

ETHICS FLASH

GIFTS OF TRAVEL

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This Ethics Flash is brought to you by:

5 USC § 7342

31 USC § 1353

41 CFR Chapter 304

5 CFR Subpart B

Joint Ethics Regulation
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Joint Travel Regulations

AFI 51-506

NAVIGATING GIFTS OF TRAVEL

Just when we thought we were out of the woods. We are back with another Ethics Flash about travel. This time, however, we are talking about gifts of travel from non-federal sources. Look, we get it, travel is not fun and the restrictions we have on travel can often make for a few uncomfortable days. We can't think of anyone who would not prefer to travel in style. But....we all chose service. To serve the public's interest, we must not use our official positions for personal gain.

Public scrutiny over gifts of travel is at an all-time high. Media does not always distinguish between government branches. For example, the Federal Judiciary is subject to a different set of gifts of travel rules but the difference is not always clear. That's not to say the Department of Defense is perfect—on the contrary, there is room for improvement. Rather, more high-profile officials provide enough “fodder” for the press. These headlines are a warning, especially in

Courts

Clarence Thomas and the Billionaire U.S. Supreme Court justices take lavish gifts – then raise the bar for bribery prosecutions

Lavish travel and questionable gifts loom over 6 Trump officials

Headlines don't distinguish between the Judicial and Executive Branch.

relation to improper acceptance of travel benefits. So, we thought it important to dedicate an Ethics Flash to gifts of travel.

These offers commonly come from non-federal entities (NFEs), including foreign governments or foreign businesses. This Ethics Flash will provide a general overview of the laws that allow acceptance, the requirements for acceptance, prohibitions, and reporting requirements.

They say that “repetition is the mother of learning, the father of action, which makes it the architect of accomplishment.” Not sure who they are but...we get it. So, we repeat—this is an overview—a (sort of) cheat sheet. For any gift of travel issues or questions, please contact us (contact information on the left!) or your local ethics official.

Packed with great information, there's not much blank space in this Flash!

ACCEPTANCE OF TRAVEL AND RELATED EXPENSES FROM NON-FEDERAL SOURCES

Per 31 USC § 1353, the **Department of the Air Force (DAF) may accept** payment of expenses for **official travel**, including in-kind subsistence and accommodations and payments/reimbursement, from NFEs for an **employee's attendance at “any meeting or similar function relating to the official duties of the em-**

ployee.” It also allows acceptance of travel benefits for a spouse. This is the primary authority for accepting gifts of travel.

41 CFR Part 304-1, the Federal Travel Regulation, implements this authority. You must comply with the Employee Responsibility rules at 41 CFR Part 304-3. Written

in FAQ style, it outlines your responsibilities as an employee and what you can and cannot do.

While the DAF may accept a gift of travel, employees may **never** solicit payment for travel expenses from a NFE. Nor may you accept payment for travel that is not a meeting under 41 CFR Part 304.

SOMEONE ELSE IS PAYING — NOW WHAT?

Did you catch the bold lettering in the previous section? These are key requirements to accept travel benefits. First, you must obtain approval **in advance** of travel for payment of travel expenses. The DAF is accepting the gift, not you personally. This requires a written determination by an authorizing or approving official (AO). The Joint Travel Regulations defines AOs as the official who determines whether travel is necessary and appropriate to the mission, among other duties. Your AO may be the individual who approves your orders in the Defense Travel System or your supervisor. You will also need a legal review by an ethics official. SAF/GCA has a Travel Fact Sheet that makes this process easy.

Second, you must be on

official orders. You may **never** utilize a gift of travel while on permissive TDY orders.

Third, travel must be to a meeting or similar function. 41 CFR Part 304-2 defines a meeting or similar function as a conference, seminar, speaking engagement, symposium, training course or similar event that takes place away from the employee's official duty station. It does not include those meetings required to carry out the DAF's statutory or regulatory functions. It does not include long-term TDY or training travel. It also does not include promotional vendor training or other meetings held for the primary purpose of marketing the NFEs products or services.

This last fact is particularly important as the DAF receives offers that involve vendors

hosting events at enticing locations such as Las Vegas, Miami, or New Orleans. Since the primary purpose of the events is to provide opportunities for vendors to show off their products, the DAF declines those offers. Instead, grab a cardigan, and enjoy a conference in the dead of winter in Omaha!

Sometimes, once travel begins, a NFE may offer an additional gift of travel. So long as the DAF previously authorized acceptance of payment for some travel expenses, you may accept. The offer must be comparable in value to those offered to or purchased by other similarly situated meeting attendees and the DAF can't have previously declined the gift offered.

What must I do if I am contacted directly by an NFE offering to pay my travel expenses to attend a meeting?

If you are contacted directly by an NFE offering to pay any part of your travel expenses to attend a meeting, you must inform your agency, so that the authorized agency official can determine whether to accept the payment.

