

- B. Food. Buying food for individual employees – at least those who are not away from their official duty station on travel status – generally does not materially contribute to an agency’s mission performance. See 31 U.S.C. § 1345 stating that except as provided by law, an appropriation may not be used for subsistence expenses at a meeting, but that this prohibition does not apply to expenses of an employee of the government carrying out an official duty. As a result, food is generally considered a personal expense. See Department of The Army—Claim of the Hyatt Regency Hotel, B-230382, Dec. 22, 1989 (unpub.) (determining coffee and donuts to be an unauthorized entertainment expense).
1. GAO-sanctioned exception where food is included as part of a facility rental cost. GAO has indicated that it is permissible for agencies to pay a facility rental fee that includes the cost of food if the fee is all inclusive, non-negotiable, and competitively priced to the fees of other facilities that do not include food as part of their rental fee. See Payment of a Non-Negotiable, Non-Separable Facility Rental Fee that Covered the Cost of Food Service at NRC Workshops, B-281063, 1999 U.S. Comp. Gen. LEXIS 249 (Dec. 1, 1999).
 2. Regulatory-based “Light Refreshments” Exception.
 - a. In a 2003 opinion, the GAO all but eliminated the “Light Refreshment” exception by prohibiting agencies from paying for refreshments given to any personnel *NOT* on travel status. See Use of Appropriated Funds to Purchase Light Refreshments at Conferences, B-288266, 2003 U.S. Comp. Gen. LEXIS 224, (Jan. 27, 2003).
 - b. This decision was somewhat reversed two years later in National Institutes of Health - Food at Government-Sponsored Conferences, B-300826, 2005 U.S. Comp. Gen. LEXIS 42 (Mar. 03, 2005) (“NIH opinion”). In that case, the GAO authorized the use of appropriated funds for light refreshments, even for individuals *NOT* in travel status, under certain criteria.³⁴

³⁴ 1) the meals are incidental to the conference or meeting; 2) attendance of the employees at the meals is necessary for full participation in the conference or meeting; and 3) the conference or meeting includes not only the functions (speeches, lectures, or other business) taking place when the meals are served, but also includes substantial functions taking place separately from the meal-time portion of the meeting/conference. National Institutes of Health - Food at Government-Sponsored Conferences, B-300826, 2005 U.S. Comp. Gen. LEXIS 42, at 3, (Mar. 03, 2005).

- c. The Department of Justice, Office of Legal Counsel (OLC) prohibited the executive branch from following the NIH opinion. <http://www.justice.gov/olc/2007/epa-light-refreshments13.pdf>. OLC opined that “meetings” as used in 31 U.S.C. § 1345 included formal conferences sponsored by government agencies and that “subsistence expenses” included meals and light refreshments.³⁵ Therefore the 31 U.S.C. § 1345 prohibits conference attendees, who are from the local PDS area, from utilizing “light refreshment exception.” The OLC opinion controls the activities of agencies of the federal government even though it is more restrictive than the opinions given by the GAO.

3. Statutory-based Exceptions.

- a. Basic Allowance for Subsistence. Under 37 U.S.C. § 402, DOD may pay service members a basic allowance for subsistence.
- b. Meetings and Conferences. Under the Government Employees Training Act, 5 U.S.C. § 4110, there is authority for the government to pay for “expenses of attendance at meetings which are concerned with the functions or activities for which the appropriation is made or which will contribute to improved conduct, supervision, or management of the functions or activities.”
 - (1) Conference Sponsored by Non-Federal Entities. Costs associated with meals included in a conference fee can be considered legitimate expenses of attendance under this statute if: 1) the meals are incidental to the conference or meeting; 2) attendance of the employees at the meals is necessary for full participation in the conference or meeting; and 3) the conference or meeting includes not only the functions (speeches, lectures, or other business) taking place when the meals are served, but also includes substantial functions taking place separately from the meal-time portion of the meeting/conference. See National Institutes of Health – Food at Government-Sponsored Conferences, B-300826, 2005 U.S. Comp. Gen. LEXIS 42 (Mar. 3, 2005).

³⁵ Use of Appropriated Funds to Provide Light Refreshments to Non-Federal Participants at EPA Conferences, 32 Op. Off. Legal Counsel 1, 5 (2007).

