good afternoon everyone and Welcome to our session today on navigating

0:09

non-federal Source travel understanding 31 USC 1353 and the federal travel

0:14

regulation I'm Cheryl Kane pieasecki and I am a senior instructor with the institute for

0:20

ethics and government at the office of government ethics and I am very delighted to introduce to you our

0:26

speakers for today's session Jeremiah Strack is a senior assistant general counsel in

0:35

the personal property division of the office of the general counsel at the general Services Administration

0:41

Jill Dunning is the deputy director of travel relocation transportation and

0:47

mail policy which is part of the office of assets and transportation management which is part of the office of

0:53

government-wide policy I am very pleased today to turn this presentation over to Jeremiah and Jill

1:15

is Jill muted yes okay there we go okay okay yeah I couldn't unmute myself I was

1:21

like no um hello everyone once again my name is

1:27

Jill Denning and I'm with gsa's office of government-wide policy and I'm

1:32

delighted to be back talking to this community I think right when kovid was

1:38

starting in March of 2020 we spoke um a little is about related parts of

1:45

this uh this topic and uh and so for those of you who were there I'm glad to

1:50

glad to have you back again and and probably a lot more and after that

1:56

presentation you guys had a lot of good questions and I realized that a future

2:01

presentation like we're having today would be much better served if I could have one of my colleagues from the

2:08

office of the general counsel to to join me and I think um you will be delighted as I certainly

2:14

am that Jeremiah Strack is is here with us today and I think he um is you're gonna have a great deal of

2:23

information thanks to thanks to his insid and knowledge so so with that why don't we

2:29

go to the next slide all right so the overview of today's

2:35

discussion um uh we're first going to talk about uh non-federal Source travel in general and

2:42

of course everyone's favorite statute 31 U.S code 1353

2:47

and then um in Jeremiah will will lead us through that and then I will talk about some of

2:54

the major changes to the federal travel regulation regarding

2:59

um non-federal Source travel that happened in November 2019 that originally came and talked about

3:06

um in the March 2020 presentation to this community and then uh just a little

3:11

bit about the intent of the changes um of course what didn't change and then we'll spend a good deal of time on the Q

3:18

a session as well so um and go to the next slide

3:24

and turn it over to Jeremiah well thank you Jill uh not Total Source travel or 1353

3:34

refers to a legal Authority which allows agencies to accept payment for an

3:39

employee's official travel expenses from a non-federal service in certain

3:44

circumstances payments can be directly to the agency or they can be in kind which means that

3:51

the non-federal source pays for a servers and then provides that service to an employee for example a non-federal

3:58

source could pay a hotel directly and then put the reservation in the employee's name

4:05

one thing to keep in mind with non-federal Source travel payments is that they're not the same as an employee

4:11

accepting a gift of travel expenses instead these are payments to an agency

4:18

that's important oh actually skipped a slide sorry about that

4:23

uh when considering whether this Authority applies the first question is whether the offer is a non-federal

4:29

source this can be complicated if a private entity is acting on behalf of a

4:34

federal agency the second question is whether the thing being paid for or provided in kind is an

4:42

official travel expense in the FDR this includes obvious things like airfare lodging to meals but but it

4:49

can also include registration fee for a conference that is if a conference organizer offers

4:54

to waive their registration fee for an employee to attend the event that may be

5:00

a non-total source payment there is an exception for speakers which we'll talk about more in a few slides

5:07

for non-federal Source travel payments this can also include activities that aren't normally reimbursable as travel

5:13

expenses as long as they're incident to the meeting provided in kind and available to all attendees

5:20

and what I'm talking about here is going to a meet and greet at something touristy like a reception or a sports

5:26

game uh before the conference the starts or maybe some sort of wrap-up session after the conference ends

5:33

however this doesn't allow employees to accept tickets to something at a later date even if those tickets are offered

5:39

to all attendees so for example a conference couldn't just package in tickets to a concert that's going to

5:46

take weeks that's going to take place weeks after after the conference it has to be something that is incident to the

5:52

event the third question is whether the offered payment is in connection with

5:59

the employee going to a meeting or similar function this includes things like seminars

6:04

conferences and training forums however it excludes travel required by

6:10

the agency's mission like investigations or Audits and events to promote a

6:15

vendor's products the last question is whether the event is away from or outside the employees

6:23

official station the official station is also sometimes called the local travel area or the

6:28

communion area you can think of that as a line when an event stops when an event can be

6:34

accepted as when to travel to an event could be accepted as non-frontal Source travel

6:41

what isn't non-federal Source travel is any travel necessary to carry out a

6:46

statutory or regulatory function as I mentioned before those are things like investigations inspections audits

6:54

site visits includes negotiations litigation and anything similar

7:00

non-frontal Source travel also doesn't include events where a vendor is going to Market to government employees

