HOLIDAY SEASON GIFT RULES

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5 U.S.C. §§ 7351, 7353
5 C.F.R. Part 2635, Subparts B, C, & H
E.O. 13490, § 1,¶ 1

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Gifts Between Employees

Basic Rule: A federal employee may **not**–

- Give, or make a donation toward, a gift to an immediate supervisor or to any other official superior;
- Solicit a contribution from another employee for a gift to an official superior of either the requesting employee or the individual who is asked to contribute;
- Accept a gift from subordinates in the employee's chain of command; or
- Accept a gift from a lower-paid, non-subordinate employee, unless there is a personal relationship that justifies the gift.

Exceptions: In connection with annually recurring occasions where gifts are traditionally exchanged–such as Christmas, Hanukkah, Kwanzaa, 'Id al-Fitr, or New Year's–a federal employee may give to, or accept from, any other employee–

- Items other than cash which, considered together, are worth no more than $10 on each occasion;
- Personal hospitality, provided at a residence (which may include common areas or a community center available to residents of an apartment building, a condominium complex or a housing development), of a type and value customarily provided to personal friends;
- Customary reciprocal gifts of appreciation to a host or hostess given in connection with the receipt of personal hospitality, even if the cost of these customary gifts is in excess of $10; or
- Food and refreshments shared in the office, including voluntary contributions of nominal amounts to purchase such items.

Examples: *Your supervisor has invited you and your co-workers to a Hanukkah dinner at the supervisor's house. You would like to show your appreciation by bringing a box of candy, a bouquet of flowers, or a basket of fruit worth about $15. Can you do so? Can the supervisor accept?*

Yes. Candy, flowers, and fruit of such value are examples of permissible gifts given in connection with the receipt of personal hospitality. Gifts in this category may exceed the $10 maximum, provided they are of a type and value customarily given on such occasions.

Employees at the office propose voluntarily to contribute varying amounts up to $10 each to a pool to raise money for a gift to the boss consisting of a $100 decorative candle set to be used during the Kwanzaa celebration. The boss plans to give you and your co-workers gifts appropriate to the season. Which gifts, if any, are permissible?

You and your co-workers may accept gifts from your supervisor. However, you may not contribute $10 to the gift fund for the boss. The $10 exception applies only to non-cash items given directly to the individual. The supervisor may not accept the $100 gift from the office. On recurring occasions such as holidays, employees may only pool their resources through voluntary contributions of nominal amounts to give the boss (and derivatively each other) food and refreshments to be shared at the office.

A few weeks before Christmas, a filing clerk is hired to help the office secretary. The secretary, although paid at a higher salary rate, does not supervise the filing clerk. Several employees are giving individual gifts to the secretary. The filing clerk has not yet developed personal friendships with co-workers and knows little about the likes and dislikes of the secretary. Motivated by the holiday spirit, but stymied by limited gift options, the filing clerk decides to give the secretary a $15 poinsettia. Can the secretary accept the gift?

No. Without demonstrating a personal friendship that would independently justify the gift, the secretary cannot receive a gift from the lesser paid filing clerk that exceeds the $10 maximum.

Gifts From Outside Sources

Basic Rule: A federal employee may **not** solicit or accept gifts given because of the employee's official position, <u>or</u> gifts offered by a "prohibited source," defined as any person or organization that–

- Seeks official action by the employee's agency;
- Does business or seeks to do business with the employee's agency;
- Conducts activities regulated by the employee's agency;
- Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; or
- Is an organization a majority of whose members are described above.

For employees in the Office of the Secretary and the Staff Divisions, "employee's agency" means the Department as a whole; for other employees, the term corresponds to the Operating Division in which they work.

Special Rule: Gifts from registered lobbyists or lobbying organizations to Presidential appointees (PAS, PA), noncareer SES executives, and Schedule C employees are prohibited.

