

GIFTS

I. REFERENCES

A. Statutes:

1. 5 U.S.C. § 7342 - Receipt and disposition of foreign gifts and decorations
2. 5 U.S.C. § 7351 - Gifts to superiors
3. 5 U.S.C. § 7353 - Gifts to federal employees
4. 5 U.S.C. § 4111- Acceptance of contributions, awards, and other payments
5. 10 U.S.C. § 974 – Military musical units and musicians: performance policies; restriction on performance in competition with local civilian musicians
6. 10 U.S.C. § 1588 - Authority to accept certain voluntary services
7. 10 U.S.C. § 2601 - General gift funds
8. 10 USC § 2601a - Direct acceptance of gifts by members of the armed forces and Department of Defense and Coast Guard employees and their families (Implemented through DoD 7000.14-R, Vol 12, Chapter 34)
9. 10 U.S.C. § 2608 - Acceptance of contributions for defense programs, projects, and activities; Defense Cooperation Account
10. 10 U.S.C. § 2613 - Acceptance of frequent traveler miles, credits, and tickets; use to facilitate rest and recuperation travel of deployed members and their families
11. 31 U.S.C. § 1353 - Acceptance of travel and travel related expenses from non-Federal sources

B. Regulations:

1. Government-wide

- a. 5 C.F.R. Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch <https://www.ecfr.gov/cgi-bin/text-idx?%20SID=83d1bb4ab16f75ee9a75f6e838c4114c&node=pt5.3.2635&rgn%20=div5>
- b. 41 C.F.R. Chapter 304, Payment of Travel Expenses from a Non-Federal Source, <http://www.ecfr.gov/cgi-bin/text-idx?SID=ab5d5f7378f2fcea7864fcc3a8daa21c&tpl=/ecfrbrowse/Title41/41chapter304.tpl>

2. DoD-wide

- a. 5 C.F.R. Part 3601, Supplemental Standards of Ethical Conduct for Employees of the Department of Defense, <http://www.ecfr.gov/cgi-bin/text-idx?SID=ab5d5f7378f2fcea7864fcc3a8daa21c&tpl=/ecfrbrowse/Title05/5chapterXXVI.tpl>
- b. DoDD 5500.07, Standards of Conduct, Nov. 29, 2007
<http://www.dtic.mil/whs/directives/corres/pdf/550007p.pdf>
- c. DoD 5500.07-R, Joint Ethics Regulation (JER), thru Ch. 7, Nov. 17, 2011, <https://www.esd.whs.mil/dd/dod-issuances/>
- d. DoDD 1005.13, Gifts and Decorations from Foreign Governments, Feb. 19, 2002, w/ Ch. 1, Dec. 6, 2002,
<https://www.esd.whs.mil/dd/dod-issuances/>

- e. DoD Financial Management Regulation 7000.14-R, Vol. 12, *Chapter 3*, Contributions for Defense Programs, Projects and Activities (implementing 10 U.S.C. § 2608); *Chapter 30*, Operation and Use of General Gift Funds (implementing 10 U.S.C. § 2601); *Chapter 34*, Direct Acceptance of Gifts by Members of the Armed Forces, DoD Employees, and Their Families and Survivors (implementing 10 U.S.C. § 2601a) <http://comptroller.defense.gov/FMR.aspx>

- f. SECDEF Memo, Waiver of Application of the Standards of Conduct Prohibition on Acceptance of Gifts from Outside Sources for Enlisted Personnel, E-6 and Below, for the Limited Purpose of Gift Acceptance from Charitable and Veterans Service Tax-Exempt Organizations, May 16, 2013 <https://dodsoco.ogc.osd.mil/ETHICS-TOPICS/Gifts/Toolbox-Gifts/>

- g. DoD SOCO Holiday Guidance for Federal Personnel, 2021, <https://dodsoco.ogc.osd.mil/ETHICS-TOPICS/Gifts/>

- h. DoD General Counsel Memo, Analyzing Invitations to DoD Officials to Participate in Fundraising and to Accept Gifts Related to Events, Aug. 18, 1997 <https://dodsoco.ogc.osd.mil/ETHICS-TOPICS/Gifts/Toolbox-Gifts/>

- i. SOCO White Paper: Application of Emoluments Clause to DoD Civilian Employees and Military Personnel, August 2017 <https://dodsoco.ogc.osd.mil/ETHICS-TOPICS/Post-Government-Employment-and-Procurement-Integrity/Toolbox-PGE-and-PI/>

- j. SOCO Emoluments Clause Summary <https://dodsoco.ogc.osd.mil/ETHICS-TOPICS/Post-Government-Employment-and-Procurement-Integrity/Toolbox-PGE-and-PI/>

- k. Office of the Under Secretary of Defense (Comptroller) memorandum “Gifts to Benefit Military Musical Units,” Mar. 9, 2015 <https://dodsoco.ogc.osd.mil/ETHICS-TOPICS/Gifts/Toolbox-Gifts/>

3. Army
 - a. AR 1-100, The Army Gift Program, Jul. 27, 2015
http://www.apd.army.mil/pdffiles/r1_100.pdf
 - b. AR 215-1, Military Morale, Welfare and Recreation Programs and Nonappropriated Fund Instrumentalities (para. 13-14), Sep. 24, 2010
http://www.apd.army.mil/pdffiles/R215_1.pdf
 - c. SECARMY Memorandum, Policy for Travel by Department of the Army Officials, January 18, 2017 (Army Directive 2017-05),
http://www.apd.army.mil/epubs/DR_pubs/DR_a/pdf/web/AD2017-05_Final.pdf
4. Navy
 - a. Secretary of the Navy Instruction (SECNAVINST) 4001.2K, Acceptance of Gifts, May 7, 2018.
<https://www.secnav.navy.mil/doni/Directives/Forms/AllItems.aspx>
 - b. OPNAVINST 4001.1G, Acceptance of Gifts, August 7, 2018.
<https://www.secnav.navy.mil/doni/Directives/Forms/AllItems.aspx>
 - c. ALNAV 077/14, "Ethics and Contracting Excellence," Nov. 6, 2014 (Requirement for written approval before accepting gift of meals, refreshments, and entertainment in foreign areas under 5 C.F.R. § 2635.204(i))
 - d. Marine Corps Order P5800.16, Volumes 1-15 (Volume 8, Gifts, Civil Litigation, and Claims), February 20, 2018.
<https://www.marines.mil/News/Publications/MCPEL/Electronic-Library-Display/Article/1447370/mco-580016-and-mco-p580016a>

5. Air Force

- a. AFI 24-602 Volume 1, December 15, 2020 and AFGM2019-01 Passenger Movement, https://static.e-publishing.af.mil/production/1/af_a4/publication/afi24-602v1/afi24-602v1.pdf
- b. AFI 51-506, Gifts to the Department of the Air Force from Domestic and Foreign Sources, April 16, 2019, https://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-506/afi51-506.pdf

II. GENERAL ETHICAL PRINCIPLES APPLICABLE TO GIFTS

- A. Public service is a public trust - 5 C.F.R. § 2635.101(b)(1).
- B. Employees shall not solicit or accept a gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties – 5 C.F.R. § 2635.101(b)(4).
- C. Employees shall not use public office for private gain – 5 C.F.R. § 2635.101(b)(7).
- D. Employees shall avoid any actions creating the appearance of violating the law or the Standards of Ethical Conduct for Federal Employees – 5 C.F.R. § 2635.101(b)(14).

III. GIFTS FROM OUTSIDE SOURCES

* Substantial changes 5 C.F.R. § 2635, Subpart B became effective on January 1, 2017. The revisions emphasize more explicit consideration of whether acceptance of a gift would call into question an employee's integrity or impartiality, and create new requirements for agency designees to document determinations in writing. Significant changes are discussed in SOCO Advisory 16-05, December 22, 2016, <https://dodsoco.ogc.osd.mil/Ethics-Program-Resources/DoD-Ethics-Guidance/SOCO-Advisories/>

A. General Punitive Prohibition on Gifts from Outside Sources. An employee shall not solicit or accept, directly or indirectly, a gift from a prohibited source OR given because of the employee's official position. 5 C.F.R. § 2635.202.

1. "Prohibited Source" means any person or entity that:

- a. Is **seeking official action** by the employee's agency;
- b. **Does or seeks to do business** with the employee's agency;
- c. Is **regulated** by the employee's agency;
- d. Has interests that may be substantially **affected by performance or nonperformance of the employee's official duties**; or
- e. Is an **organization a majority of whose members** fit into one or more of these categories? 5 C.F.R. § 2635.203(d).

See 5 C.F.R. § 3601.102(a) for listing of designated separate agencies for purposes of gift rules under 5 C.F.R. 2635 Subpart B.

