

Office of Government Ethics

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**Memorandum issued May 1, 1984
and amended August 24, 1984
from David H. Martin, Director
to Designated Agency Ethics Officials,
General Counsels and Inspectors General
Regarding Summary of Acceptance and Disclosure
of Travel Expenses and Related Gifts**

Because this Office has received a number of questions regarding the acceptance and disclosure by executive branch employees of travel reimbursements and related gifts from private sources and because the annual filing deadline for public financial disclosure reports is again drawing near, we believe it is important to provide you with the following outline of the considerations involved in answering any questions regarding this subject. The materials and the statements set forth in this outline are not new; this is simply a compilation of the various statutes, regulations and other considerations involved in this subject area. We urge you to distribute copies of this memorandum to your field offices and deputy ethics counselors for their use. Our regional training sessions have indicated a strong need and desire for this and other similar information. With regard to this specific guidance, because the first and most important determination is whether the traveling employee is on official duty or not, this guidance is separated under those headings.

If the traveling employee is on official business --

1. ****** When an executive branch employee is offered payment for travel expenses from a private source for expenses incurred in carrying out his or her official duties, the travel reimbursement expense payments can only be accepted, if at all, by the agency employing the individual on the individual's behalf. The employee may not personally accept the travel expenses without potentially violating 18 U.S.C. § 209. (Note: This statement refers to the situation where there is no statutory authority for either the individual or the agency to accept the travel expenses or where there is authority but the agency has determined it would not or the employee should not accept the travel expenses. It is not

intended to include the situation where the employee is allowed either by 5 U.S.C. § 4111 or other statutory authority to personally accept the travel expenses and that acceptance has been approved by the agency.)

2. The agency may accept the travel expenses only if it has statutory gift acceptance authority to do so or if the gift qualifies under 5 U.S.C. § 4111 discussed in paragraph 3 below. Otherwise the agency will be improperly augmenting its appropriations and running afoul of the Comptroller General's Decision B-128527 dated March 7, 1967 (46 Comp. Gen. 689). Authority to accept gifts, if it exists, will generally be found in your agency's organic statute. The authority may limit the acceptance to gifts for specific purposes and your agency must have a process to determine which offers of gifts can be accepted under that authority. An agency's authority to accept gifts, including travel expenses, cannot be granted by regulation; the grant must be made by statute. (Note: Most agencies do not have this statutory authority.)
3. If the donor is a non-profit, tax-exempt institution described by 26 U.S.C. § 501(c)(3), the Employees Training Act, codified at 5 U.S.C. § 4111, authorizes an employee to accept the payment of travel expenses from that donor if the agency follows the regulations set forth in 5 C.F.R. § 410.701 - § 410.706. These regulations require prior written authorization for acceptance of such travel expenses and that acceptance of the expenses does not create an actual or apparent conflict. The important considerations involved here are two: First, the organization must be categorized by IRS under section 501(c)(3). There are many tax-exempt non-profit organizations which do not fall under subsection (c)(3). The IRS reading room can confirm the status of the organization if you provide the exact name of the organization and the state of incorporation. Second, simply because the organization is categorized under section 501(c)(3) does not mean that the offered travel expenses are always acceptable. If the organization seeks grants from your agency or does business with your agency, especially if its staff deals directly with the employee involved, such offered reimbursements should, in most cases, not be accepted. Again, refer to the implementing regulations.

Example: A grants official at an agency is asked to speak at a University in his official capacity and the University offers to pay his travel expenses. The University is a section 501(c)(3) corporation but it has one grant and is seeking others from the agency. The employee should not be allowed to accept the travel expenses because of the appearance of a conflict of interest.

