



Gifts

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

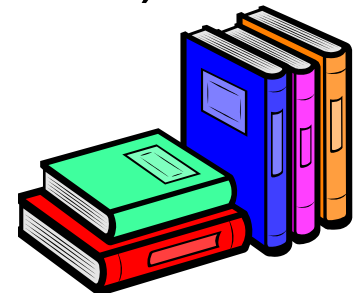
Revised April 2017





Sources of authority

- Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR Part 2635
- DoD Supplemental Regulation, 5 CFR Part 3601
- Joint Ethics Regulation (JER), DOD 5500.07-R
- 5 U.S.C. § 7342 (Foreign Gifts)
- 5 U.S.C. § 7353 (Federal Employees)
- 10 U.S.C. §2601/2608 (Gifts to Government)
- 31 U.S.C. § 1353 (Travel Payments)





Bedrock standards (5 CFR 2635.101(b))

- Public service is a public trust – (b)(1)
- Employees:
 - Ø *shall not* solicit or accept a gift from person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency – (b)(4)
 - Ø *shall not* use public office for private gain – (b)(7)
 - Ø *shall* avoid actions creating the appearance of violating the law or the standards in 5 CFR 2635.101 – (b)(14)
- When an issue doesn't fall squarely within the rules, look to these principles for guidance



Gift Analysis Framework

- Is it a gift?
- Why was the gift offered?
- Does an exclusion apply?
- Does an exception apply?
- Is there an appearance problem?
- Do we decline?
- How do we decline?





Gifts to From Outside Sources

Refer to SOCO Advisory 16-05





Gift Rules 5 CFR 2635 Subpart B

- Changes became effective January 1, 2017
- Fundamental prohibitions have not changed
 - Ø 202: Unless authorized by the rules, Executive Branch employees shall not solicit or accept a gift given because of their official position or from a prohibited source.
 - Ø Cash may never be accepted
 - Ø Remember, gift to spouse may = gift to the employee
- Changes emphasize values-based decision-making
 - Ø New rule includes a standard to evaluate not only whether a gift may be accepted, but also whether it *should* be accepted.
 - Ø Reference to OGE's advisory standard may help when advising leaders and employees



Considerations for declining permissible gifts – 2635.201

- New section states that an employee should decline a gift if a reasonable person with knowledge of the relevant facts would question the employee's integrity or impartiality
- Factors to consider include:
 - Value of gift
 - Timing of the gift
 - Donor's identity
 - Whether acceptance would create appearance of preferential treatment
- Even if all factors are present, if a gift exception applies, there is no violation of the Standards of Conduct



Gifts From Outside Sources

- 5 C.F.R. 2635.202(a)
- An employee shall not, directly or indirectly, solicit or accept a gift
 - From a prohibited source or
 - Given because of the employee's official position





Gifts from Outside Sources

- “Prohibited Source” includes any person or entity that
 - Is seeking official action
 - Does or seeks to do business
 - Is regulated by, or
 - Has interests substantially affected by employee’s official duties
 - Organization with majority of members from one or more of the above





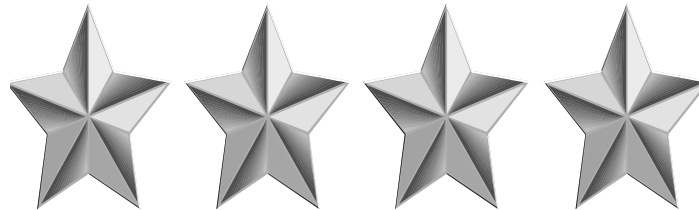
Gifts from Outside Sources

- Indirect gifts:
 - ∅ Given with the employee's knowledge to his/her parent, spouse, sibling, child, dependent relative or a member of the employee's household because of that person's relationship to the employee; or
 - ∅ Given to any other person, including charity, at the employee's designation, direction or recommendation



Gifts from Outside Sources

- “Official Position” Test
 - ∅ Gift would not have been solicited, offered, or given had the employee not held the status, authority, or duties associated with his position