Non-Gifts: Almost anything having monetary value is a gift. Money, gift certificates, services, discounts, meals, "complimentary" tickets to spectator events, a Christmas turkey or fruitcake, and free attendance, entertainment, and food at a party or holiday ball are all examples of gifts. However, a few items are excluded from the definition of "gift;" as a result, these items may be accepted no matter who gives them and even if they are given because of an employee's official position. Exclusions from the definition of "gift" permit acceptance of–

- Soft drinks, coffee, donuts, and other modest items of food and refreshment when offered separately and not as part of a meal;
- Holiday greeting cards and items with little inherent value or utility that are intended solely for presentation (such as plaques, certificates, or modest trophies); and
- Anything for which market value is paid.

Exceptions: Exceptions relevant to the holiday season allow employees to accept–

- Unsolicited gifts with a market value of $20 or less per occasion (but not cash gifts and not gifts that add up to over $50 in value in any year from any single source);
- Gifts clearly given because of a family relationship or longstanding personal friendship;
- Certain gifts resulting from the outside business or employment relationships of employees and their spouses;
- Invitations to a social event extended by persons who are not prohibited sources, provided no one is charged a fee to attend the event; and
- Free attendance provided by the sponsor (or, if more than 100 persons are expected to attend and the gift of free attendance has a market value of $335 or less, provided by a person other than the sponsor) of certain widely attended gatherings for which there has been an advance determination of a valid agency interest in the employee's participation.

Lobbyist Gift Limitations: For PAS, PA, noncareer SES, and Schedule C employees, complimentary widely attended gathering invitations from registered lobbyists or lobbying organizations, other than nonprofit or media organizations, may **not** be accepted. In addition, the $20 exception, the exception for certain gifts resulting from an outside business or employment relationship of the employee, and the exception for social invitations tendered because of official position do **not** apply to lobbyist gifts.

Disposition of Prohibited Gifts: When an employee may not accept a gift, the employee has only the following options–

- Decline the gift;
- Pay the donor market value (the retail cost of an item or service of like quality; and where a ticket or an invitation to an event is involved, the printed face value of the ticket or the amount suggested as a contribution or donation to gain entrance);
- Return tangible items to the donor; or
- Destroy, share within the office, or donate to charity perishable items only, subject to approval of a supervisor or agency ethics official.

An agency may authorize disposition or return of gifts at government expense. Employees may use penalty mail for the limited purpose of forwarding reimbursements to donors.

Examples: *You have a morning meeting with a grantee at the organization's office. On three of your six previous site visits during the year, the financial officer of the grantee took you out to eat for a $10 lunch and two $20 dinners. This morning, the project officer offers you a calendar for the new year (composed of a series of Ansel Adams landscape photographs) which is discretely imprinted with the organization's name and logo. During the meeting, you also are offered hot apple cider and holiday cookies that are set out for all visitors and staff to enjoy. What gifts, if any, can properly be accepted?*

A grantee of federal funds is a prohibited source of gifts for employees who work in the agency component that administers the grant. Nevertheless, the $20 exception would allow receipt of each of the previous meals, because none exceeded $20 and the total equalled $50 from one source for the calendar year. Gifts from different employees of the same organization derive from the same source. Because the financial officer already has given you gifts totaling $50, you cannot accept the Ansel Adams calendar from the project officer. Although some complimentary calendars can be accepted as worthless presentation items or mere advertising, the Ansel Adams calendar, albeit diminished by the proprietary imprinting, retains value as a result of its artistic merit and residual utility. As to the cider and cookies, modest items of food, not offered as part of a meal, are not considered a gift at all, are not counted when tabulating the $50 maximum, and can be freely accepted.

A high school classmate whom you have not seen in years, invites you and your spouse to dinner and offers two tickets to a sold-out performance of the Nutcracker ballet. At the restaurant, you learn that your classmate works for a company which is presently seeking approval on a matter before your agency. Your classmate asks a few general questions about the process. Following the dinner, your classmate charges the meal on the company credit card and remarks that the company had given each employee, as a holiday bonus, two tickets to the ballet and urged them

to invite a family member or friend to enjoy the evening of entertainment. Your classmate noted that, while the admission price on each ticket was $25, the tickets were hard to come by and that several co-workers had sold their tickets for $50 apiece. Can you accept your classmate's hospitality?