4. If your agency does not have gift acceptance authority and the donor is not a section 501(c)(3) corporation, neither the agency nor the employee may accept payment for travel expenses of the employee on official business. Further, the agency may not put the employee in non-duty status to carry the employee to accept the travel expenses.
5. ** An employee who is on official business should never accept direct reimbursement of expenses (cash) if the payment of travel expenses is allowed pursuant to the method set forth in paragraph 2 above. Direct reimbursements must be made to the agency which has either advanced the money to the employee or will in turn reimburse the employee. Once given approval in advance, an employee may accept in-kind gifts such as travel tickets, meals and hotel room key. Further, the agency may wish to allow the employee only those expenses which would otherwise be covered by Government travel regulations, as if the agency were paying, and in no case should it allow the employee to accept excessive and lavish in-kind services. See Comptroller General's Opinion B-128527 and 5 C.F.R. § 735.202(f).

An employee may accept direct cash reimbursements under the terms of 5 U.S.C. § 4111 from a section 501(c)(3) corporation. If the employee's agency does not have statutory gift acceptance authority allowing it to accept and retain voluntary contributions, the agency is bound by the provisions of 31 U.S.C. § 484 to deposit in miscellaneous receipts any reimbursements made to the agency rather than the employee. See 55 Comp. Gen. 1293. Therefore, if the donor is a section 501(c)(3) corporation but your agency does not have gift acceptance authority, direct cash reimbursements for travel approved pursuant to 5 C.F.R. § 410.701 - § 410.706 should go to the employee and the employee should reimburse the agency for any travel advance given by the agency. As a policy, however, when a direct cash reimbursement or payment

to the employee is necessary, care should be taken that the payment or reimbursement is related to actual expenses and is not simply a flat per diem payment.

If the traveling employee is not on official business --

6. The employee may not accept any travel expenses or any gift from any organization which:
 - 1) has, or is seeking to obtain, contractual or other business or financial relations with his agency;
 - 2) conducts operations or activities that are regulated by his agency; or
 - 3) has interests that may be substantially affected by the performance or nonperformance of his official duty.

These standards are set forth in 5 C.F.R. § 735.202(a). Agencies may have regulations which are more strict and they may also have certain exceptions based on those in 5 C.F.R. § 735.202(b). It is very rare that any of the exceptions will allow payment for travel expenses from an organization which is covered by section 735.202(a). Furthermore if the organization itself is not a prohibited source as outlined above, but all or a substantial majority of its members are, you should consider a travel reimbursement offer from the organization as if it were from one of the prohibited sources outlined in section 735.202(a).

Example: If a trade association comprised predominantly of members which are individually regulated by an agency offers an employee of your agency travel expenses so that he might, in his personal capacity, attend their annual convention, the employee may not accept the travel expenses. These travel expenses would be a gift from a prohibited source.

7. Finally, if the source of the payment of travel expenses or other gift is not otherwise prohibited and the employee attends the conference or meeting on annual or personal leave time, the employee may not use his or her official title as a title. These activities are prohibited by section 735.201a(a).** (The employee should also request that the

host not misuse his or her title in an effort to make it appear that the employee is appearing officially or in order to draw business to a commercial endeavor.)

Example: The General Counsel of a Commission is asked to teach a course for a publisher of law texts. The agency determines that doing so is not within the mandate of the agency but approves her participating under its outside employment approval process. The General Counsel may not be "billed" by the publisher in its promotional materials listing the faculty of the course or at the course itself as Jane Doe, General Counsel, Government Commission X. If the materials provide a brief description of Ms. Doe's qualifications, it can state, along with such things as her education and other positions, the fact that she presently serves as the General Counsel of the Commission. The improper use of her position is the use of her official government title as a title. She is not participating in her official capacity and it should not appear that she is, nor should the publisher be allowed to use the title to solicit business.

Public Disclosure (SF 278)

An employee required to file a public financial disclosure report (SF 278) should disclose travel expenses meeting the \$250 threshold in the manner set forth below. Note that the law treats in-kind services such as travel tickets, hotel rooms and meals as one disclosure requirement and cash reimbursements for any of those same items as a separate disclosure requirement.

