POLICY ISSUE
(Notation Vote)

May 22, 1991 SECY-91-148

For: The Commissioners

From: James M. Taylor
Executive Director for Operations

William C. Parler
General Counsel

Subject: GSA INTERIM TRAVEL REGULATIONS

Purpose: To inform the Commission of the recent interim rule published by the General Services Administration (GSA), pursuant to the Ethics Reform Act of 1989, authorizing federal agencies to accept payments from non-federal sources to fund certain official travel relating to speeches and conferences, and to recommend that the NRC not exercise this new authority.

Background: Statutory authority--Section 302 of the Ethics Reform Act of 1989, as amended, authorizes the Administrator of General Services, in consultation with the Director of the Office of Government Ethics (OGE) to prescribe regulations permitting federal agencies to accept payments from non-federal sources for travel, subsistence, and related expenses for the attendance of an employee (or the spouse of that employee) at any meeting or similar function related to the employee's official duties. An agency could also authorize the employee to accept such payments on the agency's behalf. The statute requires that the head of the agency submit to the OGE Director twice yearly a detailed report of payments of more than $250 accepted under this authority. It also

NOTE: ~~PERSONNEL RELATED MATTER - LIMITED TO NRC UNLESS THE COMMISSION DETERMINES OTHERWISE~~

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provides that, with few exceptions, this is the only authority permitting an agency to accept non-federal travel support for official travel to a meeting or similar function. The specific exceptions include 5 USC 4111 (authorizing travel support for employee training from charitable organizations tax-exempt under section 501(c)(3) of the Internal Revenue Code) and the Foreign Gifts and Decorations Act (which permits acceptance of certain expenses from foreign governments).

Interim Rule--On March 8, 1991, the GSA published the attached interim rule implementing this new authority. This rule permits an agency to accept payment from a non-federal source (or to authorize the employee to receive the payment) for the employee's attendance at a meeting or similar function which the employee has been authorized to attend in an official capacity on behalf of the agency. It prohibits an employee's soliciting payment from a non-federal source but permits the agency or employee, after receipt of the invitation, to inform the source of the existence of this authority.

The non-federal source could pay for such travel by check or similar instrument or in kind (the source directly purchases the airplane ticket and provides it to the traveler or directly pays the hotel bill). These payments are not subject to the maximum rates for federal travel if the accommodation or other benefit is comparable in value to that offered to, or purchased by, other similarly situated individuals attending the event.

The agency must ensure that officials authorized to determine the propriety of accepting payment under this authority are at "as high an administrative level as practical" to ensure adequate consideration and review of the circumstances surrounding the offer and acceptance of the payment. That official must make the following findings in advance of the employee's travel:

1). Payment is for attendance at a "meeting or similar function." This term is defined as a conference, seminar, speaking engagement, training course, or similar event that takes place away from the employee's official station. The

definition specifically excludes events required to carry out the agency's statutory and regulatory functions, such as investigations, inspections, audits, or site visits. It also excludes promotional vendor training or other meetings held for the primary purpose of marketing the non-federal source's products.

2). Payment is for travel related to an employee's official duties. This requires an examination of both the nature of the event and the official duties of the employee. The event can relate to an employee's duties even if the subject matter of the event bears no direct relation to the employee's official duties.

3). Payment is from a non-federal source that is not disqualified on conflict-of-interest grounds. The non-federal source could be any individual, private or commercial entity, or nonprofit organization or association, including any state, local, or foreign government. Payments may be accepted from a non-federal source that does not have an interest in the subject matter of the meeting or similar function so long as the payment is provided in kind. A non-federal source with interests that may be substantially affected by the performance or nonperformance of the employee's duties is considered a "conflicting" source.

Acceptance of support from a "conflicting" source requires a determination that the agency's interest in the employee's attendance at or participation in the event outweighs concern that acceptance of the payment may or may reasonably appear to influence improperly the employee in the performance of official duties.

The agency could accept payments for the employee's <u>spouse</u> to accompany the employee to the same function if the authorized official determines that the spouse's presence will support the mission of the agency or substantially assist the employee in carrying out his or her duties through attendance or participation in the function. If the non-federal source is a "conflicting" source, the authorized official must also determine that the spouse's attendance or participation outweighs concern that acceptance of the payment may or may reasonably appear to influence improperly the employee in the performance of official duties.

Current authorities for non-federal payments for NRC employee official travel--NRC now permits acceptance of the expenses for an employee's official travel to attend or participate in a meeting or similar event from a charitable organization tax-exempt under section 501(c)(3) of the Internal Revenue Code, such as most universities or some professional organizations, such as the American Nuclear Society. Under that authority, the employee must receive written authorization, the expenses should not be excessive, and the employee may not have any official dealings, or supervisory responsibility for official dealings, with the party providing the benefits. There is also authority under the Foreign Gifts and Decorations Act and NRC's annual appropriations acts to permit foreign governments and international organizations to pay travel expenses of NRC employees.

Discussion: The new regulations do not require that the NRC or any agency use this new travel authority. They do not create any new benefits or entitlements for employees. The decision whether to authorize acceptance of travel expenses under these new regulations rests solely with the Commission. Acceptance of travel expenses from NRC licensees, nuclear trade associations, and other segments of the regulated community should be based on a weighing of various competing considerations discussed below.

* Financial Savings to the Agency

The Office of the Controller estimates, based on a survey of recent speech-related travel, that last year the NRC expended approximately $255,000 in travel expenses for employees to deliver an estimated 386 speeches. The Controller estimates that, if this new travel authority were available last year, industry sources could have expended $75,000 in travel expenses for NRC employee speeches. There is a high degree of uncertainty about the actual amount that NRC could save since the offer to pay employee expenses is voluntary and cannot be required. Because these contributed funds could be used to augment the agency budget, appropriated funds now used to fund speech related travel would be available for other uses. Failure to exercise fully this authority could lead to criticism that the agency is not

taking advantage of an opportunity to reduce federal costs.

* Potential Appearances of Conflicts of Interest

The Commission has had a longstanding concern about preventing any appearances of favoritism or partiality towards licensees or other entities regulated by the NRC, including professional, trade, or business associations composed of these entities. Agency regulations and policies include provisions specifically drafted to achieve this objective, such as the requirement that most employees, their spouses, minor children, and members of their immediate household must not own stocks, bonds and other security interests issued by the major components of the commercial nuclear industry. There are also regulations barring receipt of gifts from these and other entities.