7:05

including through promotional training next slide please

7:14

one thing to keep in mind with non-federal Source travel payments is that not the same as an employee

7:20

accepting a gift of travel expenses these are payments to the agency

7:27

that's important because there are times when something couldn't be accepted as an employee by the

7:33

employee as a gift but it is acceptable as a non-federal source travel payment to the agency

7:40

a great example is when non-fertile source is when the non-federal source is a foreign government

7:46

when a foreign government gives travel to a employee of the United States government

7:52

the employee can only accept if the value is De Minimus and currently the threshold for that is 480 dollars and if

7:59

the travel is entirely outside the United States however if a government makes a payment

8:06

to an agency of travel that travel is not restricted by the de minimis threshold and it conclude in travel that

8:13

begins or in or ends in the United States on the other hand there are times when

8:19

the FDR is more restrictive one example is when an employee is a speaker at a

8:25

conference and attends on days they're not speaking or if they accept meals at a conference

8:31

under the FDR was amended to make non-frontal Source travel more similar to gift acceptance at events but because

8:37

gsa's regulations are always in the context of official travel we just couldn't get all the way there and as I

8:44

said before we'll talk more about the speaker role in a few slides next slide please

8:53

under the FTR authorization to accept non-federal Source travel payments must

8:59

come before travel that means they must occur before the

9:04

employee incurs any travel expenses uh just as an example if an employee is

9:10

going to be taking a ride share from their home to the hotel when they risk Quest that ride share they are on the

9:17

hook for a cancellation fee if that trip is going to involve non-total Source travel that travel has

9:23

to be approved before the employee even gets to the point of requesting that ride and preferably it should be

9:29

approved much earlier there are some limited exceptions to

9:35

this requirement for Advance approval and they can all be summarized as

9:40

surprises and there's two kinds of surprise when it comes to non-federal Source travel

9:46

first and most commonly and AMC may have already authorized acceptance of some

9:52

offered travel expenses an example would be if a non-federal source offered to provide airfare

9:58

lodging and wave through conference registration fee the agency accepts that meaning they

10:04

only have to reimburse the employee for meals and maybe ground transportation

10:10

when the employee gets there though it turns out the conference actually provides lunches during the event

10:16

those lunches are also a travel expense paid in kind in that circumstance the employee can

10:24

accept the lunch and then seek approval after the fact because the launch was a surprise

10:30

the second surprise is the total surprise the conference invites an employee and

10:36

doesn't say anything about reimbursing travel expenses it turns out when the employee arrives

10:41

their room at the hotel is already paid for or they're provided some sort of meal that situation is a bit more unusual but

10:48

it has happened before and it could be accepted under the FTR if the employee goes through the right

10:54

process in either case employees can only accept expenses comparable and value to what's

11:00

offered to or purchased by similarly situated meeting attendees so if everyone else at the conference is

11:07

bringing their own bat brown bag lunch but the government employee gets surf

11:13

and turf that's not really going to work however this rule does consider

11:19

similarly situated attendees if the government employee is a speaker and the conference pays for every

11:26

speaker's hotel room that would be comparable next this doesn't apply to anything the

11:33

ANC has already declined agencies sometimes decline part of an offer they might accept the airfare and

11:40

a wave registration fee but decline dinner at a high-end restaurants due to the appearance

11:46

the employee can't then overturn their employee their agency's decision if the

11:51

unopital source offers that dinner again if the employee accepts something that

11:57

the agency declines after the effect the non-federal source is always going to get reimbursed for that expense

12:03

if the employee accepts accepts something in good faith and later the agency declines it then the agency pays

12:10

for it however if the employee didn't act in good faith

12:16

for example if they accept something that was already declined then it's the employee that pays out of

12:22

their own pocket this is a serious penalty for a serious violation of the travel rules

12:29

keep in mind that non-protal Source travel authorizations have to be in writing the offer itself doesn't have to

12:35

be in writing although we always recommend getting it in writing to avoid any kind of miscommunication

12:40

but the offer will eventually get memorialized as part of the authorization

12:47

next slide please

12:53

when an agency authorizes acceptance of non-fertile source travel it's also

12:59

necessarily authorizing official travel this is more than just a record keeping

13:04

detail an employee on official travel is unofficial time and is entitled to

13:10

reimbursement of their actual and necessary travel expenses this means the agency is on the hook for

13:17

anything The non-frontal Source doesn't provide if the non-fertile source provides lodging but not airfare the

13:23

agency has to pay for transportation if the non-tradal source offers to pay exactly half of all costs the agency has

13:31

to pay the out of their half if the non-petal source breaks their promise if they don't pay for something

13:37

they said they would the agency has to pay for that and that has unfortunately happened

13:44

before the agency is also required to reimburse the employee for any emergency travel if

13:50

they get sick or injured on official travel and if the employee dies during an

13:55

official trip the agency has to pay for transporting their body therefore agency should only authorize

