

# The Motley World of Travel-Related Gifts—Scenarios

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## SCENARIO 1 -- Official versus Personal Domestic Travel

Overseen by the Surgeon General, the U.S. Public Health Service Commissioned Corps serve in several Federal agencies, but most serve in the Department of Health and Human Services (DHHS). Every year the Public Health Service Commissioned Officer Association in conjunction with its affiliate, the Commissioned Officer Foundation for the Advancement of Public Health, sponsor a Scientific and Training Symposium [hereinafter “Symposium”]. Because of financial constraints, DHHS agencies are only able to select a few commissioned officers to attend in an official capacity on behalf of DHHS. However, there is no restriction on the number of commissioned officers who can attend and/or actively participate in the symposium at their own expense while on leave.

The three-day Symposium will be held in Raleigh, NC. The Symposium invited four DHHS Commissioned Corps officers to present or lead round table/panel discussions. Their official duty station is in Rockville, MD. Each speaker/presenter is offered a waiver of the registration fee, which includes breakfast and lunch each day. The sponsors also offer to pay for lodging for presenters. Two of the officers invited to present will attend in their official capacities on behalf of DHHS and the other two officers will attend and present in their personal capacities on their own time.

In addition, the Public Health Service Commissioned Officer Association is hosting a kick-off dinner the evening before the Symposium begins. All Symposium attendees are offered complimentary admission to the kick-off dinner.

Under what authorities might these travel-related gifts be accepted?

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## SCENARIO 2 – Travel Outside of the United States

The World Customs Organization (WCO) is organizing and sponsoring a conference in Paris, France, which will take place from Monday, October 13 through Wednesday, October 15. The conference will be dedicated to worldwide best practices for importing and exporting goods and products, both from the perspective of importers/exporters and from the perspective of customs officials.

The WCO has invited approximately 250 individuals to attend the conference, including companies that produce and ship goods, customs facilitators, and customs officials, among others.

The WCO reached out to Customs and Border Protection (CBP) to invite two CBP Officers to give a presentation at the conference titled “Best Uses of Technology to Search Cargo.” The WCO has offered to pay – via reimbursement – airfare to and from the US, lodging, local travel, meals and other incidental expenses while in Paris. If CBP sends representatives to participate in this conference, it will send Joe and Susan, who work at the Port of New York and have expertise in new technologies used for conducting searches of cargo coming into or out of the Port.

French Customs is sending two representatives to attend the WCO conference. When the French government learns that CBP has been invited to send two subject-matter experts on technology and cargo searches to the WCO conference, it contacts CBP to ask whether Joe and Susan can be available after the conference, on Thursday, October 16, to provide French Customs officials with training on a specific kind of search technology. The French government expects that 20 Customs officials will participate in the training, which will take place in Nice, France. The French government offers to pay for Joe and Susan to fly from Paris to Nice on Thursday, October 16, for a hotel the night of October 16, for local travel expenses while in Nice, and for flights back to Paris on Friday, October 17.

The client has contacted you to ask whether it would be appropriate to accept the payment from the WCO for Paris-related expenses, and to accept payment of Nice-related expenses from the French government. What information do you need to provide guidance on these questions? Is the information the same or different for each of these requests? What statute(s) will you analyze these questions under? Would you recommend accepting the payment of Joe’s and Susan’s travel expenses offered by the WCO? Would you recommend accepting the payment of Joe’s and Susan’s travel expenses offered by the French government?