President's Ethics Pledge

- Executive Order 13770, Jan. 28, 2017
- OGE Legal Advisory LA-17-03
- Applies to Political Appointees (PAS, Non-Career SES, and Schedule Cs)
 - Ø No gifts from registered lobbyists or lobbying organizations
 - Ø Many of the usual gift exceptions do not apply



Gifts From Outside Sources

- Is it a Gift?
 - ∅ Any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or any other item having monetary value
 - ∅ It includes services
 - ∅ It includes gifts of training, transportation, travel, lodging, and meals



Gift Exclusions

What is not considered a gift?

- Food and Refreshments
 - Modest items of food and non-alcoholic refreshments, such as soft drinks, coffee and donuts, and light snacks
 - Not part of a meal





Gift Exclusions

- Greeting cards and items with *little intrinsic value* (e.g. plaques, certificates, and trophies) which are intended primarily for presentation
 - ∅ Applies only to presentation items
 - ∅ Look to the “\$20 exception” for accepting utilitarian items (e.g. pen, book)
 - Adorning a person’s name may diminish value, but it could also increase value (e.g. author’s signature)





Gift Exclusions

- Rewards and prizes given to competitors in contests or events, including random drawings, that are
 - Open to the public
 - Entry not part of official duties
- Reward and prize killers
 - Ø Automatic registration in drawing for conference attendees
 - Ø Completing conference evaluation sheet enters participant into drawing
 - Ø Purchasing a specified amount of goods



Gift Exclusions

- Discounts and benefits, including favorable rates
 - ∅ available to
 - General public
 - Class of all Government employees
 - All military personnel
 - ∅ whether or not restricted by geography
- Exclusion does not apply to discounts based on rank, position, organization.
 - ∅ Consider using *Gift Exception* for discounts





Gift Exclusions

- Paid by the US Government or secured under contract
- Paid by the employee at market value (MV)
 - Ø Determine MV through retail websites (not membership clubs or on-line auctions).
 - Ø Skyboxes: MV = most expensive publically available ticket + food, parking, etc.
 - Ø No fee events: Ask for a per-person estimate, or aggregate MV of food, beverages, entertainment, parking, etc. (but not venue)
- Accepted by U.S. Government under statute



Gift Exclusions

Free Attendance for Official Presentation

- Employee assigned by agency to present info
 - ∅ Speech, panel member, roundtable
- Free attendance only on presentation day
 - ∅ Other exclusions/exceptions may cover additional days
- Includes
 - ∅ Essential support personnel
 - ∅ Spouse/guest if unsolicited invitation, others are bringing spouse/guest and agency designee authorizes
- Free attendance includes conference fee, food, entertainment, instruction integral to event
 - ∅ Does not include travel expenses



Does an exception apply? (5 CFR 2635.204)

Exception – “The 20/50 Rule”

- \$20 per source, per occasion
- \$50 max per source, per year
- FMV is retail value of the gift
- No cash or investment instruments
 - Ø Store or mall gift card ≠ cash, but credit card gift card does
- May decline items to stay under \$20 but may not pay differential over \$20





Exceptions - 2635.204

- Gifts based on
 - ∅ **Personal relationship** – Gift must be from a human being
 - ∅ **Outside business relationship** – New exception for attending events at a former employer if other former employees are invited
- **Social Invitations**
 - Unsolicited and not from a prohibited source
 - No fee is charged to anyone in attendance
 - Food and entertainment only; not travel
 - Written determination required if an organization, rather than a person, is event sponsor or extends the invitation



Exceptions - 2635.204

Discount or Similar Benefits



- Reduced membership fees offered by professional organizations to all government/military personnel with certain professional qualifications (e.g. attorneys)
- Benefits to members of a group in which membership is unrelated to government employment
- Benefits offered to members of a group where membership is related to government employment if same benefit offered to large segments of the public
- Benefits offered from other than prohibited source and class is not based on position, rank or rate of pay