No. The circumstances do not clearly show that the gifts were motivated by a personal friendship. Even if you could show that you corresponded frequently or kept in touch with the classmate by phone, the company is still financially responsible for the charged restaurant bill. The fact that the company initially paid for the ballet tickets, however, is not alone determinative. The tickets were given to each employee, without reservation, to be used as each saw fit. Nevertheless, the context in which these tickets are offered indicates they were offered primarily for business purposes rather than personal friendship. You should reimburse your classmate's employer for the cost of your meal and that of your spouse. You may either decline the tickets, or pay your classmate the $25 printed ticket price (despite a "market" value inflated by demand).

Your spouse is employed by a company that submits product approval applications to your agency. You are not involved in any of these matters. Each holiday season the company gives its employees two $50 tickets to a charitable holiday ball, and sends to each employee's home gourmet foods valued at $100. May you partake in the festivities and taste the treats?

Yes. The gifts clearly resulted from your spouse's employment and were not extended or enhanced because of your federal job. Nevertheless, if you feel uncomfortable about accepting any gift that is allowed under an exception, you should remember that you are always free to refuse a gift. Frequently, it may be prudent to do so, and it is never inappropriate.

You work in an office that handles matters directly with the public. A customer sends you a holiday box of oranges worth $40 in appreciation for the helpful manner in which you performed your duties. Do you have to return the oranges to the sender?

No. You may not accept anything of value for performing the government job for which you are already compensated. However, with a supervisor's approval, perishable items may be placed in the office's reception area for co-workers to share, or they may be donated to a charity.

Your office plans to exchange gifts. All workers will participate, including the supervisor and the contractor personnel who work side-by-side with the federal employees. Will a $10 limit on gift value apply for everyone because the supervisor is among the group of potential recipients? If so, and the supervisor decides not to participate, will a $20 limit apply because a gift from a contract worker is from an outside prohibited source?

If gifts are collected and then handed out at random, no monetary limits apply (except common sense) because the purchaser of the gift does not know who will eventually receive the item. Gift exchanges in which employees purchase gifts for other workers whose names they drew in advance at random are more troublesome. Where contractor personnel are involved, a $20 limit eliminates any concerns. Where an employee draws the name of the supervisor, the $10 limit

would normally apply. However, these monetary limits can be eliminated altogether if all the participants agree to exchange items of equivalent value. If all the volunteer participants agreed to a reasonable target (rather than a limit) of $25, for example, then each participant would be paying the same market value for the item contributed as that person would in turn receive, so no one in effect would be receiving a gift.

Parties, Social Events, and Charitable Fundraising

Attendance at Office Parties: Within appropriate limits regarding the use of government property and the use of official time, a federal employee, with the approval of a supervisor, may attend a holiday gathering at the office. The employee may partake of the food and refreshments, even on occasions where no monetary payment or in-kind contribution is expected. However, in any situation where official superiors participate in the festivities without a charge or equivalent contribution, any monetary contributions by subordinate employees to purchase food and refreshments must be voluntary and nominal in amount. In-kind contributions to the party–such as baked goods, beverages, paper plates, and plastic utensils–similarly should be reasonable both in quantity and cost to the contributor. If the party takes place outside the workplace, a supervisor may not receive any benefit derived from the pooling of even nominal contributions from subordinates.

Example: *An office consisting of a supervisor, three program analysts, and a secretary/typist, proposes to hold its holiday gathering at a local restaurant after work. The program analysts have had difficulty in deciding on appropriate holiday gifts for their supervisor and the secretary. Consequently, they agree to share $10 each in the cost of the restaurant meals for the two individuals. Can either the supervisor or the secretary accept the other employees' offer to pick up the tab?*

The supervisor cannot accept a gift of food and refreshments offered outside the workplace that is purchased with pooled contributions. The $10 exception applies only to non-cash gifts given individually to the recipient. Since gifts to lesser paid co-workers are permitted, the secretary may accept the gift from the program analysts.