# STATUTORY AUTHORITIES TO ACCEPT TRAVEL AND OTHER BENEFITS

Authority	Type of Event	Location	Source/Type Payment	Nature of Benefits	Conflict Analysis	Agency Approval
<p>31 U.S.C. § 1353 as implemented by GSA regulation at 41 CFR §§ 304-1 <i>et seq.</i></p> <p>“Acceptance of Payment from a Non-Federal Source for Travel Expenses”</p> <p><i>Gift is accepted by the agency</i></p>	<p>Meeting or similar function that relates to the employee's official duties.★</p> <p>Examples: conferences, seminars, speaking engagements, etc.</p>	<p>Event must take place away from the employee's official duty station. Employee must be in official travel status.</p>	<p>Source: any non-Federal source.</p> <p>Payment in-kind (to employee) or by check made payable to the agency.</p>	<p>Travel, subsistence, and related expenses, including waiver of attendance fee. May exceed Government per diem rates, if comparable to those made available to other participants. May <u>not exceed</u> the maximum subsistence allowances prescribed by the Secretary of State for travel to foreign areas.</p>	<p>Acceptance permitted only if the agency determines that a reasonable person wouldn't question the integrity of agency programs or operations.</p>	<p>Authorization must be issued by the agency in advance of the travel.</p>
<p>5 U.S.C. § 4111 as implemented by OPM regulation at 5 CFR §§ 410.501-410.503</p> <p>“Government Employees Training Act”</p> <p><i>Gift is accepted by the employee</i></p>	<p>Training in a non-Government facility or meeting.</p>	<p>No restrictions on location. Event may be local or away from duty station. Employee attends in official duty status or agency pays for attendance expenses in whole or in part.</p>	<p>Source: an organization exempt from taxation under 26 U.S.C. § 501(c)(3).</p> <p>Payment in cash or in-kind to the employee.</p>	<p>Contributions or awards incident to training; or payments of travel, subsistence, and related expenses incident to attendance at meetings.</p>	<p>Acceptance permitted if the agency applies specific criteria regarding conflicts and appearance concerns and decides payment is proper.</p>	<p>The head of the agency or his/her designee must authorize acceptance in writing after a full evaluation of the circumstances in each case.</p>
<p>5 U.S.C. § 7342 as implemented by agency-specific regulations and GSA regulation at 41 C.F.R. §§ 102-42 <i>et seq.</i></p> <p>“ Foreign Gifts and Decorations Act”</p> <p><i>Gift is accepted by the employee</i></p>	<p>Type of event is not specified.</p>	<p>Travel must take place entirely outside of the United States.</p>	<p>Source: any foreign government, including any unit of foreign governmental authority, any international or multinational organization, and any agent or representative of such unit or organization.</p>	<p>Travel or expenses for travel including, transportation, food and lodging.</p>	<p>Acceptance permitted by the employing agency if appropriate and consistent with the interests of the United States.</p>	<p>Approval must be issued by the agency in advance of the travel, and in accordance with any regulations prescribed by the employing agency.</p>

★ Does not include activities required to carry out an agency's statutory or regulatory functions.

## REGULATORY AUTHORITIES TO ACCEPT FREE ATTENDANCE

Authority	Type of Event	Location	Source/Type Payment	Nature of Benefits	Conflict Analysis	Agency Approval
<p>5 C.F.R. § 2635.204(g)(1)</p> <p>"Speaking and Similar Engagements"</p> <p><i>There is no gift to the agency or to the employee</i></p>	Conference or other event where the employee is assigned to speak, participate on a panel, or otherwise present information on behalf of the agency.	No restrictions on location. Employee must be assigned to present information on behalf of the agency.	Source: the sponsor of the event <u>only</u> .	<p>Waiver of attendance fee, food, refreshments, entertainment and instructional materials integral to the event provided <u>on the day of the presentation, only</u>.</p> <p>No travel expenses or other items collateral to the event.</p>	Acceptance permitted if agency determines that the event is appropriate for an employee to speak or otherwise present information on behalf of the agency.	Authorization to participate in the event as a speaker or otherwise present information on behalf of the agency subject to agency's internal management controls.
<p>5 C.F.R. § 2635.204(g)(2)</p> <p>"Widely Attended Gatherings"</p> <p><i>Gift is to the employee</i></p>	Widely attended gatherings of mutual interest to a number of parties.	No restrictions on location but normally used for local events. Employee must attend on own time or excused absence. May not be used for official duty attendance at events at or away from duty station.	<p>Source: the sponsor of the event or a non-sponsor. If a non-sponsor more than 100 persons must be expected to attend and the cost of attendance must be \$375 or less.</p> <p>Payment in-kind only.</p>	<p>Waiver of attendance fee, food, refreshments, entertainment and instructional materials integral to the event.</p> <p>No travel expenses or other items collateral to the event.</p>	Acceptance permitted if employee's attendance will further agency programs or operations. Where the person who extends the invitation has interests that could be substantially affected by the performance of the employee's duties, agency must consider additional factors.	A determination of agency interest may be made orally by the agency designee in advance of the event. However, if the person who extends the invitation has interests that could be substantially affected by the performance of the employee's duties, the determination must be <u>in writing</u> .

