US and foreign countries. This information paper will discuss the authorized and prohibited uses of this money and act as a resource document for practicing Judge Advocates and Administrative Law Attorneys who deal with ORF issues.

b. Legal Analysis. The command must appoint a Representation Fund Custodian (RFC) who will initially evaluate the request for completeness and sufficiency. That person will submit the request to a the SJA for legal review prior to any ORF expenditure to ensure fiscal laws are strictly observed. Judge Advocates and legal advisors reviewing ORF proposals should examine three main points when evaluating the legal sufficiency of the expenditure: Authorized host, authorized guest, and for events, the observance of gift requirements or guest attendance ratios.

i. Authorized Host. Only certain individuals are authorized to extend invitations to authorized guests for functions that will be funded using ORF funds. Those individuals are listed in AR 37-47, para. 2-6, and include DA-level officials. Also included are “commanders,” which the Army has identified as combatant commanders and those to whom the combatant commanders have delegated ORF authority, to a maximum of one level down. In turn, those authorized individuals may issue prior written permission for still lower subordinates to host events on behalf of those authorities.

ii. Authorized Guests. AR 37-47 specifies that ORF funds may only be spent to extend official courtesies to authorized persons. These are usually foreign citizens who have attained a high rank or stature within that country or beyond, such as high-ranking military officials, business executives, or other distinguished citizens. Authorized persons also include

US or state government officials such as mayors, governors, and members of Congress and their staffs.

1. Attorneys providing legal reviews should take care to ensure the “official” is sufficiently high-ranking to warrant official courtesies. Generally, military personnel are only considered authorized persons if they are of a certain rank. For example, some commands may set general guidelines that authorized persons must be Major and higher, Sergeant Major and higher, or their equivalent. Also, those who hold specifically important positions, such as a Captain acting as aide de camp or adjutant to a senior officer, may be considered an authorized guest.

2. Civilians, such as celebrities or small businesses owners, may be considered authorized persons if they have “made a substantial contribution to the United States, DoD, or the Department of the Army.” A well-known local small business owner may qualify, but the inviting authority must be willing to underwrite any such determination.

3. DoD personnel, including military and civilians, are not authorized to receive benefits purchased with ORF funds (unless the event meets the ratio requirements discussed below). Contractors may attend, but are not authorized guests and cannot be funded with ORF funds. Similarly, friends of authorized personnel (other than spouses and immediate staff of authorized guests), who do not merit their own justification, are not valid authorized guests.

4. Judge Advocates should consider the command’s reasons for including each invitee. Legal staff may not possess enough information about each invitee to determine whether they are authorized guests. However, in most cases, commanders have invited certain guests for specific reasons; Judge Advocates can avoid alienating the command by working closely with the staff proponent in charge of the action to discover the basis for the invitation.

iii. Events. ORF funds may be used for luncheons, dinners, and other receptions that “maintain the standing and prestige of the United States at home and abroad,” or that honor authorized guests and maintain civic and community relations. ORF events must be planned with a detailed guest list identifying all individuals considered “authorized guests” for the function. As discussed above, DoD personnel are not allowed to receive the benefit of ORF funds. However, if the guest list meets the below requirements, DoD personnel may attend:

A. For events with less than 30 individuals invited, 20% of the invitees must be authorized guests.

B. For events with 30 or more invitees, 50% must be authorized guests.

C. If the number of invited DoD personnel exceeds the number allowed by the two ratios above, the additional DoD personnel must pay their own way (pro rata). Alternately, all DoD attendees may be required to pay an amount that would cover the pro rata costs for each additional DoD attendee. Contractors do not factor into the ratio and must always pay their own way at ORF-funded events.

D. Occasionally, guest lists may include individuals who have not committed to attend. In the instance that no-shows cause the event to fail the ratio requirements, the event is subject to the same pro-rata requirements listed above. Event planners must generate an actual attendance list and attach the list to the original request and authorization for the expenditure of ORF funds.

iv. Gifts. ORF funds may be used to purchase gifts and mementos for presentation to authorized guests. Gifts are those items that have a purpose or use, and mementos are things (such as coins) that contain only presentational value. These items may be purchased by authorized hosts and given only to authorized guests. No DoD personnel may receive ORF-funded gifts or mementos.

A. The command may purchase standard ORF gifts in bulk as long as they do not exceed the per-gift maximum threshold for the receipt of gifts from foreign governments, \$335. The authorized host (commander) may not keep more than a 3-month supply of ORF-funded gifts.

B. The commander's aide-de-camp should be assigned to track and inventory ORF-gifts purchased in bulk. Judge Advocates should work closely with the aide to ensure each gift or memento given is tracked along with the name of the authorized guest who received it. Preferably, a legal review of each recipient's status should be included with the inventory records.