

SOCO ADVISORY

**Department of Defense
Office of General Counsel
Standards of Conduct Office**

**APRIL 2, 2020
Number 20-02
OSD.SOCO@MAIL.MIL**

Special Edition: ETHICS REMINDERS DURING COVID-19 PANDEMIC

In this unprecedented time, many of us find ourselves living and working in a significantly altered environment. We may be working from home with new “co-workers” (e.g. family members also performing professional or school work remotely), working from deserted offices, or having to balance telework and family care obligations. In the midst of these unique circumstances, there are myriad ethics issues that may arise and we want to remind you that DoD ethics officials are available to assist you in avoiding any inadvertent violations of the ethics rules.

Please keep in mind that even though you may be working from home, the rules and policies that govern your official (and some personal) activities as Federal employees continue to apply. Here are a few of the rules to keep in mind:

1. Partisan Political Activities: Federal civilian employees may not engage in political activity (defined as an activity directed toward the success or failure of a political party, candidate for partisan political office or partisan political group) while in a federal workplace; while on duty; while using Government equipment; while wearing a Government uniform/badge; or while in a Government vehicle. (5 U.S.C. §§ 7321-7326; 5 C.F.R. Part 734)

During your scheduled telework hours, you are on-duty and you may not engage in political activity. Furthermore, you may never engage in political activity using your Government laptop, email, or phone, whether at home, in the office, or on a lunch break. Employees who may engage in political activity (“less restricted” employees) may engage in permissible political activity using their personal computer or phone as long as they are not on-duty and not in a federal workplace.

Please remember that “further restricted” employees, such as SES and political appointees, are prohibited from engaging in political activity as defined above. Further Restricted Employees include, Career SES/DISES, Political Appointees (other than Schedule C), Administrative Law Judges, Contract Appeals Board Members and employees at the National Security Agency, the Defense Intelligence Agency, and the National Geospatial-Intelligence Agency. Less Restricted Employees include all other employees, including Schedule C appointees. Per longstanding DoD policy, active duty personnel may not engage in partisan political activities.

More information can be found in the attached “Political Activities and the Hatch Act Guidance When Teleworking.”

2. Gifts: Many employees may experience a range of hardships due to the COVID-19 pandemic. Additionally, public support for our activities can lead to offers of gifts to Federal personnel or to DoD. For example:

- a. Gifts from Outside Sources: Employees on duty on the front lines, such as medical and relief workers, may be able to accept unsolicited gifts from the general public. Please remember to contact your local ethics official to determine whether you can keep these gifts or how to dispose of them otherwise.

Some employees, or their friends or family members on their behalf, may seek financial assistance from crowdsourced fundraising platforms such as GoFundMe. However, crowdsourced or web-based fundraising poses several ethical issues, such as misuse of position, improper solicitation, and acceptance of prohibited gifts. Given the potential ethical pitfalls, we encourage employees to consult with their ethics officials before any such campaign begins or immediately upon learning that a friend or family member might be crowdsourcing on your behalf.

- b. Gifts between employees: Employees may also want to help each other. However, remember that the ethics rules provide that employees cannot accept gifts from subordinates or from other officials paid less than they are, with very limited exceptions. (5 C.F.R. 2635.302 and 5 C.F.R. 3601.104)

- c. Gifts to DoD: Employees may receive offers of gifts to the Department, whether tangible items, services, to support our missions. If you receive such offers, remember that only certain officials in the Department can accept gifts on behalf of the Department. Contact your Component's legal office to determine the way forward. If you receive offers of travel related expenses, you must consult with your local ethics counsel and complete certain statutorily required documents prior to acceptance.

REMEMBER: You should NEVER solicit or ask for a gift for yourself or for the Department. Solicited gifts cannot be accepted.

More information can be found in the attached “Gift Issues During COVID-19 Pandemic.”

3. Outside Employment: Employees enduring hardship due to COVID-19 may decide to seek other employment. As a reminder, DoD regulations require that employees who file a financial disclosure report must seek prior written approval from their supervisor for outside employment with a prohibited source. A prohibited source is any entity doing or seeking to do business with the Department or otherwise seeking official action from the Department. (5 C.F.R. 3601.107) You should also remember that criminal statutes prohibit Federal employees from representing any non-federal person or entity back to the Government, with or without compensation, except in certain limited circumstances. Contact your local ethics official for more information.

4. Conflicts of Interest and Impartiality: With the response to the COVID-19 pandemic requiring concerted and rapid action, we must all remain vigilant to ensure that we are not participating in matters where we have a personal or imputed financial interest or where our impartiality might be questioned. As a reminder, the criminal conflict of interest statute prohibits you from participating personally and substantially in any matter where you, your spouse, or minor child have a financial interest. Interests also imputed to you include any organization where you serve as an officer, director, trustee, general partner or employee; and any person or organization with which you are negotiating or have an arrangement concerning prospective employment. If you become aware of a potential conflict, refrain from further participation and contact your local ethics official for more information.