# The **M**otley World of Travel-Related Gifts

***NATIONAL GOVERNMENT ETHICS  
SUMMIT***

***SEPTEMBER 2014***

# THRESHOLD QUESTION

**Official capacity** vs. **personal capacity?**—

**Will determine which authorities you  
can or must use**

# Official Capacity

Federal employee



Sent by Agency of US Government



Official Capacity



Cost of  
Employee's  
Attendance



US Government Obligation  
(need appropriated funds to  
do it)



Federal employee



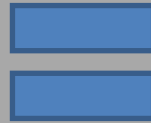
Sent by Agency of US Government



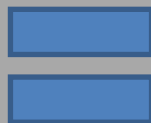
Official Capacity



Cost



Paid by  
Non-federal Source



Agency of the US Government

In order for **agency**  
to be able to accept the



# Need Congressional Authority



**Unauthorized Augmentation  
of Appropriations**

# Examples of Congressional Authority

- Gift Accepted **by Agency**
  1. Individual Agency Gift Acceptance
  2. **31 USC 1353**—(GSA) Non-Federal Source Travel Payments
- Gift Accepted **by Employee**
  1. **5 USC 7342**—Foreign Gifts and Decorations Act
  2. **5 USC 4111**—Federal Employee Training Act

# Personal Capacity

Federal employee



Attends on **Own Time**



Personal Capacity



Cost of  
Employee's  
Attendance



Employee Obligation

Federal employee



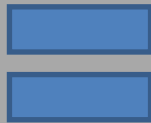
Attends on **Own Time**



Personal Capacity



Cost



Paid by  
Non-federal Source



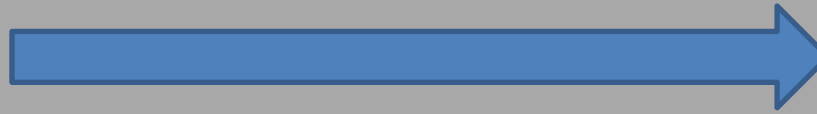
Employee

# WAG Exception

Federal employee



Attends



????? Capacity



To the **Employee**

In order for **agency**  
to be able to accept the



# Need Congressional Authority





# WAG Exception

Federal employee



Attends



**PERSONAL** Capacity



To the **Employee**

# Scenarios

- Review each scenario
- Identify which, if any, authorities you think might apply to the travel-related offers

# SCENARIO I

## Travel to and attendance at



# **Authority to Accept Travel-Related Gifts**

## **31 USC 1353**

- Primary authority for travel and related expenses for meetings away from duty station**
- May trump** other gift acceptance authorities

# Other Authorities that May Be Used

## **§304-3.19 Are there other situations when I may accept payment from a non-Federal source for my travel expenses?**

Yes, you may also accept payment of travel expenses from a non-Federal source under the following authorities, in addition to this part:

(a) Under 5 U.S.C. 4111 for acceptance of contributions, awards, and other payments from tax-exempt entities for non-Government sponsored training or meetings (see regulations issued by the Office of Personnel Management at 5 CFR part 410).

(b) Under 5 U.S.C. 7342 for travel taking place entirely outside the United States which is paid by a foreign government, where acceptance is permitted by your agency and any regulations which may be prescribed by your agency.

(c) Under 5 U.S.C. 7324(b) when payment is for travel to be performed for a partisan rather than an official purpose in accordance with the Hatch Act (5 U.S.C. 7321-7326); or

(d) Pursuant to the applicable standards or ethical conduct regulations concerning personal acceptance of gifts. For example, under 5 CFR 2635.204(e), which authorizes executive branch employees to accept gifts based on outside business employment relationships. (Note: You may also be able to accept attendance at (but not other travel expenses to) a widely attended gathering under 5 CFR 2635.204(g)(2) when the gathering is not a meeting, as defined in this part, and you are not attending in your official capacity.)

# Interplay Between 31 USC 1353 and Agency Statutory Gift Authority

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## §304-4.2 What is the purpose of this part?

The purpose of this part is to establish Governmentwide policy and guidance for acceptance by a Federal agency of payment for travel expenses from a non-Federal source for employees to attend meetings under 31 U.S.C. 1353. It prescribes how such payments may be accepted.

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## §304-4.3 Under what other authority may we accept payment for travel expenses from a non-Federal source?