See DoD \$25K contractor list for FY 2022

<https://dodsoco.ogc.osd.mil/ETHICS-TOPICS/Conflicts-of-Interest/>

2. "Indirect Gifts" include gifts:

- a. Given with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative, or a member of the employee's household because of that person's relationship to the employee (5 C.F.R. § 2635.203(f)(1); or
- b. Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee. An employee has not indirectly solicited or accepted a gift by the raising of funds or other support for a charitable organization if done in accordance with § 2635.808." [Fundraising Activities] (5 C.F.R. § 2635.203(f)(2)).

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3. The test for "official position" is whether the gift would have been solicited, offered, or given had the employee not held the status, authority, or duties associated with his federal position. 5 C.F.R. § 2635.203(e).
4. Executive Order 13989, Jan. 20, 2021, requires every full-time, political appointee appointed on or after January 20, 2021 to sign an Ethics Pledge. Previous Presidents have issued similar orders.
 - a. See OGE Legal Advisory LA-21-03, January 22, 2022 Guidance on Executive Order 13770.
 - b. Political appointees who were appointed after January 20, 2021 must commit that they will not accept gifts or gratuities from registered lobbyists or lobbying organizations. Not all of the gift exceptions are allowed for appointees subject to the Pledge. For example, appointees cannot accept an offer of free admission from a lobbyist or lobbying organization to attend a widely attended gathering that would otherwise be allowed under 5 CFR 2635.204(g).
 - (1) "Appointee" is defined as every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES- type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria) in an executive agency. It does not include any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.
 - (2) "Registered lobbyist or lobbying organization" is a lobbyist or an organization filing a registration pursuant to section 1603(a) of title 2, United States Code, and in the case of an organization filing such a registration, "registered lobbyist" shall include each of the lobbyists identified therein.

B. Practical Approach. Three-part analysis:

1. Is the item actually a gift? The term "gift" is broadly defined and includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, and lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement (5 C.F.R. § 2635.203(b)). It does not include the following items (**exclusions**):
 - a. Modest items of food and non-alcoholic refreshments, such as soft drinks, coffee and donuts when offered other than as part of a meal;
 - b. Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, intended primarily for presentation, [*OGE's rule previously said "solely" for presentation.*]
 - c. Rewards and prizes in contests open to the public. Contest must be "open to the public" and employee's entry into the contest must not be part of his/her official duties.
 - (1) See OGE DAEOGRAM DO-99-07 (April 26, 1999). This explains that "open to the public" means that there can be no cost or fee (such as a conference fee) to be eligible to win the prize;
<https://www.oge.gov/web/oge.nsf/Legal%20Research%20Search%20Collection?OpenForm>
 - d. Commercial discounts available to the general public or to all Government or military personnel, whether or not restricted by geography. Would not apply to discounts to subgroups based on rank, position or organization. The exception in 5 C.F.R. § 2635.204(c)(2)(iii) may apply.
 - (1) See OGE DAEOGRAM DO-99-001 (January 5, 1999) for detailed discussion.
<https://www.oge.gov/web/oge.nsf/Legal%20Research%20Search%20Collection?OpenForm>
 - e. Loans from banks and other financial institutions (entities in the business of loaning money) on terms generally available to the public;

- f. Pensions from continued participation in employee benefits plan maintained by a current or former employer;
- g. Anything paid for by the Government or secured by the Government under Government contract;

PRACTICE TIP: Examine the contract type (Cost or Fixed Price) and whether the item secured by the Government causes additional costs under the contract. Government should not procure items in order to avoid gift rules. “Agencies are responsible for ensuring that such arrangements are otherwise appropriate under applicable law, including their authorizing statutes, procurement law, and principles prohibiting unauthorized augmentation of appropriations.” See OGE DAEOGRAM DO-99-001 (January 5, 1999).

- h. Anything for which the employee pays market value (i.e., retail cost employee would incur to purchase the gift);

PRACTICE TIP: Reliable retail websites (e.g., department store web sites and commercial merchandise catalogs) may be used to establish market value. Private or membership clubs, limited access purchases, or on-line auction sites should not be used to establish market value.

- (1) **For Skyboxes or private suites:** “Market value” is computed as ticket price for the most expensive publicly available ticket to the event plus the value of food, parking, and other tangible benefits provided in connection with the gift of attendance. OGE DAEOGRAM, DO-07-003 (February 9, 2007) <https://www.oge.gov/web/oge.nsf/Legal%20Research%20Search%20Collection?OpenForm>
- (2) **No fee events:** Employees should aggregate the market value of any food, beverages, entertainment, or other tangible benefit offered to attendees in connection with the event, but need not consider the cost incurred by the sponsor to rent the venue where the event is held. In the alternative, an employee may elect to rely on a per-person cost estimate provided by the sponsor of the event, unless the estimate is implausible or would be inconsistent with a fair value estimate. See OGE LA-15-05, May 5, 2015,

<https://www.oge.gov/web/oge.nsf/Legal%20Research%20Search%20Collection?OpenForm>

- i. Anything accepted by the Government in accordance with agency gift acceptance statutes. Examples include:
 - (1) Voluntary Services – 10 U.S.C. § 1588.
 - (2) General Gift Funds – 10 U.S.C. § 2601.
 - (3) Fellowships, Scholarships, or Grants – 10 U.S.C. § 2603.
 - (4) Gifts for Defense Dependent Schools – 10 U.S.C. § 2605.
 - (5) Contributions to Defense Programs – 10 U.S.C. § 2608.
 - (6) Competitions of Excellence: Acceptance of Monetary Awards – 10 U.S.C. § 2610.
 - (7) Gifts of Travel – 31 U.S.C. § 1353.
 - (8) Army Specific Gift Statutes:
 - (a) Gifts to United States Military Academy – 10 U.S.C. § 4356.
 - (9) Navy Specific Gift Statutes:
 - (a) Gifts, Bequests, and Loans of Property: acceptance for benefit and use of Naval Academy – 10 U.S.C. § 6973.
 - (b) United States Naval Academy Museum Fund – 10 U.S.C. § 6974.

- (c) Gifts to Vessels – 10 U.S.C. § 7221.
- (d) Gifts for Welfare of Enlisted Members – 10 U.S.C. § 7220.

(10) Air Force Specific Gift Statutes: None.

j. **Free attendance** to an event provided by the event sponsor *to an employee assigned to present information on behalf of the agency* at the event *on any day when the employee is presenting*.

PRACTICE TIP: Where the offer of free attendance at a multi-day event includes days when the employee is not presenting information at the event, consider whether the employee could accept free attendance on the additional days under the exception for “widely attended gatherings” discussed below.

- (1) “Assigned to present information.” The employee must be assigned to present information on behalf of the agency. The presentation should be pre-arranged with the event sponsor. The “mere possibility of an exchange of ideas with only some attendees would not qualify as taking an active role in presenting information on behalf of the agency for purposes of” the exclusion allowed by § 2635.203(b)(8). See OGE LA-12-05, Sep. 7, 2012, “Speaking and Similar Engagements Involving the Presentation of Information on Behalf of the Agency,” <https://www.oge.gov/web/oge.nsf/Legal%20Research%20Search%20Collection?OpenForm>

PRACTICE TIP: Where the employee is not presenting information, but the agency’s interests would be served by the employee’s attendance, consider whether the employee could accept the offer of free attendance under the exception for “widely attended gatherings” discussed below.

- (2) An employee’s “presentation” at an event need not come from a dais or the stage, but the employee must nonetheless communicate the agency’s message in a deliberate, substantive presentation.” Examples include a keynote speech or presenting as a member of a panel of experts. See OGE LA-12-05, Sep. 7, 2012, “Speaking and Similar Engagements

Involving the Presentation of Information on Behalf of the Agency,” *id.*

- (3) “Free Attendance” may include waiver of all or part of a conference fee, the provision of food, refreshments, entertainment, instruction, and material furnished to all attendees as an integral part of the event. It does not include travel expenses or lodgings. 5 C.F.R. § 2635.203(g).

PRACTICE TIP: Where the sponsor has offered to pay all or some of the travel costs for the employee assigned to present information at an event as part of the employee’s official duties, consider whether the offer may be accepted as a gift to the Government under 31 U.S.C. § 1353.

- (4) Accompanying personnel: An employee whose presence on any day of the event is deemed essential to the presenting employee’s participation may also accept free attendance, provided the employee is accompanying the presenting employee. Examples include a security detail, speechwriter, or aide. “The number and types of personnel necessary, if any, to the speaker’s participation will vary depending upon who the speaker is and the nature of the event. There are obviously different considerations for the Secretary of Defense addressing several thousand people at a convention center as compared to a Federal Communications Commissioner speaking to a luncheon attended by several dozen communications lawyers. OGE does not view having essential personnel either remain outside the room where the event is taking place or refraining from food that is offered with the event as necessary to comply with the gift rules.” See OGE LA-12- 05, Sep. 7, 2012, “Speaking and Similar Engagements Involving the Presentation of Information on Behalf of the Agency,” <https://www.oge.gov/web/oge.nsf/Legal%20Research%20Search%20Collection?OpenForm>

- (5) Spouse or guest. The presenting employee may also accept an *unsolicited* offer of free attendance for his/her spouse or *one* other guest on any day when the employee is presenting, provided others in attendance will generally be accompanied by a spouse or guest *and the agency designee has authorized the presenting employee to accept.*

- (6) Since the employee’s participation in the event is part of his official duties, the agency may pay the employee’s travel expenses. Additionally, the employee may use government personnel and resources to help prepare the presentation.