Exercising this new authority to permit employee acceptance of travel from sources other than certain charitable organizations or universities, particularly from entities connected with the nuclear industry, could result in increasing the potential for at least appearances of conflicts of interest or regulatory bias. This is particularly true if the event takes place at a resort or costly hotel or involves special travel arrangements.

* Drying up Speaking Opportunities

Staff is concerned that many organizations will not invite NRC employees to speak if an agency consideration in determining whether an employee will accept a speaking engagement relates to the sponsor's paying for the employee's travel costs. Because staff believes that it is important that agency employees communicate the agency's policies and practices, the agency's ability to convey its message could be adversely affected if payment of expenses by a non-federal source becomes preferred agency policy or a significant consideration in the decision to accept a speaking engagement.

* Excessive Use

There are instances where the NRC staff does not approve sending an employee to deliver a speech or attend a conference because it would not

sufficiently benefit the agency. There is a concern that, under an acceptance of payment policy, some marginal travel would be approved when the agency's interests would be better served by having the employee perform his or her normal duties.

* Administrative Burden

Implementation of the accounting, recordkeeping, and reporting requirements of this new authority would be complex and burdensome because of inconsistencies with current requirements for reporting other travel. At a recent meeting of ethics officials from other regulatory agencies, it was reported that controller's offices throughout the government were expressing the same concern. The accounting problems would be lessened if the sponsor provided in kind travel expenses, rather than having the NRC pay the expenses and receiving subsequent reimbursement. However, in-kind travel expenses have a greater potential for abuse or the appearance of abuse.

Another regulatory agency which has already used this authority told us that the regulations have created additional paperwork and administrative burdens. For example, new forms had to be developed to list the conditions and determinations required for approval and agency budgets are charged for the trip until total reimbursement is finally received from the source.

* Spousal Travel

The regulations only allow acceptance of the travel expenses of the spouse of an employee to accompany the employee to a meeting or similar event if the agency determines that the spouse's presence will "support the mission of the employee's agency or substantially assist the employee in carrying out his/her duties through attendance at or participation in the meeting or similar function." We believe that there would be few, if any, situations where the attendance of an employee's spouse at such events could be justified under either of these conditions. Moreover, acceptance of payments for spousal travel from conflicting organizations certainly raises appearance of impropriety concerns.

Analysis and Options: There are three basic options available to the Commission:
(1) Generally approve acceptance of travel expenses from all organizations, including licensees and professional or trade associations;
(2) Make case-by-case determinations based on the circumstances (factors to be considered would include the source, the importance of the presentation, the availability of agency funding, the value of the reimbursement, and the timing and location of the event); or
(3) Retain the current practice of accepting reimbursement or in kind payments only from universities or other 501(c)(3) charitable organizations, or foreign governments and international organizations where authorized by statute.

After carefully weighing the competing considerations, both the EDO and the Office of the General Counsel recommend that the Commission adopt option 3 and not utilize the new travel expense acceptance authority. In our view, exercise of this authority would result in minimal savings to the agency, raise conflict of interest concerns, lead to reduced speaking opportunities, and impose administrative burdens not commensurate with the benefits. If the speaking engagement is in the agency's interest, funds could be made available from existing appropriations as in the past.

Should the Commission disagree with this recommendation, our second preference would be to adopt option 2 which calls for case-by-case determinations. Under this policy, approval would generally be given to accept travel expenses associated with speeches to professional organizations, but not to individual licensees, vendors, or nuclear trade associations.

The regulations require agencies to ensure that officials authorized to determine the propriety of accepting the offer be "at as high an administrative level as practical" to ensure adequate consideration and review. Should the NRC decide to exercise this authority, we recommend that approval to accept these offers be at the same level as that prescribed in the conduct regulations for approval of an employee's outside

employment with entities regulated by the Commission. Under those regulations (10 C.F.R. 0.735-40), individuals employed by offices reporting to the Commission through the EDO must receive approval from the Executive Director for Operations. Employees working for offices reporting directly to the Commission would receive approval from their office director. Employees in the office of a Commissioner would receive approval from their respective Commissioner. Consistent with current practice for outside employment requests, each decision-maker would be required to consult with OGC before approving offers of travel support.

Recommendation: We recommend that the NRC should not use the new travel authority in the GSA interim rule.

James M. Taylor
Executive Director for Operations

William C. Parler
General Counsel

Attachments:
(1) Public Law 101-194, section 302, as amended
(2) 56 Fed. Reg. 9878 (March 8, 1991)
(3) Memorandum from Director, Office of Government Ethics to Designated Agency Ethics Officials (March 11, 1991)

EDO and OGC recommend that this paper be withheld from public disclosure because ethics related personnel issues are best discussed internally.

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Thursday, June 6, 1991.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Thursday, May 30, 1991, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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ATTACHMENT 1

PUBLIC LAW 101-194—NOV. 30, 1989

ETHICS REFORM ACT OF 1989

SEC. 203. PRESIDENT'S COMMISSION ON THE FEDERAL APPOINTMENT PROCESS.

(a) ESTABLISHMENT.—There shall be established an advisory commission to study the best means of simplifying the Presidential appointment process, in particular by reducing the number and complexity of forms to be completed by nominees. The Commission shall be known as the President's Commission on the Federal Appointment Process.

(b) MEMBERSHIP.—The Commission shall be composed of 14 members from among officers and employees of the three branches of the Federal Government. Eight members shall be appointed by the President, two members shall be appointed by the majority leader of the Senate, two members shall be appointed by the minority leader of the Senate, one member shall be appointed by the Speaker of the House of Representatives, and one member shall be appointed by the minority leader of the House of Representatives. Any vacancy on the Commission shall be filled in the same manner as the initial appointment.

(c) REPORT.—The Commission shall present its report to the President no later than ninety days after its first meeting. The Commission shall cease to exist upon submission of its report.

TITLE III—GIFTS AND TRAVEL

SEC. 301. GIFTS TO SUPERIORS.

Section 7351 of title 5, United States Code, is amended by—

(1) adding "(a)" before "An employee may not"; and

(2) striking the final sentence and inserting the following:

"(b) An employee who violates this section shall be subject to appropriate disciplinary action by the employing agency or entity.

"(c) The Office of Government Ethics is authorized to issue regulations implementing this section, including regulations exempting voluntary gifts or contributions that are given or received for special occasions such as marriage or retirement or under other similar circumstances.". Regulations.

