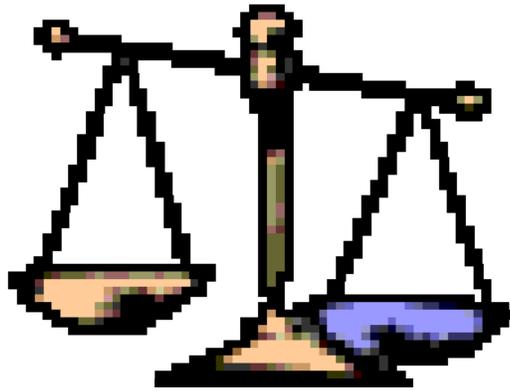


DODEA OFFICE OF THE GENERAL
COUNSEL



DODEA OFFICE OF THE
GENERAL COUNSEL'S
LEGAL NOTES

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- I. **PRESIDENTIAL EXECUTIVE ORDER DIRECTS FEDERAL EMPLOYEES TO CEASE TEXT MESSAGING WHILE DRIVING**

On October 1, 2009, President Obama issued an Executive Order 13513 entitled "Federal Leadership on Reducing Text Messaging While Driving." The Order establishes a Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government supplied equipment. The goal of the Order is to help save lives, reduce injuries, and set an example for state and local governments, private employers, and individual drivers. The Order became effective on December 30, 2009. The

Department of Transportation, in partnership with OPM and GSA, has been providing initial guidance documents to assist Federal agencies to implement the Order. The Department of Defense is currently working on Change 1 to DoD Instruction 6055.04, “DoD Traffic Safety Program,” which will fully incorporate the Order’s requirements into Enclosure 3, “DoD Traffic Safety Program Requirements.”

The Executive Order applies to all Federal Government employees and contractors operating a motor vehicle while on official Government business or using electronic equipment supplied by the Government while driving. It includes anyone operating Government-owned, Government-leased or Government-rented vehicles (GOV) or operating privately-owned vehicles (POV) on official Government business or when performing any work for or on behalf of the Government. “Driving” means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic congestion, a traffic signal, a stop sign, another traffic control device, or otherwise. It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to park. “Texting” or “text messaging” means reading from or entering data into any handheld or other electronic device (including, but not limited to, cell phones; handheld devices; navigational tools or other electronic devices), including for the purpose of SMS texting, emailing, instant messaging, obtaining navigational information or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call. The term also does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving, or while stopped in a location off the roadway where it is safe and legal to park.

Failure to comply with the Executive Order may result in disciplinary action including official reprimand, suspension from pay and duty, removal from Federal service, or other actions in accordance with law and agency policy. As appropriate, a progressive approach to discipline may be used to correct the behavior. Potential aggravating factors in determining an appropriate penalty for failure to comply with the Order, may include, but are not limited to, whether the offense:

- (1) resulted in the injury or death of the driver, passengers, or other motorists
- (2) resulted in the loss and/or damage of government property or equipment;
- (3) occurred in a state or local jurisdiction or on a military installation that prohibits text messaging while driving;
- (4) included any other violations of rules governing the operation of a GOV;
or
- (5) included any violations of state or local traffic laws or resulted in a citation of the operator by local or state authorities.

The Executive Order may be found in Volume 74 of the Federal Register, No. 192, Tuesday, October 6, 2009/Presidential Documents.

II. PROPER USE OF THE GOVERNMENT TRAVEL CHARGE CARD

The Government Travel Charge Card (GOVCC) Program was designed to improve the management and control of official Government business travel. Generally, the use of the GOVCC to pay authorized expenses incurred on official business travel is mandatory for Federal government travelers that have been issued a GOVCC.

Although the use of the GOVCC is mandatory for most expenses incurred as a result of official business travel, it is also important to note that there are several expenses that may be associated with official business travel where the GOVCC is not authorized for use. For example, the GOVCC may not be used for the purchasing of office supplies, training, memberships, conference registration fees or any other supply or services.

As a Federal employee and GOVCC cardholder, it is important that you are familiar with the Federal travel regulations and understand the GOVCC rules, regulations and policies.

Basic Rule: Only official government expenses incurred as a result of official business travel may be charged to the GOVCC. Financial Management Regulation, Vol. 9, Ch. 3, Sec. 0301.

To assist DoDEA employees in the proper use and maintenance of the GOVCC, the following Dos and Don'ts are provided:

- | <u>Do</u> | <u>Don't</u> |
|---|--|
| <ul style="list-style-type: none">▪ Become familiar with GOVCC regulations and policies (DoD Financial Management Regulation, DoD 7000.14-R, Volume 9; DoDEA Regulation 7351.1, "Use of the Government Travel Charge Card")▪ Read the Agreement between the Department of Defense employee and Citibank® Commercial Cards.▪ Request all necessary maintenance changes to your account (e.g., address changes).▪ Use your GOVCC to pay for authorized official business travel expenses.▪ Obtain travel advances for official travel through an ATM if authorized. ATM advances shall not be obtained earlier than 3 days before the scheduled travel. | <ul style="list-style-type: none">▪ Use your GOVCC to pay for personal expenditures not reimbursable on your travel voucher.▪ Put another employee's travel expenses on your GOVCC.▪ Obtain travel advances through the ATM which exceed your expected expenditures for a trip▪ Obtain travel advances through the ATM unless you are on travel or will be on travel shortly.▪ Allow your monthly statement to become past due (delinquent).▪ Wait for receipt of your monthly statement to file your travel voucher. |