2. Does an exception apply? Common **exceptions** (5 C.F.R. § 2635.204) when an employee may accept a gift:

- a. **Gifts of \$20 or Less (5 C.F.R. § 2635.204(a)).** Unsolicited gifts with a market value of \$20 or less per source, per occasion, so long as the total value of all gifts received from a single source during a calendar year does not exceed \$50. **Does not apply to gifts of cash or investment interests (e.g., stocks or bonds).**

See OGE LA-15-04, Apr. 30, 2015, “Treatment of Gift Cards under the \$20 De Minimus Gift Exception,”

<https://www.oge.gov/web/oge.nsf/Legal%20Research%20Search%20Collection?OpenForm>

PRACTICE TIP: Employees may decline gifts to keep aggregate value at \$20 or less, but may not pay differential over \$20 to retain gift(s) – No “buy down.” Applies to both \$20 per occasion and \$50 per calendar year limits.

- b. **Gifts Based on a Personal Relationship (5 C.F.R. § 2635.204(b)).** Gifts based on a personal relationship, such as a family relationship or personal friendship rather than the position of the employee;

PRACTICE TIP: Relevant factors to consider in making the determination include history of the relationship and whether the family member or friend personally pays for the gift. Also look at the occasion where the gift is presented. For example, Commanding General is a personal friend of the contractor Program Manager. A “personal” gift given during an official presentation may not satisfy the exception.

- c. **Discounts and Similar Benefits (5 C.F.R. § 2635.204(c)).** In addition to those opportunities and benefits excluded from the

definition of a gift by 5 C.F.R. § 2635.203(b)(4), employees may accept:

- (1) Reduced membership or other fees in organization activities offered to all Government employees or all military personnel by professional organizations if the only restrictions on membership relate to professional qualifications (e.g., ABA offers discount membership fee to all Government attorneys);
- (2) Opportunities and benefits, including favorable rates and commercial discounts:
 - (i) Offered to members of a group or class in which membership is unrelated to Government employment;
 - (ii) Offered to members of an organization, such as an agency credit union, in which membership is related to Government employment if the same offer is broadly available to large segments of the public through organizations of similar size;
 - (iii) Offered by a person who is not a prohibited source to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of type of official responsibility or on a basis that favors those of higher rank or rate of pay;
- (3) See for extensive discussion and examples: OGE DAEOGRAM DO-99-001 (January 5, 1999)
<https://www.oge.gov/web/oge.nsf/Legal%20Research%20Search%20Collection?OpenForm>

d. Awards and Honorary Degrees (5 C.F.R. § 2635.204(d)).

- (1) **Awards.** Employees may accept gifts that are a bona fide award or incident to a bona fide award in recognition for meritorious public service by a person who does not have interests that may be substantially affected by the performance

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or nonperformance of the employee's official duties. Awards of cash or investment interests of any amount, or awards with an aggregate value (including any item incident to the award, other than free attendance at the presentation event) in excess of \$200 require a written determination from agency ethics official that the award is part of an established program of recognition made on a regular basis pursuant to written standards.

- (2) **Honorary Degrees.** Employees may accept an honorary degree from an institution of higher education as defined at 20 U.S.C. § 1001 with agency ethics official determination that timing would not cause reasonable person to question employee's impartiality in a matter affecting the awarding institution.

PRACTICE TIP: If the degree is from a foreign institution, ethics counselors should determine whether the institution is tied to the foreign government and whether the Emoluments Clause of the Constitution would prohibit, or the Foreign Gifts and Decorations Act (FGDA) would allow, acceptance. The Emoluments Clause and FGDA are discussed in more detail below.

- (3) **Presentation events.** An employee who may accept an award or honorary degree may also accept free attendance to the presentation event provided to the employee and to members of the employee's family by the sponsor of the event. In addition, the employee may accept unsolicited offers of travel to and from the event provided to the employee and members of the employee's family by the sponsor of the event. The value of travel is added to the value of the award for purposes of determining whether the aggregate value of the award exceeds \$200. (5 C.F.R. § 204(d)(4))

e. **Gifts Based on Outside Business or Employment Relationships (5 C.F.R. § 2635.204(e)).** An employee may accept meals, lodgings, transportation, and other benefits:

- (1) Resulting from the business activities of the spouse when it is clear that the benefits have not been offered or enhanced because of the employee's official position;

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- (2) Resulting from the employee's outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of the employee's status; or
- (3) Customarily provided by a prospective employer in connection with bona fide employment discussion;
- (4) Provided by a former employer to attend a reception or similar event when other former employees have been invited to attend, the invitation and benefits are based on the former employment relationship, and it is clear that such benefits have not been offered or enhanced because of the employee's official position. (5 C.F.R. 204(e)(4))

- f. Gifts in Connection with Political Activities (5 C.F.R. § 2635.204(f)).** An employee who takes an active part in political management or in political campaigns (consistent with the Hatch Act Reform Amendments of 1993), may accept meals, lodgings, transportation, and other benefits, including free attendance at events, for the employee and an accompanying spouse or other guests, in connection with such participation from a political organization described in 26 U.S.C. § 527(e).

PRACTICE TIP: Remember that Political Activities of Uniformed Members are regulated by DoD Directive 1344.10, 19 February 2008, and political activities of DoD civilian employees are governed by the Hatch Act (5 U.S.C. §§ 7321-7326), its implementing regulations (5 C.F.R. Parts 733-734), and DoD policy. This topic is discussed in the Deskbook chapter on Political Activities.

- g. Widely Attended Gatherings and Other Events (5 C.F.R. § 2635.204(g)).**

- (1) Widely Attended Gatherings (“WAG”). *When authorized in writing by the agency designee, an employee may accept an unsolicited gift of free attendance to a "widely attended gathering."*

PRACTICE NOTE: All WAG events require a written determination. The former rule only required a written determination when the offeror had interests that may be substantially affected by the performance or nonperformance of an employee's duties.

PRACTICE TIP: Attendance at a widely attended gathering must be in a leave or other authorized absence status. The employee may not attend while on or as part of his/her official duties. Moreover, the agency may not expend appropriated funds to send personnel to widely attended gathering events. Use of a government vehicle to attend such an event would not be authorized.

- (2) “A gathering is widely attended if it is expected that a large number of persons will attend, that persons with a diversity of views or interests will be present, for example, if it is open to members from throughout the interested industry or profession or if those in attendance represent a range of persons interested in a given matter, and that there will be an opportunity to exchange ideas and views among invited persons.” (5 C.F.R. § 2635.204(g)).
- (a) Size and diversity. The rule does not include a numerical standard to define the necessary size or diversity of a WAG. OGE has stated that a small dinner party would not be a WAG. An “event attended primarily by the personnel of a particular company would not be a WAG regardless of the number of attendees, and the presence of a token representative of a divergent interest group will not cure an otherwise non-diverse gathering.” See OGE DAEOGRAM DO-07-047, Dec. 5, 2007, interpreting language in the pre-2017 rule similar to the current rule.
<https://www.oge.gov/web/oge.nsf/Legal%20Research%20Search%20Collection?OpenForm>
- (b) Opportunity to exchange ideas. OGE has consistently stated that “some social events may well provide sufficient opportunities for exchange to be considered WAGs, but most sporting, theatrical, and musical events do not.” See OGE DAEOGRAM DO-07-047, Dec. 5, 2007, *id.*, for a discussion of various events that may, or may not, qualify as a WAG.

- (3) “Free Attendance” may include waiver of all or part of a conference fee, the provision of food, refreshments, entertainment, instruction, and material furnished to all attendees as an integral part of the event. It does not include travel expenses or lodgings. 5 C.F.R. § 2635.203(g).
- (a) Gift bags delivered at the end of an event as guests are departing are rarely an “integral part of the event” and therefore may not be accepted as part of free attendance. See SOCO Advisory 14-02, Nov. 12, 2014. <https://dodsoco.ogc.osd.mil/Ethics-Program-Resources/DoD-Ethics-Guidance/SOCO-Advisories/>
- (b) Meals and receptions that are open only to attendees who pay an additional fee are deemed separate from (collateral) the original event and free attendance may not be accepted unless the collateral event independently qualifies as a widely attended gathering or another gift exception applies. See OGE LA-15-02, Apr. 6, 2015, <https://www.oge.gov/web/oge.nsf/Legal%20Research%20Search%20Collection?OpenForm>
- (4) Cost provided by person other than the sponsor. Free attendance may be accepted from a person other than the sponsor of a WAG if more than 100 people are expected to attend and the value of free attendances is \$480 or less. 5 C.F.R. § 2635.204(g)(3)(iv) and (g)(5).
- (5) Written determination by agency designee. An employee may only accept free attendance to a WAG with the written authorization of the agency designee.
- (a) “Agency designee” is defined in Section 1-202 of the Joint Ethics Regulation (DoD 5500.7-R). The definition allows an ethics counselor to act as “agency designee” only when advising a military

officer in grade of O-7 or above *who is in command*, or any civilian Presidential appointee confirmed by the Senate (PAS). Thus, some Flag and General Officers, as well as all non-PAS civilian employees will need to request written approval from their supervisor.