SEC. 302. TRAVEL ACCEPTANCE AUTHORITY.

(a) IN GENERAL.—Subchapter III of chapter 13 of title 31, United States Code, is amended by adding at the end thereof the following:

"§ 1352. Acceptance of travel and related expenses from non-Federal sources

"(a) Notwithstanding any other provision of law, the Administrator of General Services, in consultation with the Director of the Office of Government Ethics, shall prescribe by regulation the conditions under which an agency ~~or employee in the executive branch may accept payment~~ from non-Federal sources for travel, subsistence, and related expenses with respect to attendance of the employee (or the spouse of such employee) at any meeting or similar function relating to the official duties of the employee. Any cash payment so accepted shall be credited to the appropriation applicable to such expenses. In the case of a payment in kind so accepted, a pro rata reduction shall be made in any entitlement of the employee to payment from the Government for such expenses. Regulations.

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"(b) Except as provided in this section or section 4111 of title 5, an agency or employee may not accept payment for expenses referred to in subsection (a). An employee who accepts any payment in violation of the preceding sentence—

"(1) may be required, in addition to any penalty provided by law, to repay, for deposit in the general fund of the Treasury, an amount equal to the amount of the payment so accepted; and

"(2) in the case of a repayment under paragraph (1) shall not be entitled to any payment from the Government for such expenses.

"(c) As used in this section—

"(1) the term 'executive branch' means all executive agencies (as such term is defined in section 105 of title 5); and

"(2) the term 'employee in the executive branch' means—

"(A) an appointed officer or employee in the executive branch; and

"(B) an expert or consultant in the executive branch, under section 3109 of title 5; and

"(3) the term 'payment' means a payment or reimbursement, in cash or in kind.

"(d)(1) The head of each agency of the executive branch shall, in the manner provided in paragraph (2), submit to the Director of the Office of Government Ethics reports of payments of more than $250 accepted under this section with respect to employees of the agency. The Director shall make such reports available for public inspection and copying.

Public information.

"(2) The reports required by paragraph (1) shall, with respect to each payment—

"(A) specify the amount and method of payment, the name of the person making the payment, the name of the employee, the nature of the meeting or similar function, the time and place of travel, the nature of the expenses, and such other information as the Administrator of General Services may prescribe by regulation under subsection (a);

"(B) be submitted not later than May 31 of each year with respect to payments in the preceding period beginning on October 1 and ending on March 31; and

"(C) be submitted not later than November 30 of each year with respect to payments in the preceding period beginning on April 1 and ending on September 30.".

(b) CLERICAL AMENDMENT.—The table of sections for subchapter III of chapter 13 of title 31, United States Code, is amended by adding at the end the following new item:

"1352. Acceptance of travel and related expenses from non-Federal sources.".

SEC. 303. GIFTS TO FEDERAL EMPLOYEES.

(a) IN GENERAL.—Subchapter V of chapter 73 of title 5, United States Code, is amended by adding at the end thereof the following new section:

"§ 7353. Gifts to Federal employees

"(a) Except as permitted by subsection (b), no Member of Congress or officer or employee of the executive, legislative, or judicial branches shall solicit or accept anything of value from a person—

"(1) seeking official action from, doing business with, or (in the case of executive branch officers and employees) conducting activities regulated by the individual's employing agency; or

ATTACHMENT 2

41 CFR Part 301-1 and Chapter 304

[FTR Interim Rule 3]

RIN 3090-AE19

Federal Travel Regulation; Acceptance of Payment From a Non-Federal Source for Travel Expenses

AGENCY: Federal Supply Service, GSA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule further implements legislation governing the acceptance of travel, subsistence, and related expenses from a non-Federal source. It provides central policy direction on the subject and cancels a previous interim rule (54 FR 53321) which provided temporary policy direction pending development of this rule.

DATES: This interim rule is effective March 8, 1991, and applies for travel performed on or after March 8, 1991. Comments are requested on new § 301-1.2(c) and revised part 304-1 only and must be submitted by May 7, 1991.

ADDRESSES: Send comments to the General Services Administration, Travel Management Division (FBT), Washington, DC 20406, telefax (703) 557-3094.

FOR FURTHER INFORMATION CONTACT: Lennard Loewentritt or Janet Harney, Office of General Counsel (LP), Washington, DC 20405, telephone FTS 241-1156 or commercial (202) 501-1156.

SUPPLEMENTARY INFORMATION: Section 302 of the Ethics Reform Act of 1989 (Pub. L. 101-194, approved November 30, 1989) amended title 31, United States Code, by adding a new section 1352 "Acceptance of travel and related expenses from non-Federal sources." Public Law 101-280 renumbered and amended various provisions of section 1352, now designated as section 1353, and gives the Administrator of General Services, in consultation with the Director of the Office of Government Ethics, authority to issue implementing regulations.

On December 28, 1989, the General Services Administration (GSA) published an interim rule (54 FR 53321) which provided temporary policy direction on the subject pending the development of an expanded rule. This interim rule with request for comments implements section 1353 and cancels the previous interim rule published at 54 FR 53321. As such, it amends 41 CFR 301-1.3 to delete the interim rule's codifying language and thereby reflect its cancellation. Following receipt and reconciliation of requested comments, GSA will make any changes deemed appropriate and issue a final rule governing the acceptance of travel and related expenses from a non-Federal source. This rule implements a reporting requirement imposed by 31 U.S.C. 1353; a standard reporting form may be issued at a later date. The first agency report required under § 304-1.9 will be submitted not later than May 31, 1991, with respect to payments accepted from the date of publication of this interim rule through March 31, 1991.

GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Parts 301-1, 304-1, and 304-2

Government employees, Travel, Travel allowances, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR part 301-1 is amended and chapter 304 is revised as set forth below:

PART 301-1—APPLICABILITY AND GENERAL RULES

1. The authority citation for part 301-1 is revised to read as follows:

Authority: 5 U.S.C. 5701-5709; 31 U.S.C. 1353; E.O. 11609, July 22, 1971 (36 FR 13747).

2. Section 301-1.1 is revised to read as follows:

§ 301-1.1 Authority.

This chapter is issued under the authority of 5 U.S.C. 5701-5709 and 31 U.S.C. 1353.

3. Section 301-1.2 is amended by revising paragraph (b) and adding new paragraph (c) to read as follows:

§ 301-1.2 [illegible] Applicability.

