

GIFTS TO SERVICE MEMBERS AND THEIR FAMILIES FROM NON-FEDERAL SOURCES

INTRODUCTION.

As a result of interest in supporting the war effort and our service members, as well as the call-up of Reservists and National Guard personnel, many individuals and organizations have offered gifts to the Department of Defense (DoD), military personnel, their families, and victims of war.

This paper contains general guidance concerning the acceptance of such gifts. Consult with your ethics official for specific guidance.

RULE.

Generally, DoD personnel (including their families) may *not* directly or indirectly accept or solicit for gifts given:

- (1) Because of their official position; or
- (2) Offered by a “prohibited source.”

A prohibited source is any person who seeks official action from the employee’s agency, does or seeks to do business with his agency, conducts activities regulated by his agency, or has interests that may be substantially affected by the individual employee. 5 C.F.R. § 2635.203(d).

EXEMPTIONS & EXCEPTIONS.

If an exemption or an exception applies, DoD personnel (including their families) may accept unsolicited gifts, other than cash.

Exemptions. 5 C.F.R. § 2635.203(b). The following are examples of items *not* considered “gifts”:

- Modest items of food and refreshments, such as soft drinks, coffee and donuts, not part of a meal.
- Greeting cards and items of little intrinsic value, such as trophies, intended solely for presentation.
- Loans from banks and other financial institutions on terms generally available to the public.
- Opportunities and benefits, including favorable rates and commercial discounts available to the public, or large groups like all uniformed military personnel even if restricted geographically.
- Rewards and prizes given to competitors in contests and events, like random drawings open to the public.

Exceptions. 5 C.F.R. § 2635.204(a)-(1). The following are examples of gifts acceptable under an exception:

- Gifts, other than cash, valued at \$20 or less from one source, per occasion, not to exceed \$50 in a calendar year. 5 C.F.R. 2635.204(a)
- Bona fide awards for meritorious public service offered by non-Federal entities, including prohibited sources, except for those whose interests may be substantially affected by the individual gift recipient. 5 C.F.R. 2635.204(d). Some awards may require written determinations by DoD ethics counselors.
- Gifts motivated by a family or personal relationship. 5 C.F.R. 2635.204(b)
- **For Groups.** Gifts offered from other than prohibited sources to a group of personnel that does not distinguish on the basis of official position, pay or rank. Examples would include all members in a particular unit; all personnel who responded to a particular disaster; and all personnel injured in a particular disaster or event (such as the bombing of the U.S.S. Cole, the attack on the Pentagon, the Iraq or Afghanistan theater of operations). 5 C.F.R. 2635.204(c)(2)(iii)
- Gifts permitted under specific statutory authority (see below). 5 C.F.R. 2635.204(1)

To determine whether an exemption or exception applies, contact your ethics official.

DOD SPECIFIC STATUTORY AUTHORITY.

DoD personnel and their families are permitted to accept gifts under the following specific statutory authority, *if* the below conditions are met. This gift acceptance authority (the Wounded Warrior Assistance Act) is not subject to the above rules.

When. DoD 5500.7-R (Joint Ethics Regulation), 3-400; see also 41 C.F.R., Chap. 102. “Covered DoD service members,” including their families, may accept unsolicited gifts from non-Federal sources as long as:

- (1) Gifts are *not* offered by foreign governments,
- (2) Gifts are *not* accepted in return for being influenced in the performance of official duties,
- (3) Gifts are *not* accepted in violation of any other statute (such as bribery and compensation from other sources for performing Federal duties), and
- (4) For gifts with an aggregate market value exceeding the minimal value (\$335 in 2008) from one source on any particular occasion, or \$1,000 from one source in a calendar year, an agency ethics official has made a written determination that:
 - (a) The gift is not offered in a manner that discriminates among covered DoD employees on the basis of the type of official responsibility or of favoring those of higher rank or rate of pay;
 - (b) The donor does not have interests that may be affected substantially by the performance or nonperformance of the covered DoD employee’s official duties; and
 - (c) Acceptance would not cause a reasonable person with knowledge of the relevant facts to question the integrity of DoD programs or operations.

Who. Covered DoD Service members are:

- (1) Members of the Armed Forces (including Reserve, and National Guard members on Title 10 orders) on active duty, enlisted members of the Reserve on inactive duty for training, and all members of the National Guard performing official duties who,
- (2) While on active duty, on or after September 11, 2001, incurred an illness or injury
 - (a) as a direct result of armed conflict;
 - (b) while engaged in hazardous service;
 - (c) in the performance of duty under conditions simulating war;
 - (d) through an instrumentality of war; or
 - (e) in an operation or area designated by the Secretary of Defense as a combat operation or combat zone.

Policy. A component's ethics official may issue a blanket determination to cover all or any category of gifts or all or any group of DoD covered employees, if deemed appropriate.

To determine whether an exemption or exception applies, contact your ethics official.

GIFTS TO THE DEPARTMENT OF DEFENSE.

Where the preceding rules prevent DoD personnel or their families from accepting a gift, an appropriate official with gift acceptance authority may be able to accept the gift on behalf of the Department.