- (b) Agency designee determination. The rule requires the agency designee to find that the event qualifies as a WAG, the employee's attendance will further agency programs or operations, and the employee's attendance outweighs any concern the employee may be, or may appear to be, improperly influenced in the performance of official duties. 5 C.F.R. § 2635.204(g)(3).
- (c) Agency interest. The rule lists seven factors relevant to determining whether the agency's interest in the employee's attendance outweighs any concern the employee may be, or may appear to be, improperly influenced in the performance of official duties. *See* 5 C.F.R. § 2635.204(g)(4).
- (d) Form. In commenting on the proposed and final rule (80 FR 74004 at 74008, and 81 FR 81641 at 81646, respectively), and in response to concerns raised by DoD during the rulemaking process, OGE indicated that an email is sufficient and need not describe the analysis, so long as the agency designee has actually considered the criteria. OGE indicated even a simple statement that "I am authorizing you to attend [X event], pursuant to 5 C.F.R. § 2635.204(g)" is sufficient. Nonetheless, it may be prudent and helpful to list the factors in the written determination, particularly where the agency designee is not an ethics counselor.

PRACTICE TIP: The "Gifts" page under "Ethics Topics" on SOCO's public website includes an Event Information Questionnaire that includes a sample process and memo employees may use to request agency designee approval to accept an invitation of free attendance to a WAG. See <https://dodsoco.ogc.osd.mil/ETHICS-TOPICS/Gifts/>

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- (e) Record retention requirement. In response to questions from DoD during the rulemaking process, OGE explained that under the applicable records retention schedule (GRS 2.8, item 0001) the agency is responsible for retaining a record of the written determination for six years.

PRACTICE TIP: SOCO nonetheless believes that a best practice for senior officials is to retain a copy for their personal records, as they do with other ethics opinions.

- (6) Financial disclosure reporting. Employees who file a financial disclosure report must include any gift of free attendance to a WAG valued at more than \$480 from any one source received by the employee during the applicable reporting period.

h. Social Invitations from Other than Prohibited Sources (5 C.F.R. § 2635.204(h)). An employee may accept an *unsolicited* offer of food, refreshments, and entertainment (not travel or lodging) for the employee and an accompanying spouse or other guests, at a social event attended by several persons where the invitation is from a person who is not a prohibited source and where no one in attendance is charged a fee to attend the event.

- (1) If either the event sponsor or offeror is not an individual, the agency designee must make a *written* determination that attendance by the employee would not cause a reasonable person to question the employee's integrity or impartiality.

i. Meals, Refreshments, and Entertainment in Foreign Areas (5 C.F.R. § 2635.204(i)). Employees assigned to duty in, or on official travel to, a foreign area may accept food, refreshments, and entertainment in the course of a breakfast, luncheon, dinner, or other meeting or event provided:

- (1) The market value does not exceed the per diem for the foreign area (This includes the complete per diem, not merely that portion of the per diem for food.);

- (2) There is participation in the meeting or event by non-US citizens or representatives of foreign governments or entities;
- (3) Attendance at the meeting or event is part of the employee's official duties; and
- (4) The gift of meals or entertainment is from a person other than a foreign government.

j. Gifts Authorized by Supplemental Agency Regulation (5 C.F.R. § 2635.204(k)). An employee may accept a gift, the acceptance of which, is authorized by supplemental agency regulation.

- (1) Unsolicited gifts of free attendance for DoD employees (and spouses) at events sponsored by state or local governments or non-profit, tax-exempt civic organizations, where the agency has determined its community relations interests are served by attending the event (5 C.F.R. § 3601.103(a));
- (2) Educational scholarships and grants for DoD employees or their dependents (5 C.F.R. § 3601.103(b)).

k. Gifts Accepted Under Specific Statutory Authority (5 C.F.R. § 2635.204(l)).

- (1) 10 U.S.C. § 2601a - Direct acceptance of gifts by members of the Department of Defense and Coast Guard employees and their families, as implemented by DoD 7000.14-R, Vol. 12, Chapter 34 (See Section XI below);
- (2) 5 U.S.C. § 7342 – Foreign Gifts and Decorations (See Section V below).

l. Gifts of Informational Materials (5 C.F.R. § 2635.204(m)). An employee may accept unsolicited gifts of informational materials. Gifts of informational materials that exceed \$100 from the same person in a calendar year may only be accepted after an agency designee makes a *written* determination that acceptance would not

cause a reasonable person to question the employee's integrity or impartiality.

m. Additional DoD Gift Exceptions

- (1) SECDEF Memo, Waiver of Application of the Standards of Conduct Prohibition on Acceptance of Gifts from Outside Sources for Enlisted Personnel, E-6 and Below, for the Limited Purpose of Gift Acceptance from Charitable and Veterans Service Tax-Exempt Organizations, May 16, 2013
<https://dodsoco.ogc.osd.mil/ETHICS-TOPICS/Gifts/Toolbox-Gifts/>

3. Would using the exception undermine Government integrity?

- a. **Appearance concerns.** If a gift falls within one of the exceptions, acceptance of the gift will not violate any of the basic obligations of public service set forth in 5 C.F.R. § 2635.101(b), including the principle that employees shall avoid creating even the "appearance" of an ethical violation. However, it is never inappropriate and frequently prudent to decline a gift offered by a prohibited source or given because of one's official position (5 C.F.R. § 2635.204)).

- b. **Considerations for declining otherwise permissible gifts (5 C.F.R. § 2635.201(b)).** An employee who is considering whether acceptance of a gift would lead a reasonable person with knowledge of relevant facts to question his/her integrity or impartiality may consider, among other relevant factors, whether:

- (1) The gift has high market value;
- (2) The timing of the gift creates the appearance that the donor is seeking to influence an official action;
- (3) The gift was provided by a person who has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; and
- (4) Acceptance of the gift would provide the donor with

significantly disproportionate access.

c. *Notwithstanding the applicability of any exception, 5 C.F.R. § 2635.205 provides that an employee may not:*

- (1) Use his official position to solicit or coerce the offering of a gift;
- (2) Accept a gift in exchange for being influenced in the performance of official action (bribe or illegal gratuity); *See* OGE Memorandum DO-99-024, May 19, 1999 ([United States v. Sun Diamond Growers](https://www.oge.gov/web/oge.nsf/Legal%20Research%20Search%20Collection?OpenForm) <https://www.oge.gov/web/oge.nsf/Legal%20Research%20Search%20Collection?OpenForm>)
- (3) Accept a gift in violation of statute (e.g., 18 U.S.C. § 209). Note: Gifts accepted in conformity with the Standards (5 C.F.R. §§ 2635.203(b), 2635.204, or 2635.304) fall outside the scope of 18 § U.S.C. 209 (See Attachment to DAEOgram, DO-02-016, Jul. 2, 2002, Summary of the Restriction on Supplementation of Salary) <https://www.oge.gov/web/oge.nsf/Legal%20Research%20Search%20Collection?OpenForm>; or
- (4) Accept gifts from the same or different sources so frequently that a reasonable person would conclude that the employee is using his public office for private gain;
- (5) Accept a gift in violation of an Executive Order (e.g. the President’s Ethics Pledge for political appointees);
- (6) Accept any gift specifically prohibited by a supplemental agency regulation issued with OGE’s concurrence (e.g. DoD’s regulation at 5 C.F.R. § 3601).

C. Handling Improper Gifts from Outside Sources (5 C.F.R. § 2635.206). When an employee cannot accept a gift, the employee shall:

1. Refuse the gift (if possible) and diplomatically explain the restrictions on acceptance of gifts by Federal employees.
2. Return the gift or pay the donor its fair market value. An agency may authorize disposition or return of the gift at Government expense.
3. Perishable items may be donated to charity, shared within the office, or destroyed with the approval of the supervisor or ethics counselor.
4. Instead of returning or paying for the gift, tangible items with a value of less than \$100 may be destroyed. Disposition must be accomplished promptly and completely (e.g. throwing it in the trash). (5 C.F.R. § 2635.206(a)(1)).

Employees should document the disposition of the gift.

- D. Reporting Gifts from Outside Sources. Employees who file financial disclosure reports, must report travel-related cash reimbursements or other gifts totaling more than \$390 from any one source received by the employee, spouse, or dependent children during the reporting period on:
1. OGE Form 450 (Confidential Financial Disclosure Report), Part V. This requirement does not apply to New Entrants or Special Government Employees.
 2. OGE Form 278e (Public Financial Disclosure Report), Part 9. This requirement does not apply to New Entrants.