14:03

non-federal Source payments for events they'd pay for the employee to attend anyway

14:08

sometimes the agency has to we've run into situations where an

14:16

employee is away from their official station and then gets invited to an event the employee might be on vacation

14:21

or they might be on official travel for some other purpose when that invitation arrives

14:27

the question then is whether the employee is going to that event is on a

14:33

non-fertile source travel if the agency doesn't have any interest in the employee going to that event then

14:40

it's not we actually had this happen once within gsa's ogc we were hosting a

14:46

training conference in DC and while one of our lawyers from Chicago was at

14:52

training they also got inspired to speak at an ABA conference the ABA is the

14:58

American Bar Association it's basically the uh Professional Organization for attorneys in you and the US

15:04

since that Chicago lawyer was going to be speaking at the ABA event their

15:10

registration fee was waived and they got a dinner too the question came to us is this

15:15

non-fertile Source travel and we looked at it and said no GSA didn't have any interest in that ABA event

15:23

so instead we put them we authorized them as we authorized it as a white as them attending a widely attended

15:29

Gathering even though they were actually on travel the difference being they were going to uh they were going to event

15:36

that was simply not part of gsa's mission

15:41

non-federal Source payments for subsistence expenses meals and lodging can exceed the regulatory maximums in

15:49

domestic areas including Alaska Hawaii Puerto Rico and U.S territories

15:55

we're still Bound by the maximums in foreign areas The non-total Source also has to offer

16:02

the subsistence expenses to similarly situated attendees for example if the non-frontal source is

16:08

providing Suites at a luxury hotel to all speakers including the government speaker

16:13

the ANC could accept that offer but keep in mind the first point that we

16:18

talked about the agency has to pay for anything The non-tradal Source doesn't pay for

16:24

including anything that the natural source promised to pay for but then backed out on

16:30

if the non-frontal source provides that luxury suite and then doesn't actually pay for it it's the agency that has to

16:36

pick up the tab that risk can be a good reason to decline that part of an offer or perhaps

16:42

the entire offer if the agency is not confident in the source a similar rule exists for other than

16:49

coach class accommodations on a common carrier like with exceeding Max subsistence

16:56

maximums The non-fertile Source also has to offer that to similarly situated median attendees

17:02

what's different is that it can be accepted only if the non-federal source pays in full and in advance

17:09

it's not good enough for the nonprotle source to just promise to pay for a business class or first class seat they

17:15

have to hand over the tickets before the travel starts

17:21

one point that I cannot emphasize enough is that an employee must never accept

17:26

cash or a personally payable check for a non-federal source payment

17:32

those payments are to the government so employees of the government are not

17:38

allowed to possess that money it has to go to the ANC or the treasury if the non-total source for some reason

17:44

cannot process a payment to the US government which is something we've heard before

17:50

then the agency should not accept that payment

17:55

uh next slide please all right

18:00

uh with that I'm going to hand it back over to Jill thank you all right so

18:08

um we did change the FTR in November of 2019 and I just wanted to recap what

18:17

those changes were in case you know you weren't at the

18:22

presentation three odd years ago I'll just talk about it you know very briefly

18:28

here and then in a little bit more in depth in in future slides and so

18:33

basically once again there were three changes one thing we did was reclassify

18:39

speakers at conferences from conference to Mission travel the second major change is that we did

18:46

change the definition of payment and kind and I'll talk once again more about that

18:51

in a future slide and then the third major change was we did change how you

18:58

determine the cost of meals that are provided in kind and so go to the next slide

19:07

all right so people say well why did you do make you know make all those changes right um and so the major number one reason

19:15

why we made all these changes is that you know we did hear you uh we did recognize that there were

19:21

inconsistencies between the way local and temporary Duty travel treated

19:26

registration fees in particular differently and specifically I'm

19:33

referring to the standards of ethical conduct section uh 2635.203 B8 and G and so when looking at

19:42

B8 specifically um you know it does provide free attendance to the event

19:49

as long as the employee is assigned to present information on behalf of the agency at the event on the day when the

19:57

employee is presenting you'll notice that I know that there's a two and a

20:02

three to this section as well two I think being you know if other people

20:08

besides who are coming to say assist the speaker or the spouse I believe

20:14

it does not you know our rules do not extend to free registration for for them

20:22

um but it you know we did at least at least we were able to match up

20:28

for the speaker panelists presenter themselves so the next slide

20:36

and so I will spare you from reading this whole section here uh the G

20:42

um and so you know this is what talks about what is included with the free attendance and you'll see of course in

20:49

the standards of ethical conduct section it does talk about food which you know we do not include that in