Attendance at Outside Parties and Events: Invitations from non-governmental sources to parties and social events outside the workplace are gifts of hospitality. If the event occurs during duty hours, attendance must be within appropriate limits regarding the use of official time. Generally, an employee may pay for a ticket to the event. An employee may also bring an equivalent in-kind contribution to a social gathering, such as a "pot luck" dinner. On the other hand, an employee may not accept "free" attendance (or so-called "comp"tickets) if the invitation arises because of the employee's official position, or if the opportunity to attend depends upon the "generosity"of a person or organization that has, or may have, matters before the employee's agency. An employee may accept such an invitation <u>if</u>–

- The face value of any event ticket (or the combined cost of each individual's food and pro rata share of attendant costs of the event such as rental charges for ballroom space) does not exceed $20, and the employee has not received other gifts from the same source in the calendar year which when combined exceed $50;

- The invitation is clearly made because of a family relationship or longstanding personal friendship;

- The gift is due to an outside business or employment relationship of the employee or the employee's spouse;

- The invitation to the social event is extended by persons who are not prohibited sources, and no one is charged a fee to attend the event;

- The offer of free attendance is provided by the sponsor (or, if more than 100 persons are expected to attend and the gift of free attendance has a market value of $335 or less, provided by a person other than the sponsor) of certain widely attended gatherings for which there has been an advance determination of a valid agency interest in the employee's participation;

- The invitation is open to the public or all federal government employees; or

- The invitation is offered to a group or class in which membership is unrelated to federal government employment.

However, invitations to holiday parties extended to political appointees by registered lobbyists or lobbying organizations (except for nonprofit or media organizations) may **not** be accepted even if the event qualifies as a widely attended gathering. In addition, political appointees may **not** accept gifts from lobbyists because the $20 exception, the exception for certain gifts resulting from an outside business or employment relationship of the employee, and the exception for social invitations tendered because of official position do **not** apply.

Examples: *You are well known in your town by virtue of your government position. The leading philanthropist in your locale is bringing together a cross-section of community leaders to discuss pressing social needs to which the benefactor might contribute. You have only recently been introduced to this individual, yet you have been invited to a New Year's Eve party at the philanthropist's mansion. Can you attend?*

Yes. You have been invited because of your official position. Nevertheless, because the philanthropist does not have any business before your agency, and no one is charged an admission fee to the event, you may attend. If you are a political appointee, you have to verify that the philanthropist is not a registered lobbyist.

An industry association, a majority of whose members are companies regulated by your agency, has bought a table at a holiday ball benefitting a charity. The industry association employs an in-house staff of registered lobbyists. You are in a position to affect the financial interests of each company through your work on product approval applications. The association asks the charitable organization sponsoring the event to invite anyone the charity chooses. The event will be held in the same city as your duty station and thus will not require travel. The charity does not receive government funds or have any matters before your agency. However, you and an accompanying guest have been invited by the charity because of your government position. A random assignment of the $300 seats has placed you at the table of the industry association. Although predominately a social occasion with an expected attendance of 400 persons, the holiday ball will provide a rare opportunity for you to meet your counterparts from Europe, Asia, Africa, and Latin America, and briefly to discuss international cooperation on issues of mutual concern. May you and your spouse or other guest attend?

If you are a career employee and your attendance is determined to be in the interest of the agency because it will further agency programs and operations, you may accept, with supervisory approval, a sponsor's unsolicited gift of free attendance at a widely attended gathering of mutual interest to a number of parties. A gathering is widely attended if it is expected that a large number of persons will attend and that persons with a diversity of views or interests will be present, for example, if the event 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. Your spouse or other guest may also attend if the event is one in which spouses or other guests typically accompany the invited individual.