IV. FOREIGN GIFTS

A. U.S. Constitution (Art. I, Sec. 9, Cl. 8) provides:

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 Congress, accept any present, Emolument, Office or Title from a King, Prince or foreign state.

- a. See SOCO White Paper: Application of Emoluments Clause to DoD Civilian Employees and Military Personnel
<https://dodsoco.ogc.osd.mil/ETHICS-TOPICS/Post-Government->

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- b. See SOCO Emoluments Clause Summary
<https://dodsoco.ogc.osd.mil/ETHICS-TOPICS/Post-Government-Employment-and-Procurement-Integrity/Toolbox-PGE-and-PI/>
- B. 5 U.S.C. § 7342, Receipt and Disposition of Foreign Gifts and Decorations, provides:
- 1. Employees may accept a gift (or combination of gifts) of "minimal value," i.e., having retail value in the United States at the time of acceptance of **\$480** or less, tendered and received as a souvenir or mark of courtesy from a foreign government. "Minimum value" is established by GSA and adjusted every three years based on the Consumer Price Index.
<https://www.gsa.gov/policy-regulations/policy/personal-property-management-policy/foreign-gifts>
 - 2. See implementing DoD guidance at DoDD 1005.13 (Gifts and Decorations from Foreign Governments), Feb. 19, 2002.
 - 3. Gifts exceeding "minimum value" may be accepted when the gift is in the nature of an educational scholarship or medical treatment or when it appears that refusal is likely to cause offense or embarrassment or adversely affect foreign relations.
 - a. Such gifts are accepted on behalf of the United States and, upon acceptance, become the property of the United States.
 - b. Such gifts must be reported to and deposited with the agency for official use or disposal (or return to donor or forward to GSA for utilization decision or disposal). For Army, report to and deposit gifts with Office of the Administrative Assistant to the Secretary of the Army (Army Gift Program Coordinator), 105 Army Pentagon, Washington D.C. 20310-0105; telephone: 703-697-8440. For Air Force, report the gifts IAW Air Force Instruction 51-901, Gifts from Foreign Governments, 16 Feb 05. For Navy, report to and deposit gifts in accordance with SECNAVINST 4001.2K CH-1, October 2019.
 - c. Gifts retained by the DoD component are not to be used for the benefit or personal use of any individual employee (includes a spouse or

dependent). DoDD 1005.13, E3.1.1.1.2. See SOCO Advisory 14-02, Nov. 12, 2014. <https://dodsoco.ogc.osd.mil/Ethics-Program-Resources/DoD-Ethics-Guidance/SOCO-Advisories/>

4. Calculation of "minimal value".
 - a. Aggregate the value of gifts at the same presentation from the same source, i.e., same level of government (city, state, or national). Note that under DoDD 1005.13, para. 4.6, if more than one gift is given from the same source at the same presentation, they shall be considered a single gift and the aggregate value shall be used to determine whether the gift exceeds minimal value.
 - b. Do not aggregate the value of gifts from the same source at different presentations (even if on the same day) or different sources at the same presentation.
 - c. A gift from the spouse of a foreign official is deemed to be a gift from the foreign official/government.
 - d. A gift to employee's spouse is deemed to be a gift to the employee.
- C. Gifts of Travel from Foreign Governments. See Section VII below.

V. GIFTS BETWEEN EMPLOYEES

- A. General Punitive Rules (5 C.F.R. § 2635.302(a)). An employee shall not, directly or indirectly:
 1. Give a gift or make a donation toward a gift for an official superior or solicit a contribution from another employee for a gift to either his own official superior or that of another; or
 2. Accept a gift from a lower-paid employee, unless the donor and recipient have a personal relationship and are not in an official superior-subordinate relationship.
 3. "Official superior" means any other employee, including but not limited to

an immediate supervisor, whose official responsibilities include directing or evaluating the performance of the employee or those of any other official superior of the employee, i.e., anyone in the employee's chain of command. 5 C.F.R. § 2635.303(d).

B. Exceptions (5 C.F.R. § 2635.304).

1. Unsolicited gifts may be given on an **occasional basis** (not routine), including traditional gift-giving occasions, such as birthdays and holidays. This includes:

- a. Items (no cash) with an aggregate value of \$10 or less per occasion;
- b. Items such as food and refreshments that will be shared in the office among several employees;
- c. Personal hospitality (e.g., meals) at someone's home (of a type and value customarily provided to personal friends); and
- d. Items in connection with the receipt of personal hospitality (of a type and value given on such occasions).

2. A subordinate may give a gift appropriate to the occasion or donate toward a gift to an official superior, and an official superior may accept a gift on **special infrequent occasions** such as:

- a. In recognition of an infrequent event of personal significance such as marriage, illness, or birth or adoption of a child (would not include a promotion); or
- b. Upon an occasion that terminates the official superior - subordinate relationship such as transfer, resignation, or retirement.

3. Group gifts on special infrequent occasions are limited to **\$480** in value per donating group. (5 C.F.R. § 3601.104(a))

- a. A donating group is comprised of all contributors to that group gift.

- b. If one employee contributes to two or more donating groups, then the value of the gifts from groups with a common contributor are aggregated for the purposes of the **\$480** limit.

PRACTICE TIP: Although not specifically mentioned in 5 C.F.R. § 3601.104, the **\$480** limit is also subject to the no “buy-down” provisions.

PRACTICE TIP: These gift rules apply only to Federal employees. Such group gifts may not include contributions from parties who are not Federal employees, including contractor personnel who may be working in the same office.

PRACTICE TIP: The so-called “Perry Exception” should no longer be invoked as an exception to the **\$480** limit.

4. Solicitations for gifts to an official superior may not exceed \$10 (although employees are free to give more than \$10) and must be completely voluntary (given freely, without pressure or coercion). (5 C.F.R. § 3601.104(b))

VI. TRAVEL PAYMENTS FOR OFFICIAL TRAVEL FROM NON-FEDERAL SOURCES (31 U.S.C. § 1353)

A. Implementing regulations.

1. 41 C.F.R. Chapter 304, a GSA regulation that applies to Executive Branch employees.
2. JER paras. 4-100 & 4-101, which apply to DoD military members and civilian employees.

B. Conditions for acceptance. An employee may accept, on behalf of his or her agency, a travel payment from a non-Federal source to attend a meeting or similar function. 41 C.F.R. § 304-5.1. The DoD Component DAEO or designee must concur with the acceptance of official travel benefits. JER 4-101.c. All of the following conditions must be present:

1. The gift is in connection with a meeting or similar function relating to the

official duties of the employee. (Note: Travel while on pass or in a permissive TDY status is not considered to be official duty for purposes of accepting a gift of travel under 31 U.S.C. § 1353). The function will take place away from the employee's **permanent duty station** (PDS) as defined in DoD's Joint Travel Regulation (*See Pg. A-17 of Appendix A*). The employee or service member must be in a TDY or local travel status;

2. The travel is determined to be in the interest of the Government;
3. The non-Federal source is not disqualified due to a conflict of interest; and
4. Acceptance of the gift is approved before the travel. 41 C.F.R. § 304-3.12; JER para. 4-100.c(2). **Acceptance may be authorized after the travel has begun if the above criteria are met and the following additional conditions have been satisfied.** 41 C.F.R. § 304-3.13:
 - a. If the agency has already authorized acceptance of payment for some of the travel expenses for that meeting from a non-Federal source, then personnel may accept on behalf of their agency, payment for any of the additional travel expense from the same non-Federal source as long as –

- (1) The expenses paid or provided in kind are comparable in value to those offered to or purchased by other similarly situated meeting attendees; and
- (2) The employee's agency did not decline to accept payment for those particular expenses in advance of the travel.

PRACTICE TIP: Similarly situated meeting attendees may be defined by functions at the event. For examples, speakers may be offered a room with work areas while attendees are offered rooms without work areas.

- b. If the employee's agency did not authorize acceptance of any payment from a non-Federal source prior to the travel, then—
 - (1) Personnel may accept, on behalf of their agency, payment from a non-Federal source of the following expenses:
 - (a) Only the types of travel expenses that are authorized by the travel authorization; and
 - (b) Only travel expenses that are within the maximum allowances stated in the travel orders (e.g., if the travel orders state that personnel are authorized to incur lodging expenses up to \$100 a night, personnel may not accept payment from the non-federal source for a \$200 per night hotel room);
 - (2) Personnel must request their agency's authorization for acceptance from the non-Federal source within **7 working days** after the trip ends; and
 - (3) If the agency does not authorize acceptance from the non-Federal source, the agency must either—

- (a) Reimburse the non-Federal source for the reasonable approximation of the market value of the benefit provided, not to exceed the maximum allowance stated in the travel orders; or
- (b) Require the employee to reimburse the non-Federal source that amount and allow the employee to claim the amount on the travel claim for the trip.