- (a) For purposes of this exception, the conference or meeting **must not be purely internal government business meetings/conferences.** National Institutes of Health – Food at Government-Sponsored Conferences, B-300826, 2005 U.S. Comp. Gen. LEXIS 42 (Mar. 3, 2005). Moreover, luncheons disguised as meetings or conferences cannot utilize 5 U.S.C. § 4110. See B-21570, Mar. 22, 1985, 64 Comp. Gen. 406; 408. This authority does not specifically authorize agencies to pay the expenses, including food, of non-governmental employees

 - (b) As this authority is based on 5 U.S.C. § 4110, it does not apply to military members (it applies only to civilian employees). But see JFTR, ch. 4, para. U4510, which authorizes military members to be reimbursed for occasional meals within the local area of their Permanent Duty Station (PDS) when the military member is required to procure meals at personal expense outside the physical limits of the PDS.

 - (c) The OLC opinion may impact the ability of a civilian, who is not in a travel status, to utilize this authority. See Section IX.C.2.c. above.
- (2) Government Sponsored Conference. As part of the NIH opinion, the GAO authorized agencies to pay for the expenses, including food, of conference attendees from other agencies, and even *non-governmental* organizations, at “formal conferences.” National Institutes of Health – Food at Government-Sponsored Conferences, B-300826, 2005 U.S. Comp. Gen. LEXIS 42 (Mar. 3, 2005).

- (a) As part of the decision, the GAO applied the same 5 U.S.C. § 4110 criteria³⁶ to “formal conferences,” but also required sufficient indicia of formality (including, among other things, registration, a published substantive agenda, and scheduled speakers), and stated that the conference must involve **topical matters of interest to (and the participation of) multiple agencies and/or nongovernmental participants.**
 - (b) The OLC opinion may impact the ability of an agency to utilize this authority. See Section IX.C.2.c. above.
- (3) Army Directive 2011-20- Department of Army Conferences. Issued on 14 October 2011, the policy sets down bright line rules for conferences. Department of the Army Directive, 2011-20, Department of the Army Conferences (2011) [hereinafter Army Conference Policy] (available at http://www.apd.army.mil/pdf/ADP2011_20.pdf).
- (a) Appropriated and non-appropriated funds may not be used for refreshments. See Army Conference Policy, paragraph 6.e.
 - (b) Meals will not be authorized at government expense for those not in a TDY status. See Army Conference Policy, paragraph 6.f.. A location shall not be chosen merely to provide government sponsored meals. Even if in a TDY status, meals may not be provided to attendees of an Army conference if the cost of the meals exceeds the per diem for that location (or if a proportional meal rate is used, the cost of the meals provided plus the PMR must not exceed the per diem.)

³⁶ See Section IX.C.3.b.

- (c) In addition to covering food, the Army Conference Policy lays down specific processing and approval requirements, including for choosing location of the event, as well as who is authorized to sign a request for a conference.

- c. Training. Under 5 U.S.C. § 4109 (applicable to civilian employees) and 10 U.S.C. § 4301 and 10 U.S.C. § 9301 (applicable to service members), the government may provide meals when it is “necessary to achieve the objectives of a training program.” See U.S. Army Garrison Ansbach- Use of Appropriated Funds to Purchase Food for Participants in Anti-Terrorism Exercises, B-317423 (May 9, 2009), Coast Guard—Meals at Training Conference, B-244473, 1992 U.S. Comp. Gen. LEXIS 740 (Jan. 13, 1992); Use of Appropriated Funds to Purchase Light Refreshments at Conferences, B-288266, Jan. 27, 2003, 2003 U.S. Comp. Gen. LEXIS 224 (including a discussion of providing food, in general, where it furthers the needs of the training program).
 - (1) This generally requires a determination that attendance during the meals is necessary in order for the attendees to obtain the full benefit of the training. See Coast Guard – Coffee Break Refreshments at Training Exercise – Non-Federal Personnel, B-247966, 1993 U.S. Comp. Gen. LEXIS 639 (Jun. 16, 1993). See also Pension Benefit Guar. Corp. – Provision of Food to Employees, B-270199, 1996 U.S. Comp. Gen. LEXIS 402 (Aug. 6, 1996) (food was not needed for employee to obtain the full benefit of training because it was provided during an ice-breaker rather than during actual training). In many GAO opinions, the application of this rule appears to be indistinguishable from the 3-part test for Formal Conferences and Meetings under 5 U.S.C. § 4110.