Exceptions - 2635.204

- Awards
 - ∅ Meritorious public service or achievement
 - ∅ Grantor not impacted by recipient's performance of duties
 - ∅ Higher standards for cash and awards > \$200
- Honorary Degrees
 - ∅ Institution of higher education
 - ∅ Examine timing of award





Exceptions WAG Rule – 2635.204(g)

- Employees may accept free attendance at a “widely attended gathering” if agency makes a written determination of agency interest.
(See SOCO website for sample template and process.)
- Agency designee must find that:
 1. The event is widely attended (“large” group, diversity of views, opportunity to exchange ideas)
 2. Attendance will further agency programs / operations
 3. Agency’s interest in the employee’s attendance outweighs the concern that the employee may be, or may appear to be, improperly influenced in the performance of official duties
 4. If a person other than the sponsor of the event invites or designates the employee as the recipient of free attendance and bears the cost of that gift then
 - 100 or more persons are expected to attend; and
 - the value of the free attendance does not exceed \$375



Exceptions WAG Rule – 2635.204(g)

- In assessing agency's interest in employee attending vs. employee being improperly influenced in the performance of official duties, consider:
 1. The importance of the event to the agency
 2. The nature and sensitivity of any pending matter affecting the interests of the person who extended the invitation and the employee's role in any such matter
 3. The purpose of the event
 4. The identity of other expected participants
 5. Whether acceptance would create the appearance that the donor is receiving preferential treatment
 6. Whether the agency is also providing persons with views that differ from those of the donor with similar access
 7. The market value of the gift of free attendance



Exceptions - 2635.204

- Gifts of informational materials - books, magazines, recordings worth up to \$100 in a calendar year
 - Ø Value not limited if agency approves in writing
- Meals, refreshments, entertainment in foreign area
- Gifts Authorized by Supplemental Agency Regulation (JER - 5 C.F.R. 3601.103)
 - Ø ComRel events, scholarships

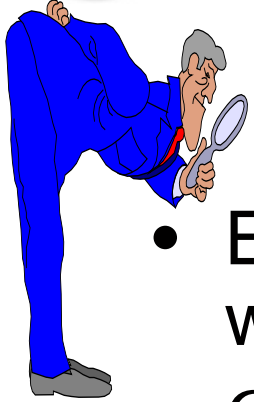


Gifts to Enlisted (E-6 and Below)

- SECDEF Memo of May 16, 2013 waives JER gift prohibition for E-6 and below for
 - ∅ gifts other than cash
 - ∅ from tax-exempt charitable and veterans service organizations
- Cannot accept if gift is attempt to influence or improper supplementation of salary



Use Gift Exceptions Wisely



- Even if a gift falls within one of the exceptions, will the acceptance
 - ∅ violate any basic obligation of public service,
 - ∅ including the obligation to avoid creating the appearance of an ethical violation?
- May still be appropriate to decline a gift



Over in Mt. Pilot they do things their own way. Here in Mayberry, Federal employees may not:



- Solicit or coerce the offering of a gift
- Accept a gift in return for being influenced
- Accept a gift in violation of statute
- Accept gifts from the same or different sources so frequently that a reasonable person would question integrity



Proper Disposition

- Identify acceptance authority, exclusion, or exception
- Refuse gift if possible
- Tangible items – return, pay FMV, destroy (if <\$100)
- Intangible items - pay FMV
- Perishable items - after consulting with supervisor or ethics counselor:
 - Ø Donate to charity
 - Ø Share within office
 - Ø Destroy



All of this because of a
“free” gift.