The impartiality rule also provides that you should recuse yourself from working on matters that have a financial impact on persons or entities with whom you have a covered relationship, such as members of your household, a relative with whom you have a close personal relationship, or where a reasonable person with knowledge about the situation might question your integrity.

5. Use of Government Resources: Finally, remember to use your work time, equipment, and information only for official purposes, unless otherwise authorized. Most organizations have authorized some minimal personal use of such resources provided that the use does not involve additional cost to the Government, result in significant use of official time, reflect poorly on DoD, or otherwise negatively impact mission. Check with your local ethics counsel and supervisor if you have questions regarding the use of a particular Government resource. Remember that the equipment issuer likely also has rules about appropriate use, such as those contained in most DoD computer user agreements.

The information above is intended to assist you in identifying potential ethics issues and provide you with general guidance. You should reach out to your local ethics office if you have specific questions or concerns and for Component specific policies.

From everyone here at SOCO, we thank you for your dedication and service during these unprecedented times.

DISCLAIMER: The purpose of this advisory is to disseminate relevant information and sources of general guidance, policy and law on Government Ethics issues to the Department of Defense ethics community. Advisories are not intended to be and should not be cited as authoritative guidance, DoD policy, or law

DoD Standards of Conduct Office
http://www.defenselink.mil/dodgc/defense_ethics

POLITICAL ACTIVITIES AND THE HATCH ACT

GUIDANCE WHEN TELEWORKING

The Hatch Act (5 United States Code §§ 7321-7326), regulations at 5 C.F.R. Part 734, and DoD policy govern the political activities of DoD civilian employees. Among other restrictions, the statute and regulation prohibit most employees from engaging in political activities in a federal workplace, while on duty, while wearing a Government uniform, badge, or insignia, and while using a government vehicle. Political activity is defined as an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group. With the increase in home-based telework due to recent events and the Presidential election this year, there may be questions about political activity while teleworking. This fact sheet provides answers to some potential scenarios that could easily arise in a telework setting. *It does not address the additional prohibitions governing “Further Restricted” employees, but please remember that “Further Restricted” employees are prohibited from engaging in political activity as defined above.*

Does teleworking away from the traditional office setting constitute “while on duty”?

Yes. From whatever location you are teleworking, that site constitutes your place of duty for that particular workday. If you are teleworking from home, you are on duty and may not engage in political activities in your home while you are on duty. For example, you may not wear a political button or display partisan political paraphernalia in the home telework location that could be seen during an online meeting.

After I am finished teleworking for the day, can I use my government computer or government mobile phone to engage in partisan political activity?

No. Employees are prohibited from using Government-issued office equipment, email, and the internet *at any time* for the purpose of engaging in political activities. For example, employees may not send or forward political material or messages using their government laptop or government mobile phone after completing a day of telework.

After I am finished teleworking for the day, when I am on my personal time and using my personal devices, can I fundraise for a partisan political party, candidate for partisan political office, or partisan political group?

No. The Hatch Act prohibits federal employees from soliciting or receiving political contributions. Fundraising is a 24/7 prohibition. For example, Federal employees may not ask for contributions, collect contributions, host or forward an online political fundraiser, or promote political fundraisers.

After I am finished teleworking for the day, can I use my personal computer or personal mobile phone to engage in partisan political activity? Yes, you may engage in permitted political activities while using your personal devices.

While teleworking, can I use my personal computer or personal mobile phone to check social media and engage in partisan political activity?

No. While teleworking, you are on duty and therefore you cannot use your personal devices to participate in political activity.

*Example 1: You are looking at Facebook on your personal cell phone. You see that a friend posted a message encouraging others to vote for members of a certain political party. You **may not** like or share that message while you are on duty.*

*Example 2: You are teleworking from home and looking at Twitter on your personal computer. You see that the President tweeted an endorsement of a congressional candidate. You **may not** like or retweet that message while on duty.*

While on my lunch break during a telework day, can I use my personal computer or mobile phone to engage in political activity?

Yes. If you are teleworking from home, you are not in a federal building. If you are on your lunch break, you are on personal time. Therefore, you may use your personal computer or personal mobile phone to engage in political activity while on a lunch break during a home telework day. ***Remember that if you are in a federal building during a lunch break, you cannot use your personal computer or personal mobile phone to engage in political activity.

While teleworking, can I use my government computer or government mobile phone to post a comment on a professional association's online discussion forum or an online news article about a current policy or a proposed policy change?