20:58

the FTR registration exclusion in registration

21:04

section and so the next slide

21:13

foreign so why doesn't G take precedence um I think as Jeremiah mentioned just a

21:19

minute ago our implementation of 1353 is more restrictive

21:24

so it applies to payments for travel subsistence and related expenses so

21:31

subsistence being meals or food and you know once again also as Jeremiah

21:38

mentioned the meals provided by non-federal Source are considered a payment in kind to the agency instead of

21:44

a gift personally accepted by the employee so so we did get closer in

21:50

matching those matching it up but once again couldn't get quite all the way there

21:55

and so next slide all right so the three changes that I

22:03

mentioned uh the first major change once again was in the FTR in chapter 301

22:10

appendix C it lists the different uh categories of travel that agencies have

22:16

to use you know when you know classifying what type of travel their

22:22

employees are taking and so for a very long time

22:28

you know travel to a conference to serve as a speaker panelist um you know presenter and providing

22:34

information in one's official capacity that was listed under Conference travel and actually not Mission travel and and

22:43

so I think I'm sure many of you were probably around in in 2012 when

22:52

um it came to light that actually gsa's own Western regions conference hit the

23:00

news unfortunately and you know for those of you who are not familiar basically it was an

23:07

internal meeting of some of our Western locations they came together in Las

23:14

Vegas and there were a lot of not only travel issues but um you know a lot of con you know

23:20

contracts ethical issues as well um and there's a IG report you can read

23:26

if you're interested but one thing we found sort of as an aftermath of that

23:32

conference was you know there was of course a lot of congressional interest and a lot of rules that were implemented

23:37

about con this this Conference travel category in particular and what ended up

23:44

happening was a lot of people who were going to conferences you know in their

23:49

official capacity to you know share information about uh you know any

23:54

variety of subjects that I'm sure you can think of um you know scientists going to present

24:00

you know research and papers and um you know people getting continuing

24:05

education credits that kind of thing um you know in serving as panelists and

24:10

all that while while doing so uh all of a sudden they were kind of caught up in this and you know people were saying

24:18

well it's Conference travel and you know basically agencies were either cutting travel completely or you know so

24:27

greatly restricting it these people you know we're no longer able to do that and and so we recognize that you know

24:33

changing the FTR would be very helpful hopefully of course you know meeting or

24:39

conferences like the GSA one will never ever happen again

24:44

um you know but hopefully if if anything ever did

24:50

um the people who really need to go out and do their mission just their day-to-day job that happens to be at a

24:58

conference will not be caught up in all that and so that's that's the reason

25:04

um for that that major change until we go to the next slide

25:12

and so the second then major change was we did change the definition of payment

25:17

in kind so of course um you know before registration fees

25:26

um paid for by a non-federal source you know did used to be considered a gift on

25:32

the day that the speaker panelists and presented were speaking but now

25:38

um that is not the case so um so those Wade fees don't need to be

25:44

reported to OGE any longer and other types of travel expenses

25:50

on non-speaking days of course still must be reviewed and reported in

25:56

accordance with what's in the FTR chapter 304 just like before

26:02

but we hope that this change is inefficiency measure for for everyone

26:10

and the next slide that leads us to the third major change

26:16

hopefully this is a huge efficiency measures well so when determining the

26:22

cost of meals provided in kind agencies can now use the meal breakdown amounts

26:28

that are listed on gsa's website at that address gsa.gov mie and there are two

26:36

different um charts there there's one for the continental United States and then

26:43

there's a chart for outside the continental United States that um that page and so that hopefully is a

26:51

lot easier than trying to figure out the cost of the chicken dinner I actually

26:58

had this happen you know before we made this change we accepted a a lunch I

27:03

think it was at a conference that I spoke at and um you know in the poor conference

27:08

organizers were running around trying to you know figure out the the cost of the

27:14

chicken and rice and whatever else it was it was it was it was a tremendous

27:19

amount of work um for all involved so hopefully you know we have uh you know done a lot of

27:25

research to come up with those meals and incidental expense figures and hope that

27:31

it's it's a Time Savings too to Simply use that instead of everything that might go into one individual or multiple

27:39

individual meals at conferences um and so let's see yeah so 1353 does

27:49

require that meals accepted as payment and kind be deducted of course from the travel voucher uh don't forget to do

27:55

that there are some exceptions that FTR 301-11.18 uh basically if you have a

28:03

medical reason why you can't eat the meal if you have religious reasons why you could not eat the meal or if you

28:10

have you know a valid business reason maybe the only time you can you know meet with some key folks constituents or

28:18

something is during that meal then you would not have to deduct that meal but

28:24

in general you do and just be we honestly hear lots of excuses about why

28:31

people think they don't have to deduct the meals but basically if it doesn't really stick to the medical religious or

28:37

you have a good business reason then then you've got to deduct it not just because you don't like it so

28:44

um so next slide

28:50

and so now we're on to the recap and Jeremiah's gonna do that and then we'll move into questions all right thanks