* * * * *

(b) This chapter 301 also applies to official travel of individuals employed intermittently in the Government service as consultants or experts and paid on a daily when-actually-employed (WAE) basis and of individuals serving without pay or at $1 a year. These individuals are not considered to have a "permanent duty station" within the general meaning of that term; however, they may be allowed travel or transportation expenses under this chapter while traveling on official business for the Government away from their homes or regular places of business and while at places of Government employment or service. Maximum rates prescribed herein are applicable except as provided in paragraph (c) of this section or unless a higher rate is specifically authorized in an appropriation or other statute.

(c) To the extent the Government has received payment and except as provided in § 304-1.7, acceptance of payment for, and reimbursement by an agency to, an employee (and/or the accompanying spouse of such employee when applicable) under part 304-1 are not subject to the maximum rates prescribed in this chapter 301 for reimbursable travel expenses.

4. Section 301-1.3 is amended by revising paragraph (b) to read as follows:

§ 301-1.3 General rules.

* * * * *

(b) *Reimbursable expenses.* Travel expenses which will be reimbursed are confined to those expenses essential to the transaction of official business.

* * * * *

5. Chapter 304 is revised to read as follows:

CHAPTER 304—PAYMENT FROM A NON-FEDERAL SOURCE FOR TRAVEL EXPENSES

Part 304-1 Acceptance of payment from a non-Federal source for travel expenses.
Part 304-2 Reductions in meeting and training allowance payments.

PART 304-1—ACCEPTANCE OF PAYMENT FROM A NON-FEDERAL SOURCE FOR TRAVEL EXPENSES

Sec.
304-1.1 Authority.
304-1.2 General.
304-1.3 Policy.
304-1.4 Conditions for acceptance.
304-1.5 Payment from a conflicting non-Federal source.
304-1.6 Payment guidelines.
304-1.7 Reimbursement claims for official travel expenses.
304-1.8 Limitations and penalties.
304-1.9 Reports.

Authority: 31 U.S.C. 1353; 5 U.S.C. 5701-5709; E.O. 11609, July 22, 1971 (36 FR 13747).

§ 304-1.1 Authority.

This part is issued under the authority of 31 U.S.C. 1353 and 5 U.S.C. 5701-5709.

§ 304-1.2 General.

(a) *Applicability.* This part applies to agency acceptance of payment from a non-Federal source for travel, subsistence, and related expenses with respect to the attendance of an employee in a travel status (and/or the accompanying spouse of such employee when applicable) at any meeting or similar function relating to the official duties of the employee. This part does not authorize personal acceptance of such payments by an employee or the accompanying spouse of an employee (see, however, § 304-1.8(a)).

(b) *Definitions.* As used in this part, the following definitions apply:

(1) *Agency. Agency* means an executive agency as defined in 5 U.S.C. 105, and includes an independent agency as well as an agency within the Executive Office of the President.

(2) *Conflicting non-Federal source.* A *conflicting non-Federal source* is any person who, or entity other than the Government of the United States which, has interests that may be substantially affected by the performance or nonperformance of the employee's duties.

(3) *Employee. Employee* means an appointed officer or employee of an agency, including an expert or consultant in the executive branch (as defined in 31 U.S.C. 1353) appointed under the authority of 5 U.S.C. 3109.

(4) *Meeting or similar function. Meeting or similar function* means a conference, seminar, speaking engagement, training course, or similar event that takes place away from the employee's official station. A meeting or similar function need not be widely attended for purposes of this definition. This term does not include events required to carry out an agency's statutory and regulatory functions, such as investigations, inspections, audits, or site visits, and does not include promotional vendor training or other meetings held for the primary purpose of marketing the non-Federal source's products or services.

(5) *Non-Federal source. 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, state, local, or foreign government, or international or multinational organization.

(6) *Payment. Payment* means funds paid for travel, subsistence, and related expenses by check or similar instrument to an agency, or payment in kind.

(7) *Payment in kind. Payment in kind* means goods or services provided in lieu of funds paid to an agency by check or similar instrument for travel, subsistence, and related expenses.

(8) *Travel, subsistence, and related expenses. Travel, subsistence and related expenses* includes the same types of expenses payable under chapter 301 of this title or analogous provisions of Volume 6 of the Foreign Affairs Manual (FAM) or Volume 1 of the Joint Federal Travel Regulations (JFTR). The term also includes expenses such as conference or training fees as well as other benefits which cannot be paid under the applicable travel regulation and which are provided in kind and made available by the sponsor to all attendees incident to and for use at the meeting or similar function.

§ 304-1.3 Policy.

As provided in this part, an agency may accept payment from a non-Federal source (or authorize an employee to receive such payment on its behalf) with respect to attendance of the employee at a meeting or similar function which the employee has been authorized to attend in an official capacity on behalf of the employing agency. An employee shall not solicit payment from a non-Federal source. However, after receipt of an invitation from a non-Federal source to attend a meeting or similar function, the agency or employee may inform the non-Federal source of this authority. An agency may accept payment under this part from a non-Federal source for an accompanying spouse when it determines that the spouse's presence at the meeting or similar function will support the mission of the employee's agency or substantially assist the employee in carrying out his/her duties through attendance at or participation in the meeting or similar function. However, the accompanying spouse shall not be deemed a Government employee for any purpose other than eligibility for payment of travel, subsistence, and related expenses under this part. Agencies shall ensure that officials delegated authority to determine the propriety of accepting payments under this part are at as high an administrative level as practical to ensure adequate consideration and review of the circumstances surrounding the offer and acceptance of the payment. Acceptance of payment for, and reimbursement by an agency to, an employee (and/or the accompanying spouse of such employee when applicable) under this part are not subject to the maximum rates prescribed in chapter 301 of this title when full payment is made by the non-Federal source for one or more types of travel expenses to be reimbursed. Payment acceptance must be in accordance with internal agency procedures.

§ 304-1.4 Conditions for acceptance.

(a) An agency may accept payment for employee and/or spousal travel from a non-Federal source when an authorized agency official determines in advance of the travel that the payment is:

(1) For travel relating to an employee's official duties (including attendance because the employee's presence at the meeting is necessary to permit participation in the meeting by another employee or because a spouse's presence will support the mission of the employee's agency or substantially assist the employee in carrying out his/her duties through attendance at or participation in the meeting or similar function) under an official travel authorization issued to the employee, and to an accompanying spouse when applicable;

(2) For attendance at a meeting or similar function as defined in § 304-1.2(b)(4); and

(3) From a non-Federal source that is not a conflicting non-Federal source or from a conflicting non-Federal source that has been approved under § 304-1.5

(b) Payments may be accepted from multiple sources under paragraph (a) of this section.