Foreign gifts





Foreign Gifts

- Emoluments Clause (U.S. Constitution, Art I, §9, Cl. 8)
 - Employees may not personally accept gifts from a foreign government without Congress' consent
- Congress has consented to allow some gifts (Foreign Gifts & Decorations Act 5 USC § 7342)
 - Implemented by DODD 1005.13
 - No solicitation of gift
- Individual may accept gift of “minimal value”
 - 1/12/17: “minimal” value” (retail value in U.S. at time of acceptance) increased to \$390
 - Financial Disclosure Report filers report if >\$375
- Must aggregate:
 - Multiple gifts from donor at single presentation
 - Gifts to spouse
- Gifts > minimal value: Refuse, return, or accept on behalf of DoD





Gifts to Wounded Soldiers and Families



12 combat veterans get 'gift of mobility' from Seahawks, Segs4Vets

by Vienna Catalani
Monday, November 7th 2016



A group of 12 combat veterans received eight Segways and four ALLY Chair adapted Segways in a partnership with Segs4Vets at the Seattle Seahawks game on Monday, Nov. 7, 2016. (Photo: Josh Lewis)



Wounded Warrior Gift Statute

- 10 U.S.C. 2601a
 - Allows direct acceptance by employee / family / survivors, rather than by Government
 - Implemented through FMR Vol 12 Chapter 34 (9/2016)
- Injury incurred in combat zone
 - in war,
 - conditions simulating war), or
 - under “other circumstances” (Service Secretary determines)
 - Ø e.g. Ft. Hood, Washington Navy Yard
- Ethics counselor review / approval required



Wounded Warrior Gift Statute

- Secretary concerned makes “other circumstances” determination
- Secretary concerned:
 - ∅ Service Secretary having jurisdiction over military reservation, installation, ship, aircraft, or facility where event occurs
 - ∅ SECDEF where event does not occur at a location under the jurisdiction of a Service Secretary



Wounded Warrior Gift Statute

- Does not apply to gifts that are:
 - ∅ From a foreign government or international organization
 - ∅ Accepted in return for being influenced in the performance of official act
 - ∅ Solicited or coerced
 - ∅ Accepted in violation of any law
 - ∅ Reflect adversely on DoD



Wounded Warrior Gift Statute

- Ethics counselor must review and approve gift prior to acceptance
 - Ø gift doesn't discriminate on basis of official responsibility, rank or pay
 - Ø donor doesn't have interests affected by performance of employee's duties
 - Ø acceptance would not raise concerns about integrity of DoD programs/operations



Gifts Between Employees





Gifts Between Employees

- 5 C.F.R. 2635.302(a)
- An employee may not:
 - Ø Directly or indirectly, give a gift or make a donation toward a gift for an official superior
 - Ø Solicit a contribution from another employee for a gift to either his own or the other employee's official superior



Gifts Between Employees

- 5 C.F.R. 2635.302 (b)
- An employee may not, directly or indirectly, accept a gift from an employee receiving less pay than himself unless:
 - Ø No superior-subordinate relationship; and
 - Ø There is a personal relationship that would justify the gift



Gifts Between Employees - Exceptions

- 5 C.F.R. 2635.304(a)
- On an occasional basis, including traditional gift giving situations
 - Ø Items with value of \$10 or less (no cash)
 - Ø Food and refreshments shared in the office
 - Ø Personal hospitality in superior's home
 - Ø Host/hostess gifts





Gifts Between Employees - Exceptions

- 5 C.F.R. 2635.304(b)
- On special infrequent occasions, a gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or employee receiving less pay
 - Ø Occasion of personal significance
 - e.g. marriage, illness, birth/adoption of child
 - Ø Occasion that terminates superior-subordinate relationship



Gifts Between Employees - Exceptions

- Solicitations are authorized for special infrequent occasions
 - ∅ Voluntary contributions
 - ∅ Nominal amounts (\$10), although employees are free to donate more
 - ∅ Ref: 5 CFR 3601.104 / JER 2-203.b



Gifts Between Employees - Exceptions

- Must be appropriate to the occasion
- Limited to \$300 per donating group
- Aggregate gifts if employee is in more than one donating groups
 - Ø Gifts to spouses
 - Ø Pieces of a larger gift
- Exclude food and entertainment at event marking departure
- Ref: 5 CFR 3601.104 / JER 2-203