C. "Meeting or similar function" means a conference, seminar, speaking engagement, symposium, training course, or similar event, and is sponsored or co-sponsored by a non-Federal source. 41 C.F.R. § 304-2.1. A "meeting or similar function" need not be widely attended and includes, but is not limited to:

1. An event at which the employee will participate as a speaker or panel member focusing on his or her official duties or on the policies, programs or operations of the agency;
2. A conference, convention, seminar, symposium, or similar event the primary purpose of which is to receive training (other than promotional vendor training), or to present or exchange substantive information concerning a subject of mutual interest to a number of parties; or
3. An event at which the employee will receive an award or honorary degree, which is in recognition of meritorious public service that is related to the employee's official duties, and which may be accepted by the employee consistent with the applicable standards of conduct regulation.

D. "Meeting or similar function" does **not** include:

1. A meeting or other event required to carry out an agency's statutory or regulatory functions (i.e., a function essential to the agency's mission), such as investigations, inspections, audits, site visits, negotiations, or litigation; or
2. Promotional vendor training or other meetings held for the primary purpose of marketing the non-Federal source's products or services.

- E. "Non-Federal source" means any person or entity other than the Government of the United States. The term includes individuals, private or commercial entities, not-for-profit organizations, international or multinational organizations, and foreign, state, or local governments (including the District of Columbia). 41 C.F.R. § 302-2.1.
- F. "Travel-approving authority" is not defined in the JER. However, agencies must ensure that the travel-approving authorities 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. 41 C.F.R. § 304-5.2. In most organizations, the "travel-approving authority" is the person authorized to sign travel orders.
1. Army Directive 2017-05 (Secretary of the Army Policy for Travel by Department of Army Senior Officials), dated 18 January 2017 authorizes heads of an Army command or organizations to delegate approval authority in writing to accept travel payments from a non-Federal source to a division chief under their supervision serving in the grade of Colonel or the civilian equivalent.
- G. Travel on commercial airlines. If the non-Federal source offers the employee a gift of travel on a commercial airline, the employee may accept travel in coach class or in premium class other than first class (e.g., business class). However, the employee may not accept a gift of travel in first class, unless the conditions exist that would authorize the Government to purchase a first class airline seat for the employee. 41 C.F.R. § 304-5.5.
- H. Hotels that cost more than the Government lodging rate. Sometimes a non-Federal source will offer a gift of lodging in a hotel, and the cost of the hotel is more than the Government lodging rate for the city where the hotel is located. In that case, the employee may accept the gift of lodging only if the accommodations are "comparable in value to that offered to, or purchased by, other similarly situated individuals attending the function." 41 C.F.R. § 304-5.4.
- I. Conflict of interest analysis. A travel payment from a non-Federal source shall not be accepted if the approval official determines that acceptance under the circumstances would cause a reasonable person to question the integrity of the agency's programs or operations. 41 C.F.R. § 304-5.3. The approval official shall be guided by all relevant considerations, including the following:

1. The identity of the non-Federal source;
2. The meeting's purpose;
3. The identity of other expected participants;
4. The nature and sensitivity of any matter pending at the agency affecting the interests of the non-Federal source;
5. The significance of the employee's role in the matter; and
6. The monetary value and character of the travel benefits offered by the non-Federal source.

J. Gifts to spouses. A Federal agency may accept payment from a non-Federal source for an accompanying spouse when the spouse's presence at the meeting or similar function is in the interest of the agency. 41 C.F.R. § 304-3.14. A spouse's presence at an event may be determined to be in the interest of the agency if the spouse will:

1. Support the mission of the agency or substantially assist the employee in carrying out his/her official duties;
2. Attend a ceremony at which the employee will receive an award or honorary degree, which is in recognition of meritorious public service that is related to the employee's official duties, and which may be accepted by the employee consistent with the applicable standards of conduct regulation; or
3. Participate in substantive programs related to the agency's programs or operations. JER 4-100.d; *see also* DoD/GC Memorandum entitled "Spouse Travel Under 31 U.S.C. § 1353," 8 Sep 95.

K. Form of payment. DoD employees, and their spouses, may not accept cash payments on behalf of the Government. Payments shall be in kind, or by check or similar instrument made payable to the agency. 41 C.F.R. § 304-6.1;

L. Format for obtaining approval. The website of the DoD Standards of Conduct Office (DoD-SOCO) has a Fact Sheet on 31 U.S.C. § 1353, as well as a format for a memorandum that approves the acceptance of travel payments under this law. These items are available at:
http://ogc.osd.mil/defense_ethics/ethics_counselors/resources/dod_guidance.html.

M. Written report of payments received. If the total value of the travel payments received in connection with an event exceeds \$250, the gift must be reported to OGE. 41 C.F.R. § 304-6.4. OGE Form 1353 or Standard Form (SF) 326 must be used to make this report.
<https://www.oge.gov/web/oge.nsf/OGE+Forms>

NOTE: DoD DAEO organizations report these payments directly to OGE. DoD DDAEO organizations report these payments directly to SOCO for inclusion in the OSD semiannual report to OGE.

Federal agencies send the reports to the Office of Government Ethics, which is required to make them available for public inspection and copying. 31 U.S.C. § 1353(d)(1). The report must be received by OGE by May 31 (for the period of October 1 – March 31) and November 30 (for the period of April 1 – September 30). **OGE will look at an agency's gift of travel reporting procedures and files as part of the agency's program review.**

N. Financial disclosure report. Travel payments accepted under this authority are considered gifts to the Federal agency and not to the individual employee. Thus, such payments do not have to be reported on the employee's Public Financial Disclosure Report (OGE Form 278e) or Confidential Financial Disclosure Report (OGE Form 450). 41 C.F.R. § 304-3.17.

O. Gifts of travel that can be accepted under 31 U.S.C. § 1353 and another gift acceptance authority. "A DoD Component may not accept or approve acceptance of travel benefits from non-Federal sources under any other gift acceptance authority, e.g., 10 U.S.C. § 2601, if 31 U.S.C. § 1353 applies." JER para. 4- 101.a(2).

VII. GIFTS OF TRAVEL FROM FOREIGN GOVERNMENTS

A. The Foreign Gifts and Decorations Act states, in relevant part:

B. An employee may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than "minimal value"

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if such acceptance is appropriate, consistent with the interests of the United States, and permitted by the employing agency and any regulations which may be prescribed by the employing agency.” 5 U.S.C. § 7342(c)(1)(B)(ii).

- C. "Minimal value" is currently **\$480**. The Foreign Gifts and Decorations Act states that GSA will revise the definition of “minimal value” every 3 years to reflect changes in the consumer price index. 5 U.S.C. § 7342(a)(5)(A).
<https://www.gsa.gov/node/83905?gsaredirect=>
- D. The Foreign Gifts and Decorations Act is implemented by DoD Directive 1005.13, Gifts and Decorations from Foreign Governments, Feb. 19, 2002.
- E. Approval authority. DoDD 1005.13 does not indicate who has authority to accept a gift of travel from a foreign government. Check your agency regulation for guidance on this.
 - 1. Air Force. For Air Force members and employees who are assigned or employed in the continental United States (CONUS), the approval authority is the individual’s commander. For Air Force members and employees who are assigned or employed outside CONUS, the approval authority is the commander of the overseas MAJCOM where the individual is located. AFI 51-506, Gifts to the Department of the Air Force from Domestic and Foreign Sources, April 16, 2019, Table 9.1, Rules 1 & 2.
 - 2. Navy. Per SECNAVINST 4001.2K CH-1, gifts of travel that meet the listed criteria may be accepted by the order issuing authority. A gift of travel may be accepted as a gift to the Navy if it meets statutory and regulatory requirements, e.g. a gift of travel to a conference in a member’s official capacity.
 - 3. Travel entirely outside United States. When consistent with the interests of the United States, 5 U.S.C. § 7342 authorizes an employee to accept a gift of travel or travel expenses from a foreign government, even if over the “minimal value (**\$480**),” for “travel taking place entirely outside the United States.” Must file report with agency within 30 days after accepting travel expenses (5 U.S.C. § 7342(c)(3))
 - 4. Check your agency regulations for additional guidance

- a. Air Force. The Air Force Instruction on gifts from foreign governments creates a minor exception to the requirement that the travel take place entirely outside the U.S. The Instruction states that a gift of travel may be accepted if the travel “[w]ill take place entirely outside the U.S., except when travel across the continental U.S. is necessarily the shortest, least costly or only route available to the destination.” AFI 51-506, para. 9.4.1.1.
- b. Navy /Marine Corps. The comparable provision for the Department of the Navy, SECNAVINST 4001.2K CH-1, states that “the travel begins and ends outside the United States, except when travel across the United States is the shortest, least costly, or only available route to the destination (e.g., Canada to Mexico.)”
- c. Army. The Secretary of the Army Travel Policy states that travel must begin, end and connect entirely outside of the United States.