You may accept payment for travel expenses to events other than meetings from a non-Federal source pursuant to an agency gift statute or similar statutory authority. However, this part 304 is the only authority you may use to accept (or authorize your employee to accept on your behalf) payment for travel expenses from a non-Federal source to attend a meeting. For example, you could not pay the travel expenses for an employee to attend a meeting and then authorize the employee to use the widely attended gathering exception in 5 CFR 2635.204(g)(2) to accept free attendance at that same meeting. You would only be able to accept payment for the employee's attendance at that meeting under this part 304.

NOTE: Employees may also be able to accept payment for travel expenses from non-Federal sources in their individual capacities under the authorities referenced in §304-3.19.

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# **31 USC 1353**

## **41 CFR §§ 304-1 *et seq.***

- Authorizes agency to accept travel, subsistence, and related expenses, in-kind or by reimbursement, from non-Federal sources, for employees in their official capacities to attend meetings or similar functions
- 41 CFR Part 304
- Consider agency specific travel manuals or policies

# Meeting or similar function?

- Is the symposium a meeting or similar function?



# Meeting or Similar Function

*Employee* means an appointed officer or employee of an executive agency as defined in 5 U.S.C. 105, including a special Government employee as defined in 18 U.S.C. 202, or an expert or consultant appointed under the authority of 5 U.S.C. 3109.

*Meeting(s) or similar functions (meeting)* means a conference, seminar, speaking engagement, symposium, training course, or similar event that takes place away from the employee's official station. "Meeting" as defined in this chapter does not include a meeting or other event required to carry out an agency's statutory or regulatory functions (*i.e.*, a function that is essential to an agency's mission) such as investigations, inspections, audits, site visits, negotiations or litigation. "Meeting" also does not include promotional vendor training or other meetings held for the primary purpose of marketing the non-Federal sources products or services, or long term TDY or training travel. A meeting need not be widely attended for purposes of this definition and includes but is not limited to the following:

(1) An event where the employee will participate as a speaker or panel participant focusing on his/her official duties or on the policies, programs or operations of the agency.

(2) A conference, convention, seminar, symposium or similar event where the primary purpose is to receive training other than promotional vendor training, or to present or exchange substantive information of mutual interest to a number of parties.

(3) An event where the employee will receive an award or honorary degree, which is in recognition of meritorious public service that is related to the employee's official duties, and which may be accepted by the employee consistent with the applicable standards of conduct regulations.

*Non-Federal source* means any person or entity other than the Government of the United States. The term includes any individual, private or commercial entity, nonprofit organization or association, international or multinational organization (irrespective of whether an agency holds membership in the organization or association), or foreign, State or local government (including the government of the District of Columbia).

# **Travel, subsistence, and related expenses?**

- Registration fee?
  - 1353?
  - 5 CFR 2635.204(g)(1)?
  - 5 CFR 2635.204(g)(2)(WAG exception)?
- Lodging?
- Breakfast and lunch?
- Kick off dinner?

# Travel Expenses

*Payment in kind* means transportation, food, lodging, or other travel-related services provided by a non-Federal source instead of monetary payments to the Federal agency for these services. Payment in kind also includes waiver of

***Travel, subsistence, and related expenses (travel expenses)*** means the same types of expenses payable under chapter 301 of this title, the Foreign Affairs Manual (FAM), and the Joint Travel Regulations (JTR) for **transportation, food, lodging or other travel-related services for official travel (e.g., baggage expenses, services of guides, drivers, interpreters, communication services, hire of conference rooms, lodging taxes, laundry/dry cleaning, taxi fares, etc).** These expenses **also include conference or training fees (in whole or in part), as well as benefits that cannot be paid under the applicable travel regulations, but which are incident to the meeting, provided in kind, and made available by the meeting sponsor(s) to all attendees.** For example, this definition as applied to this chapter would allow an employee or spouse to attend a sporting event hosted by the sponsor(s) in connection with the meeting that is available to all participants. However, it would not allow the employee to accept tickets to a professional sporting event, concert or similar event, for use at a later date even if such tickets were given to all other participants.

# Personal Capacity

- **NO 1353!**
- What authorities can the officers use to accept reimbursement for travel-related expenses for the officers attending in their personal capacities?

# **Solicit gifts?**

- Can officers ask the host to pay for travel?

# Registration fee?

- 5 CFR 2635.204(g)(1)?
- 5 CFR 2635.204(g)(2)(WAG exception)?
- 5 CFR 2635.807?