(c) If a meeting or similar function does not concern a subject of mutual interest to the employee's agency and the non-Federal source, acceptance of payment from the non-Federal source under paragraph (a) of this section is limited to payment in kind and to the types of services the non-Federal source generally provides; e.g., air passenger transportation services provided by a commercial airline.

§ 304-1.5 Payment from a conflicting non-Federal source.

The agency may accept payment from a conflicting non-Federal source if the conditions of § 304-1.4 are met and the authorized agency official (designated in accordance with § 304-1.3) determines that the agency's interest in the employee's and/or the accompanying spouse's attendance at or participation in the event outweighs concern that acceptance of the payment may or may reasonably appear to influence improperly the employee in the performance of his/her official duties. In determining whether to accept payment, an agency shall consider all relevant factors, including the importance of the travel for the agency, the nature and sensitivity of any pending matter affecting the interests of the conflicting

non-Federal source, the significance of the employee's role in any such matter, the purpose of the meeting or similar function, the identity of other expected participants, and the value and character of the travel benefits offered by the conflicting non-Federal source.

§ 304-1.6 Payment guidelines.

(a) *Payment other than in kind.* Payments from a non-Federal source for an employee and/or accompanying spouse, other than payments in kind, shall be by check or similar instrument made payable to the agency. Any such payment received by the employee on behalf of the agency for his/her travel and/or that of the accompanying spouse is accepted on behalf of the agency and is to be submitted as soon as practicable for credit to the agency appropriation applicable to such expenses. Reimbursement for an employee's and/or accompanying spouse's travel expenses is not subject to the maximum rates prescribed in the applicable travel regulation (chapter 301 of this title, FAM, or JFTR) when full payment is made by the non-Federal source for one or more types of the travel expenses, provided that the accommodation or other benefit furnished is comparable in value to that offered to, or purchased by, other similarly situated individuals attending the meeting or similar function.

(b) *Payment in kind.* When the acceptance of payment has been approved in advance by the authorized agency official, the employee, for his/her travel (and/or that of the accompanying spouse, when applicable), may receive payment in kind in excess of limitations (including maximum per diem rates) under the applicable travel regulation (chapter 301 of this title, FAM, or JFTR), provided that the accommodation or other benefit is comparable in value to that offered to, or purchased by, other similarly situated individuals attending the meeting or similar function.

§ 304-1.7 Reimbursement claims for official travel expenses.

(a) The employee (and/or accompanying spouse when applicable) shall submit to the employing agency on authorized reimbursement forms all travel expense reimbursement claims, and shall itemize all expenses incurred which exceed maximum rates prescribed under the applicable travel regulation (chapter 301 of this title, FAM, or JFTR). The employee, and/or accompanying spouse when applicable, shall be reimbursed either an amount not to exceed the maximum rate prescribed in the applicable travel regulation, or when full payment is made by the non-Federal source for one or more types of the travel expenses, the amount of that payment from the non-Federal source. However, reimbursement for expenses in excess of applicable regulatory limitations shall not in any case exceed the amount of expenses incurred.

(b) The agency may reimburse the employee (and/or accompanying spouse of such employee when applicable) for only the *types* of expenses defined in §§ 301-7.1 (b)(5) and (c) of this title or in analogous provisions of the FAM or JFTR, as applicable, for per diem allowances, transportation expenses, or other miscellaneous travel expenses.

(c) If an accepted payment covers only a portion of one or more types of the expenses incurred (e.g., $50.00 per night for lodging in a locality with an $85.00 per night maximum lodging allowance), the agency shall reimburse the employee (and/or accompanying spouse when applicable) only the amount to which he/she otherwise would be entitled under applicable regulation (chapter 301 of this title, FAM, or JFTR).

(d) If an accepted payment covers in full one or more types of expenses described in paragraph (b) of this section (e.g., payment for lodging accommodations) but does not cover all of the travel expenses incurred, the agency shall reimburse the employee (and/or accompanying spouse of such employee when applicable) for those expenses that are not covered by the payment, not to exceed applicable limitations established in chapter 301 of this title or in analogous provisions of the FAM or JFTR.

§ 304-1.8 Limitations and penalties.

(a) Except as provided in paragraphs (a) (1) through (3) of this section, this part is the only authority under which an agency may accept payment from a non-Federal source, or authorize an employee to accept such payment on behalf of the agency, in connection with the attendance of its employee (and the accompanying spouse of such employee when applicable) at a meeting or similar function. An agency may not accept under an agency gift statute or other similar authority, payment for the travel, subsistence, and related expenses of an employee or accompanying spouse incurred to attend a meeting or similar function. However, nothing in this part authorizes or prohibits an agency or employee from accepting payment as follows:

(1) When authorized under 5 U.S.C. 4111 or 5 U.S.C. 7342;

(2) When payment is otherwise authorized and an employee's travel is for a personal rather than official purpose, or for a partisan rather than official purpose and is not prohibited by the provisions of the Hatch Act (5 U.S.C. 7321 *et seq.*); or

(3) When payment is otherwise authorized and the employee's travel is for attendance at or participation in an event other than a meeting or similar function.

(b) An employee who accepts any payment in violation of this part is subject to the following:

(1) The employee may be required, in addition to any penalty provided by law and applicable regulations, to repay for deposit to the general fund of the Treasury, an amount equal to the amount of the payment so accepted; and

(2) When repayment is required under paragraph (b)(1) of this section, the employee shall not be entitled to any payment or reimbursement from the Government for such expenses.

§ 304-1.9 Reports.

(a) *Agency reports.* (1) The head of each agency (or his/her designee) shall submit to the Director of the Office of Government Ethics (OGE), 1201 New York Avenue, N.W., Suite 500, Washington, DC 20005-3917, semiannual reports of payments, as defined in this part, which total more than $250 per event, and which have been accepted under this part with respect to the attendance at, or participation in, a meeting or similar function by an agency employee, and/or accompanying spouse of such employee when applicable. The Director of OGE shall make such reports available for public inspection and copying. These reports shall:

(i) Specify the name of the employee (and/or spouse when applicable), the position held by the employee, the name of the person or entity making the payment, the nature of the meeting or similar function, the time and place of travel, the amount and method of the payment, and the nature of the expenses;

(ii) Be submitted not later than May 31 of each year with respect to payments in the preceding period beginning on October 1 and ending on March 31; and

(iii) Be submitted not later than November 30 of each year with respect to payments in the preceding period beginning on April 1 and ending on September 30.