If the employee is on official business --

1. When the agency has gift acceptance authority and has made the appropriate determination to accept travel expenses for an employee's travel prior to the expenses being incurred, then the employee need not disclose these expenses as the agency has accepted them, not the employee. If for any reason prior approval was not received, these expenses must be disclosed because, at the time they were accepted, it was the employee, not the agency, making the acceptance. For the employee's sake the agency may note subsequent approval on the form if it occurred.
2. When the employee accepts the travel expenses from a

26 U.S.C. § 501(c)(3) corporation pursuant to 5 U.S.C. § 4111, these expenses must be disclosed. Section 4111 specifically allows the employee to accept, albeit with agency approval, and because it is a personal acceptance it is governed by the public financial disclosure requirements. Again, the agency may wish to note on the form the date the agency gave acceptance approval.

3. If an employee accepts travel expenses without the benefit of agency gift acceptance authority or coverage of 5 U.S.C. § 4111, the expenses must be disclosed.

If the employee is not on official business --

4. All travel expenses meeting the threshold values must be disclosed unless they are paid by a relative or are required to be reported under 2 U.S.C. § 434.**

Gifts from a foreign government --

5. Because the reporting threshold for gifts from a foreign government covered by the Foreign Gifts Act is lower than the \$250 threshold for reporting under the Ethics in Government Act, all such travel expenses should be disclosed under the procedures established pursuant to 5 U.S.C. § 7342 and are therefore exempt from disclosure on the SF 278. (See section 209(8)(B) of the Ethics in Government Act.) Note, however, that a gift other than reimbursement of travel expenses need only meet the \$100 threshold of the Ethics in Government Act disclosure requirements. Therefore, any gift, other than travel expenses from a foreign government, valued at \$100 or more but within the "minimal value" that triggers the acceptance and disclosure requirements of the Foreign Gifts Act, would have to appear on the SF 278. (In March 1984, the GSA adjusted the "minimal value" to \$165 or less.)

Example: An employee is asked by a foreign government to participate in a symposium hosted by the government. The employee's travel expenses outside the United States are paid for by the foreign government sculpture. The travel expenses have a value of \$500 and the sculpture \$125. The Foreign Gifts Act "minimal value" at the time was \$140 or less. Because the travel expenses are more than the "minimal value" for

Foreign Gifts Act purposes and are therefore subject to disclosure under 5 U.S.C. § 7342, she need not disclose them on her SF 278. However, because the sculpture is within the "minimal value" for Foreign Gifts Act purposes but more than the \$100 reporting requirement of the Ethics in Government Act for gifts other than travel expenses, she must disclose the receipt of the sculpture on her SF 278.

Suggested Procedures

If your agency does not have procedures covering the acceptance of travel expenses, this Office considers the following to be essential elements which will protect not only the agency but the employee as well.

1. All offers of payment of official travel expenses must be approved in writing prior to acceptance.
2. If possible, all offers should be approved by the same office within an agency so as to provide consistency of interpretation of applicable statutes and regulations. Larger agencies which cannot centralize such approval should have a controlled delegation system.
3. All agency personnel should be made aware that such offers must be approved by the appropriate office. This is especially important for persons responsible for issuing travel orders.
4. Travel orders should note specifically what expenses are being accepted by the traveling employee and under what authority. For instance, the travel orders might note that an airline ticket and hotel room are being provided to the employee by the host and accepted pursuant to the agency's gift acceptance authority, whatever the appropriate statutory citation would be.
5. The traveling official should never be placed in a position of approving the acceptance of his or her own travel expenses.
6. If possible, a record of all travel expenses accepted should be kept by the agency in a central file.

If you have any questions concerning the acceptance of travel expenses, please feel free to contact this Office.

** Changes or additions to the citation or statement were made
pursuant to a supplementary memorandum issued by this office on August
24,
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