Yes. Commenting about a current policy or proposed policy change is not considered political activity and therefore the Hatch Act does not restrict this activity. Federal employees may express their opinions about current events and matters of public interest, such as referendum matters, changes in municipal ordinances, constitutional amendments, pending legislation or other matters of public interest, like issues involving highways, schools, housing, and taxes. Employees must still be mindful of using official time for official purposes and of DoD computer-use policies and must ensure they do not use or make any reference to their official position or title when expressing personal opinions.

This fact sheet is not comprehensive guidance, nor should it be substituted for legal advice. It is intended to provide an overview of the interplay between the Hatch Act and a telework setting. The Hatch Act is a very complex law and involves nuanced analysis. There are different prohibitions that apply depending on whether you are a Further or Lesser Restricted Employee, or a Political Appointee.

Political Activity by Members of the Armed Forces is covered under DoDD 1344.10.

For more information, please contact your local ethics counsel. You can also visit the SOCO website at:

https://ogc.osd.mil/defense_ethics/topics/political_activities.html

GIFT ISSUES DURING COVID-19 PANDEMIC

SECTION I: CROWDSOURCED FUNDRAISING

Employees may be experiencing a range of hardships due to the COVID-19 pandemic and may want to seek financial assistance from crowdsourced fundraising platforms such as GoFundMe. However, crowdsourced or web-based fundraising poses several ethical challenges, especially if the solicitation reaches the general public or the federal employee receives donations from a prohibited source (from which an employee generally may not accept a gift).¹ A prohibited source is any person that seeks action from the employee's agency, does or seeks to do business with the agency, conducts activities regulated by the agency, has interests that can be affected by the performance or non-performance of the employee's official duties, or is an organization the majority of whose members are in any of those classes. Other problematic donors include subordinates or other DoD employees who make less pay than the person receiving the crowdsourced fundraising. Employees must be able to identify the source of any donations received, so that they do not accept impermissible gifts from prohibited donors such as individual subordinates or contractors. Therefore, anonymity of donors does not mitigate or resolve concerns about violation of the ethics rules. Given the potential ethical pitfalls, we encourage employees to consult with their local ethics office before any such campaign begins.

SECTION II: GIFTS BETWEEN EMPLOYEES

GENERAL RULE: 5 CFR part 2635, Subpart C covers Gifts Between Employees and prohibits DoD employees both from giving, donating to, or soliciting contributions for a gift to a superior AND from accepting a gift from an employee receiving less pay UNLESS an exception applies, or if the employees are not in a subordinate-official superior relationship and there is a personal relationship that justifies the gift. Even if an exception applies, there must be no coercion in the offering of a gift from a subordinate.

An "official superior" is defined as any other employee, other than the President and Vice President, including but not limited to an immediate supervisor, whose official responsibilities, include directing or evaluating the performance of the employee's official duties or those of any other official superior of the employee (5 C.F.R. § 2635.303(d)).

EXCEPTION FOR SPECIAL, INFREQUENT OCCASIONS: A "special, infrequent occasion," includes recognition of an event of personal significance, such as marriage, illness, or birth/adoption of a child (NOT an event occurring annually, such as Christmas), and circumstances that terminate the senior/subordinate relationship, such as retirement or departure from the organization, but does not include promotions or reassignments that do not terminate the subordinate-official relationship. For special, infrequent occasions, an employee may give an

¹ For a detailed analysis, see SOCO Advisory, 19-03, dated 12 Jul 19.

individual gift that is “appropriate to the occasion” to a superior; accept appropriate individual gifts from subordinates and group gifts that do not exceed \$300; or solicit voluntary contributions up to \$10 per person for a group gift.²

GIFTS TO AND FROM EMPLOYEES’ SPOUSES are considered gifts between employees subject to the same restrictions and exceptions contained in this guidance.

SECTION III: GIFTS FROM OUTSIDE SOURCES

GENERAL RULE: Generally, DoD employees may not accept gifts from a prohibited source or gifts offered because of their official position. A prohibited source is any person or group that does, or seeks to do, business with the employee’s agency, conducts activities regulated by the agency, seeks official action from the agency, or is an organization comprised of prohibited sources. This includes all the contractor employees assigned to DoD offices. Employees may accept gifts from contractors and their employees, as long as the total amount from each contractor (which includes all its employees) does not exceed a market value of \$20 per occasion or \$50 dollars per calendar year. Employees may not solicit such gifts. If contractor employees volunteer to make a contribution to the donating group, the donation collector may accept as long as the total amount for that contractor does not exceed \$20.