28:58

um before I get to the recap of the uh major change I do want to mention one thing is that we often get questions

29:04

about discounts or waivers that apply to all government attendees at an event this can be a bit tricky uh but these

29:11

are not payments under the FTR I can't point to anything that directly says

29:17

this but it's considered a result of how registration conference registration fees are structured often there's a

29:24

variety of discounts for different groups of key people now for example members of a Professional Organization might get a discount someone who buys

29:31

their ticket early might get some sort of early bird discount and for some conferences government employees get in

29:37

free taking advantage of these category-wide discounts is not considered a

29:42

non-fertile source payment it's just being cost effective and therefore it's not can not processed as unoffical

29:48

Source payment now as Jill discussed uh in 2019 GSA

29:54

revised the rules on accepting waive registration fees as a non-frontal

30:00

source travel payment the headline change is that if a non-total source invites an employee to speak present or

30:07

participate in a panel at an event and waves or discounts the registration fee

30:12

for that employee the waiver or discount is not an optional Source payment on the

30:18

days the employee participates however there are three ways this

30:23

exception differs from OG's rules on widely attended gatherings first the waiver is still a non

30:31

non-federal Source payment on days the employee isn't actively participating

30:37

the second is that this exception only applies to employees who are actively

30:42

participating as a speaker presenter or panelist if an employee is attending simply to

30:49

support a speaker they're not actively participating so their waive registration fee would still be

30:55

processed as a payment in kind lastly meals and any other travel

31:01

expense provided at no cost by non-federal Source are always considered a payment under the FTR

31:08

if an employee accepts a meal on the day they speak present or participate in a panel that meal is itself a non-federal

31:16

source payment however it doesn't convert the rest of the waive registration fee into a

31:22

payment they can be separated and as Jill just discussed on the last slide you no longer have to get the value you

31:29

no longer have to find the the cost of the meal you can simply report the per the meal breakdown amount instead

31:36

uh so with that we're finished with the presentation uh we can move on to the question and answer period

31:43

okay Michelle if you could bring up the Q a slides um as I mentioned to Folks at

31:48

the top of the hour before we got started um we had asked for uh the community to

31:55

submit questions to us in advance so that GSA would have an opportunity to take some time to to craft whatever

32:02

answers that they had to the questions that we had so there's not going to be a live q a today but we are going to

32:08

answer some of the questions that we did receive from the community so if I could have the next slide please Michelle

32:17

okay so Jeremiah you talked about this a little bit in your presentation but I

32:22

was wondering if you have any sort of even GSA specific examples of what would

32:28

be a statutory function or a regulatory function where it wouldn't meet the the

32:34

definition of meeting or similar function for purposes of using the The non-federal Source travel payment

32:40

Authority um and and if you even if you don't I mean how would you ex how would you help

32:47

agencies what would you your advice be to agencies who maybe have what they consider to be borderline cases

32:54

sure um I'm afraid I actually don't have any uh good GSA good GSA examples

33:00

um were were not a you know we don't have a we're a relatively

33:05

um um we don't have a lot of uh really uh interesting cases we're mostly just you

33:11

know um providing General services to uh and uh and goods and services to the government

33:17

um I would say though that um just as a general matter the reason that

33:22

these kinds of uh statutory and Regulatory functions are excluded is because Congress needs to be able to

33:29

exert control on how agencies are carrying out their functions so if they

33:35

are a lot they when they appropriate funds for Regulatory and statutory functions they don't want agencies to be

33:42

able to supplement that with outside funding so that's the reason for that exclusion

33:48

um I would say that if there's a borderline case um agencies would have to use their best

33:53

judgment um but I can tell you right now at GSA if I ran across a borderline case I

33:59

would just err on the side of not accepting it as a non-federal source payment

34:06

so on to our next question so could an agency accept a non-federal source payment for an employee to attend a seminar for

34:13

example about transitioning out of federal service uh it's Paul possibly

34:19

um generally agencies decide what's official travel for them including uh in terms of non-frontal source travel

34:26

uh so some agencies may have a function where they do have to or may have a some

34:32

sort of uh considerate official travel for an employee to take training on transitioning out of federal uh

34:38

employment on the other hand this might be something that could be accepted under another Travel Authority I'm

34:43

thinking here the um the government employee training Act five USC 50 41 11

34:48

allows for for the employee to accept uh payments for uh training expenses for

34:54

example um so next

35:02

next meeting and that meeting is meeting is in place outside of the United States and that and in this instance the offer

35:08

isn't coming from a foreign government so we're not dealing with the foreign government being the source of the non-federal source travel payment

35:16

does uh the provision the exception and the gift rules of five CFR 2635.204 I apply or would 31 USC 1353

35:25

apply uh so this is a this can be a really tricky question um our general advice would be that