- **For the benefit of Military Departments or those wounded in the line of duty.** The Secretaries of the Military Departments (and the Secretary of Defense) may accept real or personal property, cash, or services for use by their respective departments, or to benefit DoD personnel who incurred a wound, injury or illness while in the line of duty. 10 U.S.C. § 2601
 - Gifts from foreign governments or international organizations: Gifts of services cannot be accepted under this authority; and real or personal property or monetary gifts may only be accepted if they are not designated to the benefit of a specific individual.
 - DoD personnel include members performing full-time National Guard duty under 32 U.S.C. 502(c).
 - Dependents and survivors of such personnel are also covered.
 - The Secretary has prescribed regulations for the acceptance of these gifts under DoD Financial Management Regulation (FMR), Volume 12, Chapter 30, section 3003. See http://www.defenselink.mil/comptroller/fmr/12/12_30.pdf.
- **Secretary of Defense Acceptance.** The Secretary of Defense may accept real or personal property, cash, or services of any kind from any entity, including a foreign government or international organizations. 10 U.S.C. § 2608
 - Cash contributions must be placed in the Defense Cooperation Account, and DoD may spend the money only by a Congressional appropriation.
 - The Secretary of Defense must submit a report to Congress, not later than 30 days after the end of each quarter of each fiscal year, listing contributions of property accepted by

the Secretary during the previous quarter. Each report must include a description of all property valued at more than \$1,000,000. 10 U.S.C. § 2608(e)

- Voluntary Services. The Secretaries of the Military Departments (and the Secretary of Defense) may accept volunteer services that support members of the armed forces and their families in areas such as medical, dental, nursing or other health-care related services; family support, child development, and youth services programs; library and education programs; religious programs; housing referral programs; employment assistance programs for military spouses; legal assistance; and morale, welfare and recreation programs. 10 U.S.C. § 1588

DoD Points of Contact for the Acceptance of Gifts.

Washington Headquarter Service: (WHS) Pursuant to Volume 12, Chapter 30 of the DoD Financial Management Regulation, the Director of WHS may accept gifts of personal property and supplies made to the Office of the Secretary of Defense, WHS, or WHS-serviced organizations.

Foreign and Domestic Gifts should be directed to the Defense Facilities Directorate, Programs and Services Division; Tel: 703-614-6409.

Monetary Donations: Monetary donations to the Military Departments should be directed to the following offices:

Army:

OAA: Tel: (703) 602-2132; Fax: (703) 602-1200

MWR Tel: (703) 681-7453 or (703)681-7418

Navy/Marine Corps:

AAUSN/SPD: Tel: (703) 693-0975/0933 or (703)693-0984; Fax: (703) 693-1190

Navy MWR: Tel: (703) 693-0975

Marine MWR (MCCS): Tel: (703) 784-3007

Air Force:

HQ USAF/JAA: Tel: (703) 614-4075; Fax (703) 614-2205

MWR: Tel: (210) 652-4945

DoD:

Tel: (317) 510-3154; or DFAS, Indianapolis; Attn: DFAS Trust Fund Accounting Division, Column 203L; 8899 East 56th St.; Indianapolis, IN 46449-1500.

OTHER INFORMATION.

The following are other pertinent rules and resources relating to acceptance of gifts from non-Federal sources. **Disclaimer:** Please note that any list of resources may not be complete and is **not** an endorsement of any particular organization, its services or products.

- Federal employees who wish to contribute may do so in their personal capacity, or may contribute to participating organizations during the Combined Federal Campaign.
- Families of deceased DoD personnel, assuming they are not Federal personnel themselves, are not bound by the above rules.
- Gifts for Deployed Personnel are discouraged since they overload the transportation and distribution systems and offer a threat of bio-terrorism to deployed personnel. DoD urges the public not to send unsolicited mail, care packages, or donations to service members unless they are family members or personal friends. In lieu of sending mail, the public may log on to the following websites to show support, to include greeting cards and virtual thank you cards
 - <http://www.americasupportsyou.com/Message.aspx?SectionID=5> (on-line thank you card for troops)
 - <http://uso.org/whatwedo/specialprograms/operationusocarepackage/> (contribute to the purchase of a care package of items requested by troops such as sunscreen, disposable cameras, prepared calling cards)
 - www.army.mil/operations/iraq/faq.html (Army frequently asked questions site includes answers to how to support troops)
 - U.S. Army Central, Coalition Forces Land Component Command (USARCENT/CFLCC) handles donations going to OEF/OIF. Tel: (404) 464-4145 or 2945.
- Assistance to Families of Service Members. Individuals, organizations, and businesses may offer time and resources to help families of deployed troops. Some opportunities are listed at www.usafreedomcorps.gov or www.americasupportsyou.com.
 - Donors may support families of service members who are being treated at military and Veterans Affairs hospitals through donations to the Fisher House. Internet web site is www.fisherhouse.org, or telephone (888) 294-8560.
 - Donations may also be accepted by the Commanding Officers of military hospitals.
 - In addition, many local service organizations are providing ways for volunteers to help local military families.
- Tax Deductable. Donations made to charitable organizations with 501(c)(3) tax-exempt status are deductible for those who itemize deductions on their tax returns.
- Monetary Gifts. Individuals and entities wishing to provide monetary gifts or contributions should be advised that DoD personnel and their families cannot accept gifts of cash. Offers should be redirected to relief organizations that assist DoD personnel.

SUMMARY:

- Is it a “gift” given because of your position or from a prohibited source?
- Does an exception apply?
- Does the Wounded Warrior Assistance Act apply?
- If gift acceptance is not possible, can DoD accept the gift?

Remember, when in doubt, consult with your ethics official for specific guidance, or contact the Standards of Conduct Office at soco@dodgc.osd.mil.

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