# **“Free Attendance”**

## **5 CFR §2635.204(g)(4)**

tion of its members

(4) *Free attendance.* For purposes of paragraphs (g)(1) and (g)(2) of this section, free attendance may include waiver of all or part of a conference or other fee or the provision of food, refreshments, entertainment, instruction and materials furnished to all attendees as an integral part of the event. It does not include travel expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees. Where the invitation has

been extended to an accompanying spouse or other guest (see paragraph



# Teaching, Speaking & Writing

## 5 CFR §2635.807(a)(2)(iii)

(iii) **Compensation** includes any form of consideration, remuneration or income, including royalties, given for or in connection with the employee's teaching, speaking or writing activities... **It does not include:**

(A) Items...

(B) **Meals or other incidents of attendance such as waiver of attendance fees** or course materials furnished as part of the event at which the teaching or speaking takes place;

(C) Copies of books...

D) In the case of an employee other than a covered noncareer employee as defined in 5 CFR 2636.303(a), **travel expenses, consisting of transportation, lodgings or meals, incurred in connection with the teaching, speaking or writing activity.**



# **Lodging/breakfast and lunch?**

- **5 CFR 2635.204(g)(1)?**
- **5 CFR 2635.204(g)(2) (WAG exception)?**
- **5 CFR 2635.807?**

# **Kick off dinner?**

- **5 CFR 2635.204(g)(1)?**
- **5 CFR 2635.204(g)(2) (WAG exception)?**
- **5 CFR 2635.807?**
- **Pledge Restrictions?**

# **Personnel Rules**

- **Outside activity approval?**
- **On leave?**
- **Misuse of official title?**
- **Official uniform?**

# SCENARIO 2

## Part I

# Travel to and in



paris

# **Analysis— Where, Who and What**

- 1. Is the event at or away from duty station?**
- 2. Will the employee be placed in official travel status to attend?**

# Travel Authorization

SOURCE: FTR Amdt. 2003-02, 68 FR 12604, Mar. 17, 2003, unless otherwise noted.

## **§304-5.1 When may we accept payment from a non-Federal source for travel to a meeting or authorize an employee to accept payment on our behalf?**

You may accept payment from a non-Federal source or authorize an employee and/or the employee's spouse to accept payment on your behalf only when-

- (a) You have issued the employee (and/or the employee's spouse, when applicable) a travel authorization before the travel begins;
- (b) You have determined that the travel is in the interest of the Government;
- (c) The travel relates to the employee's official duties; and
- (d) The non-Federal source is not disqualified due to a conflict of interest under §304-5.3.

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## **§304-5.2 Who must approve acceptance of payment from a non-Federal source for travel expenses to a meeting?**

An official at the highest practical administrative level who can evaluate the requirements in §304-5.3, must approve acceptance of such payments.

# **Analysis— Where, Who and What**

**3. Who is offering to pay?**

**4. Is the source of payment (WCO) a non-federal source?**

# Non-Federal Source

(1) An event where the employee will participate as a speaker or panel participant reading or hearing official duties or on the policies, programs or operations of the agency.

(2) A conference, convention, seminar, symposium or similar event where the primary purpose is to receive training other than promotional vendor training, or to present or exchange substantive information of mutual interest to a number of parties.

(3) An event where the employee will receive an award or honorary degree, which is in recognition of meritorious public service that is related to the employee's official duties, and which may be accepted by the employee consistent with the applicable standards of conduct regulations.

*Non-Federal source* means any person or entity other than the Government of the United States. The term includes any individual, private or commercial entity, nonprofit organization or association, international or multinational organization (irrespective of whether an agency holds membership in the organization or association), or foreign, State or local government (including the government of the District of Columbia).

*Payment* means a monetary payment from a non-Federal source to a Federal agency for travel, subsistence, related expenses by check or other monetary instrument payable to the Federal agency (*i.e.*, electronic fund transfer (EFT), money order, charge card, etc.) or payment in kind.

*Payment in kind* means transportation, food, lodging, or other travel-related services provided by a non-Federal source instead of monetary payments to the Federal agency for these services. Payment in kind also includes waiver of any fee that a non-Federal source normally collects from meeting attendees (e.g., registration fees).