35:32

um agency's uh agencies may want to look at accepting things on any kind of uh

35:38

offer under uh 1353 first it's just tends to be especially in the

35:44

international area tends to be a much more uh it tends to have some flexibilities that employee acceptance

35:49

doesn't have um that said there may be a case where an agency couldn't accept under 1353

35:55

maybe it's part of the maybe this meeting is part of the agency's statutory and Regulatory function like

36:01

we talked about uh earlier uh in that case maybe that's the case where the employee could accept under uh this is

36:08

under oge's Authority and in that case that would be for example where we're

36:14

just allow you know that would be a case where the employee could just accept the meals but we would avoid any kind of other Transportation or other travel

36:21

expenses people and I just want to concur in what you're saying and that the office of

36:27

government ethics um in in the context of our standards of ethical conduct would never presume to

36:33

preempt the authority of 31 USC 1353 we recognize fully that that has Primacy

36:39

and so we would also tell our agencies you have to make sure that you couldn't

36:44

Avail yourself of 31 USC 1353 first and then only if you were in a circumstance

36:50

where 31 USC 1353 did not apply would you then be able to Avail yourself of of

36:56

this Authority obviously provided that this Authority uh you know that the conditions of the of the of the

37:03

circumstances in which the meals are being offered fell within the within the confines of 204 I

37:11

um next slide please so are there any special considerations

37:18

when the non-federal source of the benefits is not the same as the entity that's extending the

37:25

invitation and hosting the events that the employee is attending uh so the background so there's an

37:31

additional context for this question uh this can come up if an employee is invited to speak at a an event within a

37:39

larger event and the sponsor of that sub event is sending the invitation but the overarching larger event sponsor

37:47

is actually burying the cost of the employee's attendance so that's a bit more of a complicated situation

37:54

um there's nothing that's special required by the right by the FTR but you would presumably want to look at both

38:01

the both the invite and in the the non-verbal Source that's offering the invitation and the source that is

38:08

actually providing the funding for this um presumably they both have some role in deciding when the invitation is going

38:15

to be extended or to whom and therefore you'd want to make sure that this is uh something you know this is something

38:21

that the agency could accept and it's not going to create kind of some some issue with either source

38:27

so in other words the the sort of conflict of interest or Optic scrub that

38:33

agencies are expected to conduct in the context of deciding whether or not to

38:38

accept an offer a non-federal sources offer of travel payments you're suggesting that in the context of that

38:45

and in this situation that that analysis should incorporate both sources of

38:51

invitation for that particular travel exactly I it's it's uh because both

38:57

sources have we it'd be safe to assume that both sources have some form of control over the invitation so both

39:03

sources should be examined for you know both sources should go through the scrub okay very good

39:09

so how do the non-federal source rules apply to sges and attendantly

39:16

um how do they apply to those who serve under the intergovernmental Personnel Act uh so special government employees are

39:23

covered by the non-federal sourced roles they're included in the in the definition

39:29

um unfortunately the it's a little it's not as unfortunately I I I couldn't give you a definite answer about uh iPad

39:36

Personnel um there may in fact also be a difference between IPA detailies and

39:43

appointees we had a situation come up where the person where we had a Personnel who was under the IPA and uh

39:52

we ultimately had to hand it off to our labor attorneys or our employment Council to uh to actually sort it out uh

40:00

so that I would recommend doing the same if you had a question within your agency okay

40:06

um next question so how should folks value Beverages and light Refreshments

40:11

uh are these even something that need to be accepted or can be accepted under 31

40:16

USD 1353 uh so as far as the FTR is concerned these are not subsistence expenses

40:24

um so there's not really a a way to Value them um I've seen at least a GSA we tend to

40:31

treat these as part of the event uh that said you may want to check with your agency Council about agency ethics

40:37

Council about accepting these um and maybe avoiding acceptance for either appearance reasons or for some sort of

40:42

uh or for some other uh restriction okay next slide please

40:52

do you have any examples of when an agency declined non-federal Source

40:58

travel I actually do have an example this time uh at USA we had a uh we actually had an

41:04

invitation from a non-profit which at first seemed like it would be perfectly

41:09

acceptable but then we discovered that a number of the board members were GSA

41:14

contractors so even though the non-profit was technically independent the we knew that

41:21

there were we knew that there was going to be a presence by GSA contractors and so we basically flagged it as something

41:28

that would not be acceptable within GSA that's a great example

41:34

um okay should agencies be concerned about an employee who goes on too much

41:39

non-federal Source travel uh at least as far as the FDR is concerned uh this is ultimately

41:45

something that isn't this is not something that's this is not a consideration under the FTR

41:50

um but I I I'd say that uh I'd certainly say that agencies may want to consider uh may want to consider that for

41:56

appearance purposes I'm not sure if uh if uh of OG has anything to weigh in on

42:03

I think that that I'd like to to sort of pause a moment and

42:10

nature of this Authority and what the regulation itself requires in the way of the kind of analysis we're supposed to

