

ACTIVITIES WITH FOREIGN ENTITIES

There are some issues to keep in mind when considering an activity with a foreign entity. Generally, an employee of the Federal Government may not accept employment, gifts or compensation from any foreign government, including any entity which is owned or operated by the foreign government, which may include public research institutions or universities. The Constitution specifically states that "with the consent of Congress", certain activities, gifts, and honors are permissible. Congress; consent is found in the Foreign Gifts and Decorations Act (FGDA) which permits gifts up to the minimal value (as of January 2017, that value is \$390). The FGDA also permits travel, lodging and meal expenses when it occurs totally outside of the United States. This means that travel expenses may be paid only for that travel which originates and ends outside of the United States.

Emoluments Clause

This provision of the United States Constitution prohibits anyone who holds an "Office of Profit or Trust" in the Government from accepting a position with a foreign state, whether compensated or uncompensated, or from accepting any compensation or other items of value, including salary, honoraria, and travel expenses, from a foreign state, except as authorized by Congress. For purposes of the Emoluments Clause, a "foreign state" is deemed to include an international organization in which the United States is NOT a member. In addition, a foreign public university is presumed to be part of the foreign state, unless the university is independent of the foreign government with respect to decisions regarding the terms and conditions of faculty appointment.

Foreign Gifts and Decorations Act (FGDA)

Under this statutory provision, Congress has authorized employees, including advisory committee members, to accept items from a foreign government that do not exceed the "minimal value". Tangible items over minimal value that have been accepted must be turned over to the agency and become government property. The Act authorizes acceptance of items over minimal value when such items consist of an educational scholarship, medical treatment, or expenses for travel taking place entirely outside of the United States (thus, permitting hotel and meal reimbursements in the foreign country, but not airfare for flights originating or terminating in the United States).

Department of Justice interpretations

The FGDA's definition of "decoration" **includes** cash prizes, so these cannot be accepted from a foreign government, except in the form of an educational scholarship.

The FGDA's definition of "decoration" **excludes** honorary degrees, so employees may accept honorary degrees even from a foreign university deemed to be foreign government.

For SGE's (Collaborators/Panel Managers), you may need to determine whether travel expenses may be accepted by the "home" institution. If the home institution would have paid to send the SGE to the particular function with their own funds, they may accept the funds from the foreign government entity, similar to USDA sponsored travel mechanisms.

Foreign Agent Prohibition

An employee cannot act as an "agent of a foreign principal," as defined by the Foreign Agents Registration Act (FARA), or as a "lobbyist" for a foreign entity required to register under the Lobbying Disclosure Act (LDA). The FARA ban prohibits representation of a foreign government or foreign political party before the United States Government as well as other activities conducted on behalf of foreign entities with respect to influencing the United States Government or public. The FARA contains an exception for activities in furtherance of bona fide religious, scholastic, academic or scientific pursuits.

Analyzing a Foreign Entity for Purposes of the Emoluments Clause of the United States Constitution, Article 1, Section 9, Clause 8:

No Title of Nobility shall be granted by the United States...And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Foreign State: A foreign state is any organization which is owned or operated by a foreign government, including federal, regional and local level governments.

Webster's definition of the word "Emolument" is . . . compensation or payment from an office or employment.

The Emoluments Clause does not apply in the cases of government employees offered faculty employment by a foreign public university where it can be shown that the university acts independently of the foreign State when making faculty employment decisions. Refer to the Department of Justice, Office of Legal Counsel (OLC) opinion regarding the University of Victoria, 1994. To determine whether the OLC opinion can be used, first be sure the foreign organization is a university. If it is not, this analysis is not applicable.

The analysis includes determining the following:

1. Source of funding (public or private) for the foreign university.
 - If funding source is government, what is their level of autonomy in faculty decisions, i.e., does the faculty make hiring decisions? Are the decisions confirmed or ratified by the government? What is the composition of the managing board? Appointed by government? If so, what percentage of the total board?
 - If governmental funding, are employees considered "government employees"?

In order to conclude that the university is autonomous, you must be able to support the independence of the faculty decisions and management of the university, even though they are funded by the government.

Official Duty Activities

Federal employees may conduct activities with foreign entities, including foreign governments, as part of their official duties when such activities are required and approved. If travel is necessary, the employee travels on a travel order just like any other official duty activity and travel is regulated by GSA Travel Regulations. Offers of travel payment from a non-Federal source must be reviewed for conflicts of interest prior to acceptance.

Outside Activities

Outside activities with foreign entities may be permitted as long as the foreign entity is not owned or operated by the foreign government. Professional societies typically are not related to the government.

Please contact your Ethics Advisor for specific guidance concerning activities with foreign entities. Determinations have been made regarding various foreign entities some of which clearly are considered part of the foreign government. Some entities are funded by the foreign government but are considered independent so that the Emoluments Clause would not apply.

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