THE SURPRISE GIFT DILEMMA

It's a story we know all too well. While on official travel, you checked out of your hotel, only to learn the host of the event you attended paid your lodging expenses. There was no previous authorization from the DAF. What do you do? This is the one time that you may accept a gift of travel on behalf of the DAF. However, you are limited to only the types of travel expenses authorized by your travel author-

ization (e.g., meals, lodging, transportation but not recreation or other personal expenses); and only travel expenses that are within the maximum allowances stated on your travel authorization. So, let's change the facts. You check in to the hotel and discover the host upgraded you to the Presidential Suite, gratis. You would not be able to accept this gift because it likely exceeds your travel allowances.

For these "surprise" gifts, you **must** request the DAF's authorization **within seven working days** after your trip ends. If the DAF declines, the DAF will either reimburse the donor or require you to reimburse the donor and then you can claim that amount on your travel claim. If you accepted more than allowed, well, you can't just shrug and shake it off—there are penalties. So know the rules!

SO LONG, LONDON! THANKS FOR HAVING ME!

There are two ways gifts of travel may be accepted from a foreign government. First, if travel is **beginning and ending** outside the continental United States, the Foreign Gifts and Decorations Act (FGDA) allows acceptance. Like 1353 travel, it must be approved in advance and cannot be a travel expense governed by 1353. **Again, this is a gift to the DAF, not you personally,** so the proper approval authority

must accept the offer. AFI 51-506 has a table that identifies the proper approval authorities based on your duty assignment. A copy of the approval must be sent to SAF/AA.

What about travel that begins and ends in the United States? We go back to 31 USC § 1353 which defines a non-federal source as "any person or entity other than the Government of the United

States" including foreign governments. One issue we've seen is using the FGDA to accept gifts of travel from foreign governments that occur in and around an overseas TDY area but the travel begins and ends within the United States. Remember, to accept the gift under the FGDA, travel must begin and end outside of the United States. The more appropriate acceptance would be under 31 USC § 1353.

THE ROUTING NUMBER FOR MY BANK IS.....

Never in our wildest dreams did we think we had to take a moment and address personal reimbursement for official travel from NFEs. But here we are and here we go.

Employees may not personally accept payment of official travel expenses on their own behalf. Remember, 31 USC § 1353 allows acceptance of travel payments from non-federal sources for official

travel and requires approval from your agency before acceptance. If the gift is reimbursement of travel expenses, you may not personally receive this reimbursement. Don't accept the envelope of cash to pay for your meals. Don't permit or accept an electronic funds transfer from the NFE to your personal bank accounts...especially if the NFE is a foreign government. Don't do anything you'll real-

ize later you should've said no to. We understand it's a delicate balance when declining a gift from a foreign government but ultimately, you will be held responsible for the acceptance.

Reimbursement for official travel expenses goes directly to the government. Payment from a non-federal source must be in the form of a check or similar instrument made payable to the agency.

THE JOB INTERVIEW EXCEPTION

Another common gift of travel comes in the form of the job interview. For example, a prospective employer offers to fly you out to their corporate headquarters for an interview. Generally, we may not accept a gift from a prohibited source or offered because of our official positions. There are several exclusions and exceptions to the general

rule. One exception allows you to accept meals, lodgings, transportation and other benefits **customarily** provided by a prospective employer in connection with bona fide employment discussions. If the prospective employer has interests that could be affected by the performance or non-performance of your duties, you may not accept unless

you have already disqualified yourself in accordance with our post-government employment rules.

"Customarily provided" is key here. You cannot receive special treatment; otherwise you may find yourself with champagne problems and having to reimburse that prospective employer.

NO BODY, NO CRIME? NO. ALWAYS ASK AN ETHICS OFFICIAL.

There are other, far less utilized authorities that may allow you to accept a gift of travel. This Ethics Flash was designed to focus on standard statutes and regulations. Remember, this Ethics Flash is to provide you with general information. Gifts of travel from non-federal sources must be accepted by the DAF first. So, if you receive an

offer, reach out to us or your local ethics official.

Thank you to Heather Callery and Amy Braud for their editing prowess. The Air Force Ethics Office team lovingly dedicates this Ethics Flash to our fearless leader, the Director of Ethics, and the #1 Swiftie in the DAF, Ms. Meredith Pierce. Thank you for your fearless leadership!

For the rest of you, if you haven't realized it yet, we sprinkled Taylor Swift song titles throughout this Ethics Flash—how many did you catch? If you're a Swiftie, you can probably guess how many there are but can you name them?

This is not an endorsement nor is there a prize—except for maybe bragging rights and a friendship bracelet.

The Air Force Ethics Office directs the daily activities of the Department of the Air Force ethics program. We serve as legal counsel to the Secretariat, Air Staff and Space Staff. While we are happy to assist with any ethics issues, individuals outside of Headquarters should consult with their local ethics counselor.

Should you have any questions, please contact us at SAF.GCA.Ethics.Workflow@us.af.mil.

Must I provide my agency with information about payments I receive on its behalf?

Yes. The Office of Government Ethics requires us to submit a semi-annual report of gifts of travel in excess of \$250 accepted under 31 USC § 1353. SAF/GCA collects this information via TMT.