# **Analysis— Where, Who and What**

**5. Where does the travel begin and end?**

**6. What is being offered?**

# Travel Expenses

***Travel, subsistence, and related expenses (travel expenses)*** means the same types of expenses payable under chapter 301 of this title, the Foreign Affairs Manual (FAM), and the Joint Travel Regulations (JTR) for **transportation, food, lodging or other travel-related services for official travel (e.g., baggage expenses, services of guides, drivers, interpreters, communication services, hire of conference rooms, lodging taxes, laundry/dry cleaning, taxi fares, etc).** These expenses **also include conference or training fees (in whole or in part), as well as benefits that cannot be paid under the applicable travel regulations, but which are incident to the meeting, provided in kind, and made available by the meeting sponsor(s) to all attendees.** For example, this definition as applied to this chapter would allow an employee or spouse to attend a sporting event hosted by the sponsor(s) in connection with the meeting that is available to all participants. However, it would not allow the employee to accept tickets to a professional sporting event, concert or similar event, for use at a later date even if such tickets were given to all other participants.

# Analysis— Where, Who and What

7. Given the answers to 1-6:

Does **31 USC 1353** apply ?

# **Using 31 USC 1353 (41 CFR 304-1.1 *et seq.*)**

- 1. Who may accept the offer and how?**
- 2. What method of payment is permitted?**
- 3. Are there limitations of the amount that can be accepted?**

# Payments

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## **§304-3.3 May my agency or I accept payment for travel expenses to a meeting from a non-Federal source?**

Yes, you or your agency may accept such a payment from a non-Federal source, but you may only accept when your agency specifically authorizes such acceptance under the requirements of this part. Except as provided in §304-3.13 of this part, your agency must approve acceptance of such payment in advance of your travel.

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## **§304-3.4 What payments may my agency or I accept from a non-Federal source?**

You or your agency may accept payments other than cash from a non-Federal source for all of your official travel expenses to attend a meeting of mutual interest, or any portion of those travel expenses mutually agreed upon between your agency and the non-Federal source. You may not accept payments for travel that is not to attend a meeting under this part. However, you may be able to accept payments under other authorities (see §304-3.19).



# Maximum Allowances

**§304-3.11 Am I limited to the maximum subsistence allowances (per diem or actual expense) prescribed in applicable travel regulations for travel expenses paid by a non-Federal source?**

Generally yes. Subsistence expenses are usually limited to the maximum subsistence allowances (per diem or actual expenses) prescribed in chapter 301 of this title for travel in CONUS, by the Secretary of Defense for travel in non-foreign areas and by the Secretary of State for travel in foreign areas. However, acceptance of payment for, and when applicable, reimbursement by an agency to an employee and the accompanying spouse of such employee are not subject to the maximum per diem or actual subsistence expense rates when traveling in CONUS or in non-foreign areas under the following conditions:

- (a) The non-Federal source pays the full amount of the subsistence expense, as authorized by your agency; and
- (b) The subsistence expense paid by the non-Federal source is comparable in value to that offered to or purchased by other meeting attendees; and
- (c) Your agency has approved acceptance of payment from the non-Federal source prior to your travel; if your agency has not approved any acceptance from the non-Federal source, you may not exceed the maximum allowances. See §304-3.13.

**NOTE:** The maximum subsistence allowances established by the Secretary of State for travel to foreign areas may not be exceeded.

# **Using 31 USC 1353 (41 CFR 304-1.1 *et seq.*)**

## **4. Is the WCO event a “meeting?”**

**--Do we need to consider the number of attendees?**

**--Is there a “diversity of views” requirement?**

# **Using 31 USC 1353 (41 CFR 304-1.1 *et seq.*)**

**5. What must the agency consider before accepting?**

**--Relevant considerations at 41 CFR 304-5.3**

**6. Who decides?**



## **§304-5.2 Who must approve acceptance of payment from a non-Federal source for travel expenses to a meeting?**

An official at the highest practical administrative level who can evaluate the requirements in §304-5.3, must approve acceptance of such payments.

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## **§304-5.3 What does our approving official need to consider before authorizing acceptance of payment from a non-Federal source for travel expenses for a meeting?**

(a) The approving official must not authorize acceptance of the payment if he/she determines that acceptance of the payment under the circumstances would cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of agency programs or operations. The approving official must be guided by all relevant considerations, including but not limited to the—

- (1) Identity of the non-Federal source;
- (2) Purpose of the meeting;
- (3) Identity of other expected participants;
- (4) Nature and sensitivity of any matter pending at the agency which may affect the interest of the non-Federal source;
- (5) Significance of the employee's role in any such matter; and
- (6) Monetary value and character of the travel benefits offered by the non-Federal source.

