

INFORMATION PAPER

AFZK-JA

13 August 1998

SUBJECT: Foreign Gifts

1. PURPOSE: To summarize restrictions on acceptance of gifts from foreign governments.

2. REFERENCES:

- a. U.S. Constitution, article I, § 9, cl. 8.
- b. 5 U.S.C.A. § 7342;
- c. Title 41, Code of Federal Regulations, Parts 101-49 and 101-45;
- d. DoD 5500.7-R, Joint Ethics Regulation § 2-300b;
- e. DoD 1005.13, Gifts from Foreign Governments (20 Jul 96).

3. FACTS:

a. DoD employees (including members of the uniformed services) MAY NOT request or encourage the giving of gifts from foreign governments.

b. DoD employees MAY accept:

(1) Gifts of "minimal value (not in excess of \$245 retail value in the United States at time of acceptance).

(a) Value of the gift is the value it would have in the United States--not value at point of donation.

(b) If more than one gift is given at one presentation from the same donor to an employee they constitute one gift; values must be aggregated.

(c) Gifts from different officials of the same foreign government at the same presentation must be aggregated. If gifts are from different governmental levels (e.g., national, state, local, and municipal), aggregate the levels separately.

(d) Gifts received at separate presentations, even on the same day and/or from the same foreign official, are separate gifts; their values are not aggregated.

(e) Gifts to a DoD employee's spouse are deemed gifts to the DoD employee, and gifts from a foreign official's spouse are deemed gifts from the foreign official.

(2) Gifts of travel (or expenses for travel) occurring entirely outside the United States, even if in excess of "minimal value."

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c. Gifts of more than "minimal value" may be accepted on behalf of the United States if refusing the gift would offend or embarrass the donor or adversely affect foreign relations. Gift becomes government property.

(1) Within 60 days, gifts must be deposited with "employing DoD Component" for return to donor, use within the Component, or disposition by General Services Administration (GSA). (Army: Commander, PERSCOM, ATTN: TAPC-PDO-IP, Alexandria VA 22332-0474; Air Force: AFI 51-901, AFPC/DFFFRS, 550 C. Street West, Suite 12, Randolph AFB 78150-4714; Navy: SECNAVIST 1650.1F, Chapter 7.)

(a) Gifts retained by DoD Components must be used for benefit of all employees. GSA must be notified by SF 120, "Report of Excess of Personal Property," within 30 days following termination of official use.

(b) Gifts that DoD Components do not wish to retain must be reported to GSA within 30 days on SF 120, and held by the Component pending disposition instructions from GSA.

c) Gifts for which GSA determines there are no federal requirements may be sold to recipient for appraised value (plus cost of appraisal).

d) Recipients may recommend foreign gifts for donation to public agencies or nonprofit tax-exempt organizations for public display, reference or use.

(e) Firearms received as foreign gifts may be transferred to federal agencies or if not required for federal use, sold at GSA's discretion to interested recipients.

(2) DoD components must maintain records of foreign gifts or more than minimal value (other than travel or travel expenses) received by their employees. Compilations are transmitted annually to Department of State by January 31.

d. DoD components may sell or destroy gifts of minimal value.

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SUBJECT: Gifts Between Employees

1. PURPOSE: To summarize the Standards of Ethical Conduct and Joint Ethics Regulation rules concerning gifts between employees.

2. FACTS:

a. General Rule. (5 C.F.R. ? 2635.300 et seq) Employees may not:

(1) give, or solicit contributions for, gifts to someone in their subordinate-official superior chain;

(2) accept gifts from employees who receive less pay, unless there is no subordinate-official superior relationship and there is a personal relationship justifying a gift.

b. Exceptions:

(1) On an occasional basis gifts may be given when:

(a) \$10 or less per occasion (e.g. a birthday gift or a souvenir gift upon return from a vacation) (no cash).

(b) Refreshments shared in the office.

(c) Personal hospitality at an employee's home.

(d) Customary gifts given in connection with the receipt of hospitality.