(2) In the case of acceptance of travel on a private or chartered aircraft, for purposes of agency reports under this section, value shall be determined by computing the total constructive cost of

transportation using premium-class air fares to the extent scheduled air service is available between the relevant cities.

(b) *Employee reports.* Payments properly accepted under this part, if received by an employee, are accepted on behalf of the agency and must be submitted to the agency for credit to the agency appropriation applicable to such expenses. Therefore, receipt of such a payment by an employee for himself/herself and/or the accompanying spouse, when applicable under the authority of this part, is not required to be reported as a gift on any confidential or public financial disclosure report that the employee is required to file pursuant to law or OGE regulation. Acceptance of payment by an employee for himself/herself and/or the accompanying spouse, when applicable, that is not authorized under this part may require reporting of the payment on the employee's financial disclosure report and may subject the employee to agency disciplinary procedures.

PART 304-2—REDUCTIONS IN MEETING AND TRAINING ALLOWANCE PAYMENTS

Sec.
304-2.1 Authority.
304-2.2 Applicability.
304-2.3 Conditions for approval of contributions or payments.
304-2.4 Agency responsibilities.

Authority: 5 U.S.C. 4111(b); E.O. 11609, July 22, 1971 (36 FR 13747).

§ 304-2.1 Authority.

This part is issued under the authority of 5 U.S.C. 4111(b).

§ 304-2.2 Applicability.

Subject to the exceptions in 5 U.S.C. 4102, this part 304-2 applies to civilian officers and employees of executive agencies, including the Department of Defense; independent establishments, as defined in 5 U.S.C. 104; Government corporations, subject to 31 U.S.C. 9101 *et seq.*; the Library of Congress, the Government Printing Office; the Government of the District of Columbia; and commissioned officers of the National Oceanic and Atmospheric Administration. All such officers and employees and all such agencies, independent establishments, and departments are hereinafter referred to in this part 304-2 as "employees" or "agencies," as appropriate.

§ 304-2.3 Conditions for approval of contributions or payments.

Section 303(j) of Executive Order 11348 of April 20, 1967, and the regulations issued by the Office of Personnel Management under section 401(b) of that Order, prescribe the conditions under which agency heads may approve the acceptance by employees of contributions and awards incident to training and payments incident to attendance at meetings, under 5 U.S.C. 4111(a), from the organizations described therein. These organizations are hereinafter referred to as "donors."

§ 304-2.4 Agency responsibilities.

Agency heads shall provide adequate safeguards to ensure that the following regulations are carried out:

(a) Where an approved payment by a donor fully covers expenses incident to training in a non-Government facility, or travel, subsistence, or other expenses incident to attendance at a meeting, the agency shall not pay for such expenses or shall recover payments previously made in the manner described in paragraph (c) of this section.

(b) If an approved payment by a donor does not fully cover expenses described in paragraph (a) of this section, the agency may pay an amount considered sufficient to cover the balance of the expenses to the extent authorized by law and regulation, including 5 U.S.C. 4109 and 4110. If an amount in excess of such balance has been previously paid by the agency, such amount shall be recovered from the employee in the manner described in paragraph (c) of this section.

(c) Recoveries of payments, as provided in paragraph (b) of this section, shall be made in the manner prescribed by regulations of the agency concerned and shall be issued according to 5 U.S.C. 5514.

(d) No reduction in payment by an agency is required where an approved contribution or award to an employee covers types of expenses which the agency is not authorized to pay. For example, where an agency authorizes travel expenses of an employee, including per diem and transportation expenses of his/her immediate family and household goods and personal effects to a training location, no reduction in payment by the agency is required if an approved contribution or award covers subsistence expenses of the family en route and expenses incurred by the employee in establishing himself/herself and the family at the training location.

(e) Expense data shall be obtained from employees or donors in such detail as the agency head deems necessary to carry out this regulation.

Dated: February 11, 1991

Richard G. Austin,

Administrator of General Services.

[FR Doc. 91-5295 Filed 3-7-91; 8:45 am]

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ATTACHMENT 3

United States
Office of Government Ethics
Suite 500, 1201 New York Avenue, N.W.
Washington, D.C. 20005-3919

March 11, 1991

MEMORANDUM

TO: Designated Agency Ethics Officials, General Counsels and Inspectors General

FROM: Stephen D. Potts
Director

SUBJ: 31 U.S.C. § 1353 and GSA Interim Rule

The following is a summary of an interim rule, with request for comments, published by the General Services Administration (GSA) on March 8, 1991, in consultation with the Office of Government Ethics (56 Fed. Reg. 9878). The rule implements 31 U.S.C. § 1353 and governs acceptance by Executive Branch agencies of payments for travel, subsistence, and related expenses from non-Federal sources in connection with the attendance of employees at certain meetings and similar functions. The rule also provides authority for an agency to accept payments in connection with the attendance of an accompanying spouse in some circumstances. Comments on the interim rule must be submitted to the appropriate office within GSA by May 7, 1991.

New Agency Gift Acceptance Authority

Section 1353 provides authority for agencies to accept payments from non-Federal sources in connection with the funding of certain official travel. Before the enactment of section 1353, some agencies had statutes permitting them to accept gifts from non-Federal sources. Some of these agency gift acceptance statutes extended to the acceptance of payments in connection with an employee's official attendance at meetings or similar functions. As of the effective date of GSA's interim rule, section 1353 supersedes all of these agency gift acceptance statutes to the extent that payments may be accepted under authority of the new law. See § 304-1.8(a) of the interim rule.

As emphasized in the statute and in § 304-1.8(a) of the interim rule, section 1353 is authority for an agency to accept payments and does not disturb authorities which authorize an employee to accept payments from non-Federal sources. Thus, for example, the Foreign Gifts and Decorations Act (5 U.S.C. § 7342) will continue to provide authority for an employee to accept travel-related benefits when the donor of the gift is a foreign

government. See, e.g., the Department of State's implementing regulation at 22 C.F.R. Part 3. Similarly, 5 U.S.C. § 4111 will continue to authorize the acceptance by employees of payments for travel, subsistence, and other expenses incident to training or attendance at certain meetings. See the Office of Personnel Management and General Services Administration implementing regulations published at 5 C.F.R. Part 410 and 41 C.F.R. Part 304-2, respectively.