(b) The agency official may find that, while acceptance from the non-Federal source is permissible, it is in the interest of the agency to qualify acceptance of the offered payment by, for example, authorizing attendance at only a portion of the event or limiting the type or character of benefits that may be accepted.

# **Using 31 USC 1353 (41 CFR 304-1.1 *et seq.*)**

**7. Are there additional requirements—e.g. reporting?**

# Reports

## Subpart B—Reports

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### **§304-6.4 What form must we use to report payments received by the agency from non-Federal sources?**

Your agency head or designee must submit Standard Form (SF) 326, Semiannual Report of Payments Accepted From a Non-Federal Source (fully completed) to report payments received from non-Federal sources. This applies to all payments that are more than \$250 per event for an employee and accompanying spouse. For purposes of the \$250 threshold, payments for an employee and accompanying spouse shall be aggregated. If you wish to use a form other than SF 326 to report such payments, you may seek permission to do so by contacting the Office of Government Ethics at United States Office of Government Ethics, 1201 New York Avenue, NW., Suite 500, Washington, DC 20005-3917.

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# SCENARIO 2

## Part II

# Travel to and in



# **Analysis— Where, Who and What**

- 1. Is the event at or away from duty station?**
- 2. Will the employee be placed in official travel status to attend?**
- 3. Who is offering to pay?**
- 4. Is the source of payment (French Customs) a non-federal source?**

# **Analysis— Where, Who and What**

**5. Where does the travel begin and end?**

**6. What is being offered?**

# Analysis— Where, Who and What

7. Given the answers to 1-6:

Can we use **31 USC 1353** ?

Is there another **authority** we  
can consider?

# **Foreign Gifts and Decorations Act**

## **5 USC 7342**

### **What's Different?**

- 1. Where travel begins and ends**
- 2. Source of the payment**



# Type of Travel

(c)(1) The Congress consents to

(B)(ii) an employee may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if such acceptance is appropriate, consistent with the interests of the United States, and permitted by the employing agency and any regulations which may be prescribed by the employing agency.

# Utilization and Disposition under FGDA (41 CFR 102-42)

## §102-42.10 What definitions apply to this part?

The following definitions apply to this part:

*Decoration* means an order, device, medal, badge, insignia, emblem, or award offered by or received from a foreign government.

*Employee means:*

(1) An employee as defined by 5 U.S.C. 2105 and an officer or employee of the United States Postal Service or of the

*Minimal value* means a retail value in the United States at the time of acceptance of \$375 or less, except that GSA will adjust the definition of minimal value in regulations prescribed by the Administrator of General Services every three years, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period.

(4) A member of a uniformed service as specified in 10 U.S.C 101;

(5) The President and the Vice President;

(6) A Member of Congress as defined by 5 U.S.C. 2106 (except the Vice President) and any Delegate to the Congress; and

# Source of Payment

(a) For the purpose of this section—

(2) **“foreign government”** means—(A) any unit of foreign governmental authority, including any foreign national, State, local, and municipal government;

(B) any international or multinational organization whose membership is composed of any unit of foreign government described in subparagraph (A); and

(C) any agent or representative of any such unit or such organization, while acting as such;

# **Using FGDA**

## **5 USC 7342**

- 1. Who may accept the offer and how?**
- 2. What may be accepted?**
- 3. Are there limitations of the amount that can be accepted?**

# **Using FGDA**

## **5 USC 7342**

- 4. Do we have to look at the nature of the “event?”**
- 5. What must the agency consider before accepting?**
- 6. Who decides?**

# **Utilization and Disposition under FGDA (41 CFR 102-42)**

**7. Are there additional requirements—e.g.  
reporting?**

# Reporting

(c)(3) When an employee deposits a gift of **more than minimal value** for disposal or for official use pursuant to paragraph (2), or within 30 days after accepting travel or travel expenses as provided in paragraph (1)(B)(ii) unless such travel or travel expenses are accepted in accordance with specific instructions of his or her employing agency, the employee shall file a statement with his or her employing agency or its delegate containing the information prescribed in subsection (f) for that gift.

# Utilization and Disposition under FGDA (41 CFR 102-42)

## §102-42.10 What definitions apply to this part?

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(5) The President and the Vice President;

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