VIII. OTHER GIFTS TO THE AGENCY

A. 10 U.S.C. § 2601(a)

1. (a)(1) authorizes the Secretary concerned (including the Secretary of Defense) to “...accept, hold, administer, and spend any gift, devise, or bequest of real, personal property, or money made on the condition that it be used for the benefit, or in connection with, the establishment, operation, or maintenance, of a school, hospital, library, museum, cemetery, or other institution or organization under the jurisdiction of the Secretary.”
2. Gifts of cash or proceeds from the sale of property received under 10 U.S.C. § 2601 shall be deposited into the Treasury of the United States in a General Gift Fund for each Department.

3. Funds deposited into the General Gift Fund will be distributed for the benefit or use of the designated institution or organization, subject to the terms of the gift, devise, or bequest.
4. (a)(2) authorizes the Secretary concerned to accept a gift of services for a military museum program from a nonprofit entity established for the purpose of supporting a military museum program. It also permits the Secretary concerned to solicit gifts of certain personal property for the benefit of a military museum program.

B. 10 U.S.C. § 2601 (b):

1. Authorizes the concerned Secretaries to accept, hold, administer, and spend gifts of real or personal property, money, and **services** on behalf of:
 - a. Members of armed forces (including members performing full-time National Guard duty, who incur a wound, injury, or illness while in the line of duty;
 - b. DoD civilian employees who incur a wound, injury, or illness while in the line of duty;
 - c. Dependents of such members or employees; and
 - d. Survivors of such members who are killed.
2. Prohibits acceptance of gifts of services from foreign governments or international organizations under this authority.
3. Permits acceptance of gifts of property or money from foreign governments or international organizations if gifts are not designated for a specific individual.
4. The authority in § 2601(b) was made permanent by the National Defense Authorization Act for Fiscal Year 2008 (P.L. 110-181, Sec. 593). Sec. 593 also directs SECDEF to promulgate regulations implementing 10 U.S.C. §§

2601 and 2608 to prohibit solicitation under certain conditions. Current implementing regulation prohibits solicitation.

5. Restrictions on acceptance of gifts under 10 U.S.C. § 2601(a) and (b) imposed by amendments in the National Defense Authorization Act for Fiscal Year 2006, P.L. 109-163, Sec. 374.
 - a. May not be accepted if gift would violate any prohibition or limitation otherwise applicable.
 - b. May not be accepted if conditions of gift are inconsistent with applicable law or regulations.
 - c. May not be accepted if the Secretary concerned determines that acceptance would reflect unfavorably on the ability of the Department (or employee of the Department or member of the armed forces) to carry out any responsibility or duty in a fair and objective manner.
 - d. May not be accepted if acceptance would compromise the integrity or appearance of integrity of any program of the Department or individual involved in the program.
- C. For purposes of Federal estate, gift, or income taxes, gifts accepted under 10 U.S.C. § 2601, are considered to be gifts to the United States.
- D. Implementing regulation: Volume 12, Chapter 30, of the DoD Financial Management Regulation (FMR), DoD 7000.14-R.
 1. Reporting requirements.
 2. Services report to Defense Finance and Accounting Service (DFAS) offices.
 3. DFAS reports to the Under Secretary of Defense (Comptroller) Deputy Chief Financial Officer.
- E. 10 U.S.C. § 2608. Authorizes the Secretary of Defense to accept from any person, foreign government, or international organization any contribution of

money or real or personal property (or services provided by a foreign government or international organization) for use by the Department of Defense.

F. 10 U.S.C. § 974. Subsection (d) authorizes the Secretary concerned to accept contributions of money, personal property or services for the benefit of a military musical unit under the jurisdiction of the Secretary. Implemented by USD(C) memorandum “Gifts to Benefit Military Musical Units” of Mar. 15, 2015.

G. 10 U.S.C. § 1588. Authorizes the Secretary to accept voluntary services but not goods associated with the services.

1. Categories:

- a. Medical services, dental services, nursing services, or other health-care related services.
- b. Voluntary services to be provided for a museum or a natural resources program.
- c. Voluntary services to be provided for programs providing services to members of the armed forces and the families of such members, including the following programs:
 - (A) Family support programs.
 - (B) Child development and youth services programs.
 - (C) Library and education programs.
 - (D) Religious programs.
 - (E) Housing referral programs.
 - (F) Programs providing employment assistance to spouses.
 - (G) Morale, welfare, and recreation programs, to the extent not covered by another subparagraph of this paragraph.
- d. Service as a member of a funeral honors detail.
- e. Legal assistance services.
- f. Service as a proctor for administering the ASVAB (“Armed Services Vocational Aptitude Batter”) to secondary school students.
- g. Translation and interpreter services by persons registered or

approved in accordance with the statute.

- h. Voluntary services to support programs of a committee of the Employer Support of the Guard and Reserve.
 - i. Voluntary services to facilitate accounting for missing persons.
 - j. Voluntary legal support services provided by law students through internship and externship programs approved by the Secretary concerned.
- 2. Limitations in voluntary services include supervising the employee providing the voluntary service to the same extent as a compensated employee; ensuring that the person providing the service is licensed or credentialed in accordance with applicable law; not placing the person providing services in a policy-making position; and compensating for voluntary services, except for necessary incidental expenses.
 - 3. DoD Guidance: DoDI 1100.21, Voluntary Services in the Department of Defense, Mar. 11, 2002 <https://www.esd.whs.mil/dd/dod-issuances/>
 - 4. Navy Guidance: OPNAVINST 5380.1D, Acceptance and Use of Voluntary Services in the Navy, August 11, 2016.

IX. DONATIONS OF FREQUENT FLYER MILES, CREDITS, AND TICKETS

- A. 10 U.S.C. § 2613 authorizes the Secretary of Defense to accept the donation of travel benefits (frequent flier miles, credit for tickets, or tickets issued by a carrier that serves the public):
 - 1. Eligible purposes:
 - a. To facilitate travel of a member of the armed forces who:

- (1) Is deployed on active duty outside of the United States away from the permanent duty station of the member in support of a contingency operation; and
- (2) Is granted leave during such deployment, or
- (3) If the member is recuperating from an injury or illness incurred in line of duty during such a deployment, facilitating the travel of family members of the member to be reunited with the member.

X. GIFTS TO INJURED OR WOUNDED SOLDIERS

- A. 10 U.S.C. § 2601a, “Direct acceptance of gifts by members of the armed forces and Department of Defense and Coast Guard Employees and their families.” Permits covered members of the Armed Forces and covered employees of the DoD (and their family members and survivors) who have incurred combat-related and similar injuries and illnesses to accept gifts from nonprofit organizations, private parties, and other sources outside the DoD under specified circumstances. Covers injuries or illnesses incurred under “other circumstances” warranting analogous treatment such as the Ft. Hood and Washington Navy Yard shootings. NOTE: Direct acceptance of such gifts may have tax implications. Ethics counsel should encourage DoD personnel to seek independent tax advice regarding before accepting the gift.
- B. Implemented by DoD 7000.14-R, Volume 12, Chapter 34, “Direct Acceptance of Gifts by Members of the Armed Forces, Department of Defense Employees and Their Families and Survivors,” This addition to the DoD Financial Management Regulation replaces DTM 14-004 and guidance in JER Chapter 3, Section 4.
 1. Covered members of the Armed Forces (“covered members”) and covered employees of DoD (“covered employees”), their family members, and their survivors may accept gifts directly from nonprofit organizations, private parties, and other sources outside the DoD when, while performing military duties or performing duties as a civilian employee on or after September 11, 2001, they incur an injury or illness:
 - a. As a direct result of armed conflict; while engaged in hazardous service; in the performance of duty under conditions simulating war; or through an instrumentality of war;

b. In an operation or area designated as a combat operation or combat zone by the Secretary of Defense; or Under other circumstances determined by the Secretary concerned to warrant treatment similar to members covered by the first criterion of this section. “Other circumstances” would include, but not be limited to, events that result in injury or illness of covered members or employees such as the shootings attacks at Fort Hood in 2009 and the Washington Navy Yard in 2013.

2. The authority in section 2601a is in addition to, and in no way limits, any other statutory or regulatory authority of covered members or employees, their family members, and their survivors to accept gifts from non-federal entities.

3. The authority in section 2601a does **not** apply to gifts from foreign governments or international organizations or their representatives, nor does it apply to gifts that:

- a. Are accepted in return for being influenced in the performance of an official act;
- b. Are solicited or coerced;
- c. Are accepted in violation of any other statute or regulations, including sections 201 and 209 of Title 18, United States Code and Parts 2635 and 3601 of Title 5, Code of Federal Regulations; or
- d. Will reflect adversely on the DoD.

4. The Secretary concerned determines whether an event occurring within his or her jurisdiction meets the criterion of “other circumstances.”

5. The designated agency ethics official shall ensure that an ethics counselor reviews and, when appropriate, approves the acceptance of a gift under this authority. That review and approval includes a determination that:

- a. The gift is not offered in a manner that specifically discriminates among covered members or employees on the basis of type of official responsibility or favors those of higher rank or pay;
- b. The donor does not have interests that may be affected substantially by the performance or nonperformance of the covered member’s or employee’s official duties;

- c. Acceptance would not cause a reasonable person with knowledge of the relevant facts to question the integrity of DoD programs or operations.