Conditions for Acceptance of Payments for Employee Travel

Section 1353 is authority for an agency to accept payments only with respect to the travel of an "employee" as that term is defined in § 304-1.2(b)(3). By indicating that the term includes those employees "appointed" under authority of 5 U.S.C. § 3109, the definition excludes independent contractors who may be hired pursuant to the same statutory authority.

The agency must make certain findings in advance of an employee's travel to ensure that acceptance is authorized under the statute. Section 304-1.3 of the interim rule requires that agencies "ensure that officials delegated authority to determine the propriety of accepting payments under this part are at as high an administrative level as practical to ensure adequate consideration and review of the circumstances surrounding the offer and acceptance of the payment." Since an official travel authorization must be issued as noted in § 304-1.4 of the interim rule, the authorized agency official may choose to document his determinations by annotating the authorization.

As outlined in § 304-1.4(a) of the interim rule, the authorized agency official must make the following three determinations before an agency can accept payments for an employee's travel under authority of section 1353:

1. Payment is for attendance at a meeting or similar function. The authorized agency official must determine that the employee will attend a "meeting or similar function." The term meeting or similar function is defined in § 304-1.2(b)(4) to mean "a conference, seminar, speaking engagement, training course, or similar event that takes place away from the employee's official station." The definition specifically excludes events required "to carry out an agency's statutory and regulatory functions, such as investigations, inspections, audits, or site visits ...." Thus, an agency could not use section 1353 to accept payments from an adverse party to fund a Government attorney's travel to the location of a deposition incident to a bid protest. While the definition of meeting or similar function does encompass a "training course," it excludes promotional vendor training or other meetings held for the primary purpose of marketing the non-Federal source's products. Note that the event need not be "widely-attended."

2. Payment is for travel related to an employee's official duties. The authorized agency official must determine that the travel relates to an employee's official duties. See § 304-1.4(a)(1) of the interim rule. Section 304-1.8(a)(2) of the rule emphasizes that section 1353 has no application with regard to travel for personal or partisan purposes since such travel is not undertaken in an official capacity. The authorized official's determination requires an examination of both the nature of the meeting or similar function and the official duties of the employee. The interim rule includes language intended to indicate that, in some circumstances, a meeting or similar function can "relate" to an employee's duties even if the subject matter of the event bears no direct relation with the employee's official duties. For example, a security agent's attendance at a conference on hazardous waste may relate to his official duties because he must be present at the meeting "to permit participation in the meeting by another employee." Acceptance of payments for the travel of an executive assistant or aide could also fall within this category.

3. Payment is from a non-Federal source that is not disqualified on conflict of interest grounds. The authorized agency official must determine that the payment is from a non-Federal source that is not disqualified on conflict of interest grounds. As indicated in § 304-1.2(b)(5) of the interim rule, a non-Federal source can be "any person or entity other than the Government of the United States." The definition includes any individual, private or commercial entity, or nonprofit organization or association, and extends to any state, local, or foreign government. Normally, it is expected that it will be the non-Federal sponsor of the meeting or similar function that will be the source of the payments, or at least a non-Federal source with an interest in the subject matter of the event. However, § 304-1.4(c) indicates that payments may be accepted from a non-Federal source that does not have an interest in the subject matter of the meeting or similar function so long as the payment is provided in kind and consists of "the types of services the non-Federal source generally provides; e.g., air passenger transportation services provided by a commercial airline." This provision could, for example, permit an agency to accept a hotel's offer of a free final night's lodging in connection with a 4-day regional administrator's conference. Payments can be accepted from more than one non-Federal source in connection with a single event.

If the prospective non-Federal source of payments "has interests that may be substantially affected by the performance or nonperformance of the employee's duties," then it is a "conflicting" non-Federal source within the meaning of § 304-1.2(b)(2) of the interim rule. In the case of a conflicting non-Federal source, §304-1.5 of the interim rule requires that the authorized agency official determine that "the agency's interest in the employee's ... attendance at or participation in the event

outweighs concern that acceptance of the payment may or may reasonably appear to influence improperly the employee in the performance of his/her official duties." The interim rule provides guidance to the authorized official in making this determination.

Conditions for Acceptance of Payments for Accompanying Spouse

Provided that an employee is attending a meeting or similar function in an official capacity, section 1353 provides limited authority for an agency to accept payment from a non-Federal source for the travel of an accompanying spouse. As is made clear by the use of the word "accompanying" in § 304-1.4 of the interim rule, the authority of section 1353 cannot be utilized to accept payments for a spouse's travel unless the spouse is traveling to the same event as the employee. However, an agency's acceptance of a payment in connection with an employee's attendance at an event is not a condition precedent to its acceptance of a payment in connection with the spouse's attendance. Thus, an agency could use appropriated funds to pay for the employee's travel, yet accept payment from a non-Federal source for the accompanying spouse's travel to the same event.

Like the employee, the spouse must also travel pursuant to an official travel authorization. The authorized agency official must make three advance determinations before a payment can be accepted for an accompanying spouse. As noted in the previous paragraph, the authorized official must first find that the employee will be attending the same meeting or similar function in an official capacity. The authorized official must then find that the "spouse's presence will support the mission of the employee's agency or substantially assist the employee in carrying out his/her duties through attendance at or participation in the meeting or similar function." See § 304-1.4(a)(1) of the interim rule. Finally, if the prospective non-Federal source is a "conflicting" source as to the employee, § 304-1.5 of the rule requires that the authorized official determine that "the agency's interest in ... the accompanying spouse's attendance at or participation in the event outweighs concern that acceptance of the payment may or may reasonably appear to influence improperly the employee in the performance of his/her official duties."

Method of Payment and Acceptance

Section 1353 is authority for an agency to accept "payments" for "travel, subsistence, and related expenses" for the purposes described in the statute. Section 304-1.6 of the implementing rule makes clear that an agency may accept payment from a non-Federal source in the form of a check or similar instrument made payable to the agency, or it may accept payment in kind. "Payment in kind" is defined in § 304-1.2(b)(7) as meaning "goods or services provided in lieu of funds paid to an agency by check or similar instrument for travel, subsistence, and related expenses."