Gifts Between Employees - Exceptions

- Helpful Hints:
 - ∅ Be proactive - be part of the planning process
 - ∅ Keep the number of donating groups to a reasonable number (no competition)
 - ∅ Ensure donation is voluntary
 - ∅ Ensure contractors in workplace are not in the donating groups
 - ∅ Remember purpose is to honor departing superior not to embarrass



Gifts To The Government





10 USC 2601(a)

- Authorizes Secretary concerned to “...accept, hold, administer, and spend any gift, devise, or bequest of real or personal property, made on the condition that it be used for the benefit, or in connection with the establishment, operation, or the department.”
- Gifts of cash/proceeds from sale of property shall be deposited into the Treasury of the U.S. in a General Gift Fund for each department.
- Funds deposited into 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.



10 USC 2601(b)

- Authority for government to accept gifts to benefit members, dependents and civilian employees who incur a wound, injury or illness in the line of duty
- Types of gifts include real property, personal property, money or services
- Implementing regulations in DoD Financial Management Regulation (FMR)



10 USC 1588

- Authorizes Secretary to accept voluntary services for
 - Medical, dental, nursing, or healthcare
 - Museums
 - Family Support programs
 - Funeral Detail
 - Legal Assistance
 - ASVAB proctors
 - Translators registered / approved IAW statute
 - Employer Support of the Guard and Reserve
 - Services to facilitate MIA accounting
 - Volunteer law student interns



Voluntary Services

- Limitations
 - Ø Supervising to the same extent as a compensated employee
 - Ø Ensure that volunteer is licensed in accordance with applicable law
 - Ø No policy making or managerial responsibilities
 - Ø No compensation, except for incidental expenses



Agency Gift Statutes

- Army Specific Gift Statutes:
 - Ø Gifts to United States Military Academy
10 U.S.C. § 4356
- Navy Specific Gift Statutes:
 - Ø Gifts to the Naval Academy
10 U.S.C. §§ 6973, 6974
 - Ø Gifts to Vessels
10 U.S.C. § 7221
 - Ø Gifts for Welfare of Enlisted Members
10 U.S.C. § 7220.





Travel Payments From Non-Federal Sources





Travel Payments From Non-Federal Sources (31 USC 1353)

- Rule: Agencies may accept payment from a non-Federal source for
 - travel, subsistence, and related expenses
 - in connection with an employee's attendance at a meeting or similar function
 - relating to his official duties
- 31 U.S.C. § 1353
- 41 C.F.R. Chapter 304
- JER Section 4-101



Travel Payments From Non-Federal Sources (31 USC 1353)

Conditions for Acceptance

- Attendance at a meeting or similar function that is related to employee's official duties
- Function takes place away from duty station (employee must be in a travel status)
- Employee attends in an official capacity
- Acceptance would not bring into question the integrity of DoD programs (conflict analysis)
- Acceptance generally approved in advance
- No solicitation



Travel Payments From Non-Federal Sources (31 USC 1353)

Meeting or Similar Function

- Conferences, seminars, speaking engagements, symposia, training courses, awards programs, or other similar event sponsored or co-sponsored by a non-Federal source
- Excludes:
 - Ø Meetings or events required to carry out an agency's mission
 - Ø Promotional Vendor Training or other meetings held for the primary purpose of marketing product/services



Travel Payments From Non-Federal Sources (31 USC 1353)

1353 Payments - Miscellaneous

- Travel on Commercial Air
- Gift to Spouses
- Payments in excess of Per Diem Limits
- Payment in Kind or Reimbursement
- Reporting Requirements





Gifts of Travel From Foreign Governments

- Rule: An employee may accept gifts of travel or expenses from a foreign government
 - for travel taking place entirely outside the U.S.
 - of more than minimal value if acceptance is consistent with the interests of the U.S.
- Solicitation is prohibited
- Approval authorities – check your service regulations
- Reporting requirements
- 5 U.S.C. § 7342(c)(1)(B)(ii)



Summary

- **Know the rules**
- **Use common sense**
- **Be proactive**
- **Make the call!**