6. Definitions:

- a. covered employee. A civilian DoD employee who, while an employee on or after September 11, 2001, incurred an illness or an injury under the criteria in the regulation.
- b. covered member. A Service member who, while performing active duty, full-time National Guard duty, or inactive-duty training on or after September 11, 2001, incurred an injury or illness under the criteria in the regulation.
- c. family members. Parents, siblings, spouse, biological and adopted children, and dependent relatives of covered members or employees.
- d. Secretary concerned. The Secretary of a Military Department who has jurisdiction over the military reservation, installation, ship, aircraft, or facility where an event occurs that meets the criterion of the regulation. The Secretary of Defense, if the event meeting the criterion of the regulation occurs at a DoD location that is not a military reservation, installation, or facility, or where more than one Secretary has jurisdiction.
- e. Survivors. Living family members of a covered member or employee who is killed.

XI. FREQUENT FLYER MILES AND OTHER BENEFITS

- A. National Defense Authorization Act for FY 2002, P.L. 107-107, Section 1116, Dec. 28, 2001. Repealed Section 6008 of the Federal Acquisition Streamlining Act of 1994 (5 U.S.C. § 5702).

- B. Federal employees (military and civilian) who receive promotional items (including frequent flyer miles, upgrades, or access to carrier club or facilities) as a result of using travel or transportation services obtained at Federal Government expense or accepted under 31 U.S.C. § 1353 may retain the promotional items for personal use provided the promotional items are obtained under the same terms as those offered to the general public and at no additional cost to the Federal Government. JTR, Chapter 1, Part D, para. 1300B; see also NDAA FY 2002, P.L. 107-107, Section 1116. Section 1116 applies to promotional items received before, on, or after the effective date of P.L. 107-107.
- C. DoD Dine Smart Program. In 2018, the Defense Travel Management Office introduced DoD Dine Smart, a voluntary preferred dining program pilot that earns the Department rebates on meals when travelers use their Government Travel Charge Cards to pay at participating restaurants. The program includes 20,000+ CONUS/non-foreign OCONUS restaurants. As part of this program, DoD launched DoD Dine Smart Traveler Rewards, a loyalty program where travelers can sign up to earn points toward gift cards when they dine at participating restaurants and pay with their Government Travel Charge Card while on official travel. The points that the traveler earn are theirs to keep and are redeemable for gift cards to retailers. See 5 C.F.R. 2635.203(b)(7).

XII. UPGRADES ON OFFICIAL TRAVEL -- WHEN YOU MAY ACCEPT THEM AS A GIFT

- A. An employee may accept an upgrade to first class (or business class) on official travel in any of the following circumstances.
 - 1. It is an on-the-spot upgrade that is generally available to the public (or at least to all Federal employees or all military members). Examples include an upgrade to a first class airline seat to remedy overcrowding in coach class, and an upgrade to a larger rental car due to a shortage of smaller cars or for customer relations purposes. *See generally*, 5 C.F.R. § 2635.203(b)(4).
 - 2. The upgrade results from a promotional offer that is realistically available to the general public (or to all Federal employees or all military members). For example: an upgrade to first class that is offered to anyone who opens a frequent flyer account. *See generally*, 5 C.F.R. § 2635.203(b)(4). This includes vouchers or upgrade stickers, which are sometimes provided through the Government contract travel office.

3. The upgrade is offered to anyone who accumulates enough frequent flyer miles to belong to a club or group (such as the Gold Card Club), even if some or all of the miles are from official travel. *See* XIV (A) below. For example, an employee who flies 50,000 miles or more in a year on an airline can be a member of the airline's Gold Card Club. If the airline gives all of its Gold Card Club members a free upgrade to first class and the employee earns a membership in the Club as a result of 50,000 miles of official travel, the employee may keep the first class upgrade. The upgrade is the property of the employee, who can do with it whatever he or she wants (e.g., use it for official travel, use it for personal travel, give it to his or her spouse, sell it, or donate it to charity). NDAA FY 2002, P.L. 107- 107, Section 1116.
- B. However, no upgrade may be accepted if it is provided on the basis of the employee's grade or position. 5 C.F.R. § 2635.202.

XIII. UPGRADES ON OFFICIAL TRAVEL -- BUYING THEM WITH YOUR PERSONAL FUNDS OR PERSONAL FREQUENT FLYER MILES

- A. Upgrades with personal funds. Federal employees may use their personal funds to upgrade to first class or business class while on official travel. See note 1 to 41 CFR § 301-10.123, Upgrades with personal frequent flyer miles. Federal employees may use their personal frequent flyer bonuses to upgrade to first class or business class while on official travel. See note 1 to 41 CFR § 301-10.123. Note: Air Force Instruction 24-101, Passenger Movement, Oct. 19, 2012, para. 3.30, states in relevant part: "Air Force personnel when using their frequent flyer miles to upgrade to business or first class shall not wear a uniform or allow a rank or grade to be associated with an upgrade." Therefore, if the Air Force member is unable to change into civilian clothes before boarding the aircraft, (s)he should not upgrade.
- B. Army Directive 2017-05 (Secretary of the Army Policy for Travel by Department of the Army Senior Officials), dated 18 January 2017, section 4.C., allows for wear of uniform in this circumstance.

XIV. THE INVOLUNTARILY BUMP

- A. If a Federal employee is involuntarily bumped from an overbooked flight on official travel, any compensation the employee receives (such as a check or a complimentary ticket) belongs to the

Government as liquidated damages. JTR Chapter 1, Part D, para. 1300C.2; Matter of Charles E. Armer, 59 Comp. Gen. 203, 205 (1980); Matter of John B. Currier, 59 Comp. Gen. 95, 96-97 (1979); Matter of Tyrone Brown, Comp. Gen. Dec. B-192841, Feb. 5, 1979; Matter of Chester Sipkin, Comp. Gen. Dec. B-148879, Jul. 20, 1970, affirmed by Comp. Gen. Dec. B-148879, Aug. 28, 1970; 41 Comp. Gen. 806, 807(1962).

- B. Depositing the check. If a Federal employee is involuntarily bumped from an overbooked flight on official travel and is given a check or cash, the money belongs to the Government. In the absence of a statutory provision that authorizes the money to be deposited to a specific appropriation, the money should be deposited into the miscellaneous receipts account. 41 Comp. Gen. 806, 807 (1962).

XV. VOLUNTEERING TO GIVE UP YOUR SEAT ON AN OVERBOOKED FLIGHT (THE VOLUNTARY BUMP)

- A. If an employee is on official travel, the flight is overbooked, and the airline asks for volunteers to give up their seat and take a later flight, the employee may volunteer, as long as doing so would not interfere with the mission.
- B. The employee may keep any benefits or compensation earned as a result of voluntarily relinquishing his or her seat on an overbooked flight, as long as taking the later flight does not result in any additional cost to the Government, and the delay will not detract from the performance of official business. JTR Chapter 1, Part D, para. 1300C.1; Matter of Charles E. Armer, 59 Comp. Gen. 203, 206 (1980); Matter of Edmundo Rede, Jr., Comp. Gen. Dec. B-196145, Jan. 14, 1980. For example, the employee may not claim extra per diem for the extra time spent away from home because the employee took the later flight. Also, if the employee volunteers to take the later flight, the employee is responsible for any additional travel expenses he or she may incur (extra night in the hotel, additional meals, etc.).
- C. Reporting the compensation. If the employee is required to file either a Public Financial Disclosure Report (OGE Form 278e) or an OGE Form 450 (Confidential Financial Disclosure Report), and if the compensation has a value greater than \$200.00, the employee must report the compensation. The compensation is not a “gift,” since the employee received it in exchange for a service provided, i.e., taking the later flight. Thus, the compensation should be reported as income.

XVI. GIFTS OF TRAVEL IN CONTRACTOR AIRCRAFT AND VEHICLES

- A. If the transportation is duty related (i.e., received in connection with official duty and having the effect of reducing Government expenditures), it is a gift to the agency, not to the individual. The Government generally should not accept such travel unless: (1) it is permitted in the terms of a contract, (2) the Government has agreed to reimburse the contractor, or (3) acceptance was approved in advance under statutory gift authority. However, if the contractor offers travel after working hours, it would generally be a gift to the individual and could potentially be accepted under the \$20/\$50 rule. Office of Government Ethics (OGE) Informal Advisory Letter 98 X 8, Jun. 25, 1998.
<https://www.oge.gov/web/oge.nsf/Legal%20Research%20Search%20Collection?OpenForm>
- B. See Information Paper Travel Alternatives When Visiting Contractor Facilities, dated 2017, on the website of the DoD Standards of Conduct Office at: <https://dodsoco.ogc.osd.mil/ETHICS-TOPICS/Gifts/Toolbox-Gifts/>