(2) On special, infrequent occasions, subordinates may give a gift to a superior "appropriate to the occasion."

(a) Infrequently occurring occasions of personal significance such as marriage, illness, or birth of a child (does not include a promotion unless the employee is also being transferred out of the chain of command).

(b) Occasions that terminate subordinate-official superior relationship, such as retirement, resignation or transfer.

(c) Value of gift normally should not exceed \$300 from a "donating group" whose definition depends on the circumstances. If the gift exceeds \$300 in value, the gift must still be "appropriate to the occasion," and "uniquely linked to the departing employee's position or tour of duty."

(d) An employee may not contribute as part of more than one donating group. If he or she does, the different groups become one donating group.

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c. Voluntary contributions of a nominal amount may be solicited only for the following:

(1) The occasional sharing of food and refreshments in the office;

(2) The gift for a special, infrequent occasion.

(3) DoD rule: the nominal amount is defined as \$10; however, while more than \$10 may not be solicited, an individual may offer to contribute more.

d. Gifts from an employee's spouse to another employee's spouse will be considered a gift between employees subject to the above rules, unless there is an independent basis for the gift to the spouse.

e. A finding that gifts are based on a personal relationship (5 C.F.R. 2635.204(b)), may be appropriate, especially among members of the USAR and NG who live and work together in civilian life.

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15 April 1999

SUBJECT: Receipt of Gifts from Outside Sources

1. PURPOSE: To summarize the rules concerning gifts from outside sources.

2. FACTS:

a. Generally, DoD employees may not accept gifts from a prohibited source or a gift that is offered because of the recipients official position. There are four steps to determining whether a gift may be accepted. (5 C.F.R. 2635.204)

(1) First, is it a "gift?" Items with little intrinsic value intended solely for presentation, benefits available to all military personnel in a particular geographic area, and coffee and donuts offered during a meeting are examples of "non-gifts."

(2) Second, if it is a "gift," is it a gift from prohibited source?

(a) A prohibited source is someone who does business with the employee's agency, seeks to do business with the agency, conducts activities regulated by the agency; or is an organization, a majority of whose members are prohibited sources.

(b) A gift given because of the recipient's official position is treated as a prohibited source gift.

(3) Third, if it is a "prohibited source gift," does an exception apply? The exceptions are:

(a) A gift with a market value of \$20 or less, not to exceed \$50, in a calendar year from any one source.

(b) A gift to a group of Federal employees or class of individuals, but not based on official position or rank.

(c) Awards for meritorious public service or achievement if pursuant to an established program of recognition (might require an Ethics Counselor written determination).

(d) Social invitations from other than prohibited sources, but based on the employee's official position, if no fee is charged to anyone attending.

(e) Gifts based on a personal relationship (must be clearly motivated by family or other personal relationship).

(f) Gifts based on outside business or employment relationships (for example, gifts that arise from the spouse's business activities).

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(g) Free attendance at widely attended gatherings, typically conferences or seminars, when the supervisor determines it to be in the agency interest for the employee to attend.

(h) Gifts permitted by other statute, such as gifts from foreign governments accepted under the authority of 5 U.S.C. 7342 (retail value in United States may not exceed \$245).

(4) Fourth, if an exception applies, should it be used?

(a) Exceptions do not authorize bribes. If a gift buys influence, it is a bribe.

(b) A gift may never be solicited or coerced.

(c) If the frequency of gifts would lead a reasonable person to believe that the employee is using public office for private gain, they may not be accepted.

b. Disposal of improper gifts. An Ethics Counselor may authorize any one of the following dispositions. (5 C.F.R. 2635.205).

(1) The gift may be converted to a gift to the agency, or to an appropriate morale, welfare and recreation activity.

(2) If perishable, the gift may be consumed in the office where received.

(3) The recipient may keep the gift, and pay the donor its cost.

(4) The gift may be returned to the donor.

c. If the value of gifts from a single source is \$250 or more during a calendar year, they must be reported on public (SF 278) or confidential (SF 450) financial disclosure report.