- Track your expenses while on travel so you have accurate information for filing your travel voucher.
- File your travel voucher within 5 days after you complete your trip.
- Submit payment in full for each monthly statement.
- Follow your bank's dispute process for charges which are incorrect.
- Contact your bank's customer service number if you have questions about your monthly statement.
- Be aware that misuse of the card could result in disciplinary actions by your agency.
- Safeguard your GOVCC and immediately report a lost or stolen card to Citi at (800) 200-7056, your supervisor and your local area travel card program coordinator.
- Ignore errors listed on your monthly bill.
- Make late payments because this could result in suspension or cancellation of your card.
- Wait to report a lost or stolen card to Citibank® Commercial Cards, your supervisor, AND to your local area travel card program coordinator.
- Forget that the card is issued in your name and liability for payment is YOUR responsibility.

Remember, the GOVCC is a valuable and simple means to pay for costs incident to official business travel and as a cardholder YOU are responsible for using the GOVCC ONLY for authorized purposes.

Brain teasers:

1. Your co-worker will be leaving for official business travel tomorrow and he/she needs to make their hotel reservations. He/she forgot to bring their GOVCC so he/she asks you for permission to use their GOVCC to make their reservations, and promises to switch credit card information once he/she arrives at the hotel. Is this permissible?

No! You are authorized to use your GOVCC only in connection with your official business travel purposes.

2. After dinner, while on official business travel, you and some of your co-workers decide to go to the bar to have a couple of drinks before retiring for the night. Is it permissible to use your GOVCC to purchase your drinks?

No! This outing is not an authorized official business travel expense; therefore, you and your co-workers are prohibited from using your GOVCC in this instance. You must pay for your drinks from your personal funds.

3. Which one of these three items are you not authorized to pay for with your GOVCC while on official TDY?
- a) car rental fee
 - b) lodging
 - c) conference registration fee

Answer: c – A conference registration fee should be charged to your organization's Government Purchase Card, not the GOVCC.

Case:

A Department of the Army employee's removal was upheld on appeal by the Agency where the employee misused his Government travel card 67 times, and was in a position in which he was responsible for handling and managing Government property of value. In addition, the employee did not show remorse for his admitted misconduct and did not exhibit potential for rehabilitation. *Brown v. Dept. of the Army*, 96 M.S.P.R. 232 (2004).

III IS SOMEONE OTHER THAN THE FEDERAL GOVERNMENT OFFERING TO PAY FOR YOUR OFFICIAL TRAVEL EXPENSES?

Under 31 U.S.C. section 1353, non-Federal sources (such as organizations, associations, or businesses) are permitted to reimburse the Federal government for travel, subsistence, and related expenses incurred by Federal government personnel while in their official capacities to attend meetings, conferences, seminars, symposia, and other similar functions.

Approval is subject to the following determinations:

- Payment for travel expenses is for a function related to official duties. This authority does not permit acceptance of payments for promotional vendor training or other events in which the primary purpose is marketing the non-Federal source's products or services;
- The employee is in an official travel status;
- The travel is determined to be in the best interest of the Federal government; and
- Acceptance of benefits will not create a conflict of interest.

Benefits in kind (e.g., plane tickets, prepaid hotel reservations) are preferred. Cash reimbursement for travel expenses cannot be accepted from a non-Federal source by Department of Defense (DoD) employees for travel expenses incurred while in an official capacity. If benefits are provided by a non-Federal source as a reimbursement of expenses, it must be done by a check made payable to the U.S. Treasury, as neither DoDEA nor DoDEA employees are authorized to accept reimbursements.

Since these travel benefits are provided to the Federal government, they should not be listed as a gift on the financial disclosure reports (either the Standard Form 278 or the Office of Government Ethics (OGE) Form 450) of the traveler.

Before DoDEA can accept travel payment reimbursement from a non-Federal source, prior approval must be granted by the DoDEA Director (i.e., approval must be received from the DoDEA Director prior to accepting the payment of travel expenses and the actual travel). Employees who are made aware of potential travel payments from a non-Federal source must complete a request form to initiate the approval process. That form is available at your local DoDEA Office of the General Counsel (OGC). The traveler must provide the completed form to his or her supervisor for concurrence. The form is then forwarded to the Area Director for concurrence, and then the DoDEA Director for approval via DoDEA Headquarters OGC.

After the travel has been completed, the traveler must complete a report (also available from the local DoDEA OGC office). The completed report must be returned to the local OGC office for inclusion in the semi-annual report that DoDEA submits to the DoD, which is then provided to OGE.

Please contact your local DoDEA OGC office if you have any questions.

Please send us your suggestions for articles!

For questions related to any of these matters, please contact your local DoDEA OGC Office:

At HQ: generalcounsel@hq.dodea.edu

At DoDDS-E: generalcounsel@eu.dodea.edu

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