42:16

do before we accept these travel payments first uh Jeremiah as you pointed out to folks this is a statutory

42:23

approval for agencies to augment their Appropriations so it's a government-wide effectively

42:30

authority to augment your Appropriations when it comes to official travel for

42:36

official Duty activities and I would just submit that what Congress gives

42:42

Congress can take away if they believe it's being abused or is detracting from Mission critical

42:48

activities so that's Point number one point number two is before authorizing any payments you you

42:54

have to do an analysis of a variety of factors there are like six factors that

43:00

you're supposed to consider under 304-5.3 um and to be able to determine

43:07

why they're accepting payments from this source for this event would call into question the Integrity of agency

43:14

programs and operations okay so this is an Optics question

43:19

so we we so we would submit you should consider as we ask you also to do Under

43:25

the standards when you're dealing with an employee's gift acceptance you know what that acceptance might look

43:31

like to the public whether it might look like the use of public office or private gain or in any

43:37

inappropriate augmentation of Appropriations or whether it would otherwise call into question how the

43:42

government is spending its time and who the government is accepting these types

43:47

of free travel and other benefits from and then my third point is this

43:53

the public and the media are increasingly interested in these types

43:58

of gifts and these types of payments there is a reporting requirement for a

44:03

reason there is transparency around this for a reason your reports are public so

44:09

all I'm going to ask you also to consider is are your acceptance of payments of

44:15

travel from non-federal sources defensible in the event that someone might question them

44:21

so we're not suggesting one way or the other how you manage your 1353 travel we're not suggesting to you one way or

44:28

the other what is or isn't appropriate acceptance I'm just reminding us all that there are consequences if we aren't

44:35

mindful enough about respecting the nature of the authority what the authority was intended to do and how

44:41

others might perceive our use of these authorities

44:47

okay next question is uh what if a non-federal source makes a conditional

44:53

offer that's they will waive a registration fee but they reserve the right to charge it if for example the

45:00

employee doesn't speak for some reason so uh when I ran across this uh this uh

45:05

question I it kind of struck me as a surprise I've never seen something like this before and if it came across my

45:12

desk at GSA it would raise a lot of red flags um if it's something if it's maybe

45:17

something some sort of nuance of maybe the The non-federal Source um made this offer and then when the

45:24

employee had a had a life event and had to cancel the trip they sent a bill to the agency uh that would that could be

45:30

something where it's Pro where it's looked at as a travel expense uh but I've never seen uh somebody up front

45:36

make a conditional offer like this okay um and this kind of gets back to what

45:42

you were saying before is that you do have to be careful because the agency is going to be on the hook

45:48

for anything that the non-federal source might renege on so if you're seeing already in the in the offer up front

45:54

it's conditional that yeah I'm with you I think that would send up a red flag as well

46:00

um next slide please

46:07

so can agencies use non-federal Source travel to process an invitation only event at a conference that's not open to

46:14

that's and the event is not open I presume to not not open to all attendees uh yeah the uh the way I interpreted

46:22

this question is like we have in a conference where um the the conference that's got you know several thousand attendees for

46:28

example and then there is also an event within uh within that conference that is only where the invitations are only

46:34

extended to a certain number of people um the quote the answer is it's fact dependent um if it's event at a

46:40

conference and it's not offered to All Conference attendees then it's outside the FDR definition of travel expenses

46:48

however if it's a separate event that's taking place during the conference it could be accepted as a separate event if

46:54

that makes sense um so it really becomes a matter of what exactly is going on is this a a it

47:01

really comes down to piecing through what exactly is going on with this invitation versus this broader event

47:09

okay so it's it's a it's it's depends on the facts basically it depends on the facts okay

47:16

very good okay this next question I think is when you're probably going to want to punt to me but uh but if you

47:22

have something to say on the matter Jeremiah please feel free to chime in um the question was is the ethics role

47:28

only to vet for potential conflicts of interest um again your internal processes for

47:35

vetting these requests are your internal processes what I would suggest is that

47:41

anytime you're being tasked with vetting uh documents for potential ethics issues

47:47

that that vetting has to be comprehensive um I know that a lot of Ethics ethics

47:53

folks are General law attorneys so you're accustomed to uh I think putting

48:00

your your green shades on and looking for all sorts of Law and regulation that might be implicated and I would suggest

48:07

that that should be the same sensibility for these so as a first matter I would say you know is this a legitimate use of

48:14

1353 I think making sure as an initial matter that this is even an appropriate use of that Authority

48:21

is certainly within the the purview of a vetting of these requests

48:26

um as we said the regulation itself requires you to do a determination and

48:32

it's a six-factor determination um to protect the appearance of the Integrity of agency programs and those