SECTION IV: GIFTS TO THE AGENCY

AUTHORITIES. There are various gift acceptance authorities permitting certain DoD organizations and commands to accept gifts of property or services offered to the Department, the most common of which are 10 U.S.C. §§ 2601 and 2608. Section 2601 authorizes the Secretary to “accept, hold, administer, and spend any gift, devise, or bequest of real property, personal property, or money made on the condition that the gift, devise, or bequest 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. Section 2608 authorizes the Secretary to “accept from any person, foreign government, or international organization any contribution of money or real or personal property made by such person, foreign government, or international organization for use by the Department of Defense and may accept from any foreign government or international organization any contribution of services made by such foreign government or international organization for use by the Department of Defense. DoD Financial Management Regulation

² Remember that a gift between employees, including a collection made via an online tool, is subject to the regulations in 5 C.F.R. § 2635.302 and 5 C.F.R. § 3601.104. See Section II above. Thus, anyone organizing a gift collection that includes employees earning less pay/subordinate to the recipient should consult with an ethics counsel to ensure that an appropriate exception, such as for special infrequent occasions, applies and that the solicitation and gift are in compliance with any applicable limitations (e.g., for a group gift in DoD, suggested donation does not exceed \$10 and the gift value does not exceed \$300.)

7000.14-R, Vol. 12, Chapter 30 provides implementing guidance on acceptance of gifts to the Department.³ There are limitations on who can accept such gifts.

There is also authority to accept gifts of travel and related expenses to the Department under 31 U.S.C. § 1353. Use of this statute requires advance written approval and coordination with the employee's local ethics counsel. Approvals must be reported to the Office of Government Ethics in May and October of each year.

If your organization is offered a gift from a non-Federal source, consult with your local ethics and fiscal counsel to determine whether it can be accepted and by whom, and to determine the appropriate acceptance process. DoD personnel should NEVER solicit a gift to the Department unless specific statutory authority permits doing so.

SECTION V: Q&As

1. What is Crowdsourced Fundraising? Crowdsourcing is the practice of soliciting monetary contributions or services from large groups of people, including the online community. Some examples of such platforms are GoFundMe, Kickstarter, and Fundly.
2. A DoD employee has medical bills due to COVID-19. May our office start a GoFundMe page for the employee? It depends. Generally, an employee (or a person acting on the employee's behalf) may not solicit a gift based on the employee's federal employment. This means that an employee's agency, title, or status as a federal employee may not be used in any such solicitation. For example, the narrative or posting cannot include reference to an employee's position or include photos of the employee wearing a DoD uniform or insignia. Additionally, crowdsourced fundraising platforms open the door to donations from a prohibited source or subordinates. Therefore, an employee would need to be able to identify and reject such prohibited donations, which can be very challenging to do when the source of the donation is from a crowdsourced fundraising campaign.
3. May I accept assistance from crowdsourced relief fund? It depends. Such offers may be accepted if (1) the assistance is offered to a broad class of government employees that does not discriminate based on responsibility, rank, or rate of pay, and (2) the campaign organizer is not a prohibited source. We encourage employees to contact their local ethics office for advice regarding the specific circumstances.
4. A DoD employee in my office has COVID-19. May I send my co-worker food or medicine? The ethics regulations regarding limitations on gifts between employees remain in effect during the COVID-19 pandemic. Generally, employees may not give, donate to, or solicit

³ The DoD FMR defines a gift to "include devises or bequests, and money, real property, personal property, or services collectively referred to herein as gifts." DoD FMR, Vol 12, Ch 30, para. 3002.D.

contributions for a gift to an official superior, and may not accept gifts from another employee receiving less pay, subject to certain exceptions. For example, it may be permissible for an employee to accept a gift of food or medicine from a subordinate if the gift qualifies as one being given on a special, infrequent occasion subject to the limitations stated in 5 C.F.R. §§ 2635.302 and 3601.104.

5. Can a gift to a DoD employee be solicited? It depends. If the special infrequent occasion exception applies, then employees can solicit for donations of up to \$10 from other employees for a non-cash group gift that does not exceed \$300 in value. Employees should only participate in one gift group so that the value of gifts of multiple groups don't have to be aggregated when applying the \$300 limit. Employees of DoD may never solicit gifts or encourage the solicitation of gifts from an outside source, to include a contractor employee.
6. Who can accept a gift to the Agency? Each Service or Agency has an instruction or regulation on acceptance of gifts by the component. Gift acceptance authority is delegated based upon the value of the gift being proffered. Gifts of travel under 31 U.S.C. § 1353 require advance approval in coordination with your local ethics counsel.
7. Can a gift to the Agency be solicited? No. Employees of DoD may not solicit gifts or encourage the solicitation of gifts to DoD absent specific statutory authority.
8. What role does the local Ethics Office have? An employee may not accept a gift to the agency without contacting the employee's local legal office to determine whether fiscal and ethics laws and regulations provide authority for the agency to accept the gift.

This is not comprehensive guidance, nor should it be substituted for specific ethics advice. For specific guidance on particular situations, please contact your local ethics counselor.