If an agency has authorized acceptance of payment, then the employee or spouse is authorized to receive the payment on the agency's behalf. As a practical matter, payments in kind must be received on behalf of the agency by the employee or spouse. Thus, it is the traveler who receives the dinner, the seat on the airplane, or the hotel room key on behalf of the agency. Checks made payable to the agency may be received by the employee or spouse on behalf of the agency, but must be "submitted as soon as practicable for credit to the agency appropriation applicable to such expenses." Neither an employee nor spouse is authorized to receive cash, a check, or a similar instrument made payable to the traveler.

Expenses Authorized to be Accepted By Agency

Payments can only be accepted by an agency under authority of section 1353 if they are for "travel, subsistence, and related expenses" as defined in § 304-1.2(b)(8) of the interim rule. Under this definition, agencies can accept the types of expenses that are payable under the Federal Travel Regulation, Chapter 301 of title 41, Code of Federal Regulations, or under analogous provisions of Volume 6 of the Foreign Affairs Manual (applicable to the State Department) or Volume 1 of the Joint Federal Travel Regulations (applicable to the uniformed services). Significantly, payments accepted under authority of section 1353 are not always subject to the maximum rates otherwise prescribed in these travel regulations. See § 304-1.6 of the interim rule. So, for example, the agency could accept a check from a non-Federal source that covers the cost of a room at a hotel, even though that cost exceeds the lodgings portion of the otherwise applicable lodgings plus per diem rate. Similarly, the agency could accept that same night's lodging if provided for the employee in kind. The agency could also accept payment for first class air transportation even where the employee would not otherwise be authorized to fly first class. The only limitation with respect to an agency's ability to accept payments in excess of applicable maximum rates is that the accommodation or other benefit must be "comparable in value to that offered to, or purchased by, other similarly situated individuals attending the meeting or similar function."

In addition to the types of expenses payable under applicable travel regulations, the definition of travel, subsistence, and related expenses in § 304-1.2(b)(8) indicates that the term also includes "expenses such as conference or training fees as well as other benefits which cannot be paid under the applicable travel regulation and which are provided in kind and made available by the sponsor to all attendees incident to and for use at the meeting or similar function." Conference and training fees (or the waiver of these fees) may be accepted by an agency from an approved non-Federal source who may or not also be the sponsor of the event. Payment of these fees may entitle the employee or spouse to

benefits or amenities offered as part of the event that may not be reimbursed under applicable travel regulations, such as cocktails or training materials. Non-reimbursable benefits other than conference or training fees must be provided by the sponsor of the event, be provided in kind, and be incident to or for use at that event in order to qualify for acceptance by an agency. Provided that the authorized official has determined that the sponsor is a non-Federal source from whom payments can be accepted, this permits the employee or spouse to enjoy or utilize benefits made available to all attendees by the sponsor, even though the benefit may not have been provided as part of the conference or training fee. This would permit an employee or spouse to enjoy a dinner dance available to all attendees hosted by the sponsor in connection with the meeting or similar function, but would not permit the employee to take home two tickets to a professional baseball game even if two tickets were given to all other attendees. Moreover, if the dinner dance were hosted by someone other than the sponsor, even by a pre-approved non-Federal source, the employee and spouse could only partake of the evening's entertainment if consistent with the standards of conduct or if provided incident to payment of the conference or training fee.

Reimbursement to Employee or Spouse

Each employee or spouse on whose behalf a payment has been accepted under authority of section 1353 must file a travel claim on an authorized reimbursement form. See § 304-1.7(a) of the interim rule. Except as noted below concerning reimbursements in excess of otherwise applicable limitations, the employee or spouse will be reimbursed for expenditures in accordance with the Federal Travel Regulation or analogous provisions of the Foreign Affairs Manual and the Joint Federal Travel Regulations.

For purposes of filing a travel claim, payments in kind for otherwise reimbursable expenses (such as transportation or lodging) are treated as if furnished by the Government. Adjustments to or deductions from expenses otherwise reimbursable by the Government will ensure that the employee or spouse is not reimbursed for benefits provided in kind.

In the case of payments provided to the agency by check or similar instrument, section 304-1.7(b) of the interim rule indicates that an agency may reimburse an employee or spouse "only the types of expenses" defined in applicable travel regulations, such as transportation or lodging. This would mean, for example, that a traveler would not be entitled to be reimbursed for out-of-pocket expenses associated with the purchase of alcoholic beverages at a cash bar since this is not a type of expense that is reimbursable under applicable travel regulations. Since lodging is a type of expense reimbursable under these regulations, however, an agency can reimburse a traveler for the amount expended for a hotel room in connection with attendance at an event. Moreover,

to the extent that an agency receives full payment from a non-Federal source for any type of reimbursable expense, the traveler can be reimbursed to the full extent of his or her expenditure even if that amount exceeds applicable maximum rates. When a non-Federal source funds only a certain type or types of expenses associated with attendance at an event, e.g., by sending a check to the agency to cover lodging but not air fare, § 304-1.7(d) of the interim rule explains that reimbursement for other expenses shall not exceed maximums established in the applicable travel regulation. In the event a non-Federal source sends a check to the agency that covers only a portion of a particular type of expense, such as only one-half of a first class air fare, the agency can only reimburse the traveler for that expense in the amount provided by the non-Federal source or in an amount authorized under the applicable travel regulation, whichever is greater. See § 304-1.7(c) of the interim rule.

Reports

Section 1353 provides that each agency shall "submit to the Director of the Office of Government Ethics reports of payments of more than $250 accepted under this section with respect to employees of the agency." The statute also establishes May 31 and November 30 as the applicable due dates for these semiannual reports. Section 304-1.9(a) of the interim rule specifies the information that must be included in the report. Significantly, the rule explains that the $250 reporting threshold is met when the total of payments received from non-Federal sources exceeds that amount with respect to attendance at a particular function. Thus, if an agency accepts payments of $150 for the employee and $150 for the spouse for any one event, the reporting threshold is met. As noted in the preamble of the interim rule, the first agency report is to be submitted not later than May 31, 1991, covering payments accepted from the date of the interim rule's publication through March 31, 1991. Negative reports are not required. The interim rule's preamble notes that a standard reporting form may be issued at a later date.

Finally, since it is the agency and not the employee or spouse that actually accepts payments under authority of 31 U.S.C. § 1353, an employee need not report his receipt of payments on any public or confidential financial disclosure form required to be filed by any Office of Government Ethics regulation. Provided that the guidelines set forth in the GSA implementing rule are followed, such payments are gifts to the agency and not to the employee or spouse. See § 304-1.9(b) of the interim rule.