48:39

factors include things and these are similar to factors that we ask you to do in the case of for example a widely

48:44

attended Gathering which is who is the source of the invitation who's the source of the payment what is the actual

48:50

nature of the event is it the type who are the type of participants that are going to be attending this event is this

48:57

an appropriate audience for for example if your employees going to speak related official matters does the employee have

49:03

any official matters going on that might be related to The Host to the invitee to the non-federal source that we might be

49:10

concerned about the Optics of the timing of the acceptance and attendance by the employee

49:17

um what is the value and character of the benefits are they really let's see is it a really

49:23

extravagant set of of uh travel and related benefits that the employee is

49:29

likely to receive those all factor into the Optics of the acceptance of this payment so in some you have to ask

49:36

yourself is this an appropriate event for the agency to send someone to travel to attend in an official capacity and is

49:44

it appropriate that the agency isn't paying in whole or in part for that

49:50

employee's travel in attendance at that event finally you

49:56

'll be scrubbing these for any potential employee ethics issues which might be

50:02

things like a criminal conflict of interest because of the nature of the

50:08

source of the invitation or payment it might be someone with whom the employee has a 208 relationship that needs to be

50:16

vetted um similarly with impartiality is there any compensation that's being

50:23

offered I have heard stories of particularly scientists who are invited to many many a colloquia to provide a

50:32

speech or to give some sort of talk and they are offered on our area because that's very

50:38

typical for those types of conferences so we'd one of that to make sure that the employee wasn't being offered uh

50:45

compensation or some form of compensation that they might not be able to accept gifts to the employee for

50:51

example are there going to be some sort of is there some sort of an award ceremony that's going to be happening where the employee may be receiving an

50:57

award um will there be events at the at the conference like a trade show or Raffles

51:04

being offered so these are all sorts of things that you want to kind of be on the lookout through the documentation

51:10

you get in support of this request to make sure that there aren't things you should be flagging Beyond just whether

51:16

the agency should send this person in their official capacity to this particular event and accept those

51:22

payments there are additional considerations that you should be on the lookout for

51:27

I just wanted to add from uh gsa's experience am I uh still

51:33

I just wanted to add from gsa's experience um our our ethics attorneys look at the

51:38

entire travel package including the travel authorization and there's been times when they've flagged the uh that the travel day per diem was not

51:44

calculated correctly so absolutely their scope has been is much more Broad

51:50

very good okay so back to within the confines I think of the federal travel

51:56

reg can agencies estimate values for transportation and lodging for example if an employee lodges with a private

52:02

citizen uh so the FDR does have a couple of special rules in

52:08

304-6.6 for valuing certain kinds of transportation and lodging uh for

52:13

example there's rules on valuing chartered corporate or private aircraft and for lodging when there's no

52:19

commercial rate available so in that case of an employee lodging with the with a private citizen if there's just

52:25

no way to establish a commercial right there's the rules have ways to determine to determine a uh how to how to make

52:33

that evaluation um if none of those apply then the

52:39

default is that the agency should establish what usually would have been charged and if there's no way to estab

52:44

if there's no way to get that information from the source then that it's perfectly reasonable to provide an

52:49

estimate of what is of something that is comparable um one example I've heard of is if

52:56

somebody is being provided if somebody is being provided a ride by some by a

53:01

not by a non-commercial Source they may instead use something that the ride share fee that would have been charged

53:09

uh-huh okay and I think this is our final question do you happen to have any examples I

53:15

think you may have provided an example in response to a for one of the earlier questions but of acceptance under using

53:22

the authority five USC 411. oh yeah uh we uh talk about an example earlier of

53:27

um if uh a an employee who is accepting training to uh for transitioning out of

53:35

federal uh service that is something that could be accepted uh under the uh five USC 411 Authority

53:43

that it's important for folks to know that five USC 411 can be used even in

53:48

situations I mean obviously provided it falls within the Ambit of 411 in situations where 1353 could be used so

53:56

these are two authorities that are that one can be used in lieu of the other so

54:01

it's not that you're prohibited from using 411 if you for whatever reason believe that would be a better Authority

54:07

for you to use in a given circumstance even though you could use 31 USC 1353 if

54:12

you wanted to um and I think that if you look at the regulations for these which are somewhat they're somewhat uh Spartan but I think

54:20

you get a good indication that really these authorities are very similar

54:25

um but they but they do differ in a few significant ways but in many ways they

54:30

are very similar but I think it is important for folks to understand that this is an authority you could use in

54:37

lieu of 1353. um Michelle I think that's the last of

54:43

our questions am I correct

54:50

I believe so so I want to thank Jeremiah and Jill very much for coming and

54:57

providing us with this really important information as you can see from the registration numbers

55:02

um this is really an important topic for the community so I want to thank you both again very much for your time and

55:10

um and I want to wish everybody else a very good afternoon