If, however, the sponsor presently has interests that you can affect substantially by doing your job, you may accept only if the agency's interest in your participation is so significant that it outweighs the appearance that you might be influenced in the performance of your duties. The balancing of these considerations must be documented in writing. If someone other than the sponsor both pays for your attendance and either invites you directly, or asks the sponsor to invite you, then the offer did not come from the sponsor, and the exception will not apply unless more than 100 persons are expected to attend and the gift of free attendance has a market value of $335 or less.

In the above example, your supervisor may properly conclude that the requisite criteria have been met to allow you and your spouse or other guest to attend. However, each case will turn on its own facts, and agency ethics officials should be consulted. Usually, with social events, there has to be a particularly strong agency interest. The scenario above presumes that face-to-face contact with foreign counterparts will further agency operations. Although the money to pay for your tickets came from a prohibited source, and your seats are at the industry association table, the charitable sponsor of the event, rather than the industry association, actually selected you and randomly assigned your seats. If the industry association had paid for your tickets and either invited you directly or told the charity to invite you, you could still attend—unless you are a political appointee who cannot accept such gifts from lobbyists—because your individual ticket cost $300 and would be within the $335 limit. Your spouse or guest, however, could not attend

for free because the total market value of the gift of free attendance that was offered to you would be $600 for the two tickets.

Closer scrutiny would be required if the event were, instead, a formal holiday party at a regulated company. (The costs per person for renting the ballroom and providing the food and entertainment exceed $20.) An event attended by an insular group of company employees that lacks a sufficiently numerous and diverse showing of external invitees would not qualify under the "widely attended gathering exception to the gift rules." Moreover, even assuming the basic criteria were satisfied, if the company has significant matters pending before your agency and you are in a position to affect substantially those interests, your supervisor appropriately may deny approval for you to attend. Your supervisor may conclude that the governmental interest in avoiding the appearance of influence outweighs the agency's minimal interest in your donning a tuxedo or evening gown for the gala event.

A university hospital is having a holiday open house where they will offer a smorgasbord of healthy food, drinks, free pedometers, and free health screening for diabetes and high blood pressure. The event is open to the public and has been advertised in the newspaper. The hospital conducts clinical research funded by HHS. You would like to attend the open house and bring the rest of your family to take advantage of this opportunity.

You and your family may attend the open house and enjoy the freebies being offered by the hospital. Attendance at this event would not be considered a gift because it is an opportunity that is available to all members of the public.

A small health care company with offices headquartered near your home has invited you and all the other homeowners within a one mile radius of the company to a neighborhood holiday reception. The per person cost of this reception is $25. May you accept this invitation?

Yes, you may attend the reception. Even though the invitation is from a prohibited source and the cost of the event is five dollars above the $20 threshold, you may attend because the invitation was offered to a group where your membership in the group is because of the location of your home and not related in any way to your status as a federal employee.

Charitable Fundraising: The solicitation of funds at the federal workplace for a charity (as opposed to the collection of tangible items such as canned goods or "Toys for Tots") is strictly limited to those fundraising efforts that have received prior approval by the Office of Personnel Management, such as the Combined Federal Campaign (CFC).

CFC fundraising events, such as raffles, lotteries, auctions, bake sales, carnivals, athletic events, or other similar activities are permitted during the campaign period if approved by the appropriate agency head or government official, consistent with agency ethics regulations. CFC special fundraising events must be open to all individuals without regard to whether an individual participates in the CFC. Chances to win must be disassociated from the amount of contributions, if any. Prizes should be modest in nature and value. Rewards and prizes given to competitors or

participants in such contests or events, including random drawings, open to the public may be accepted under the gift rules.

During the holiday season and throughout the year, a federal employee engaged in fundraising in a personal capacity outside the workplace is subject to specific rules prohibiting–

- Use of official title, position, or authority to further a fundraising effort; and
- Solicitation from subordinates and persons whose interests may be affected by actions of the employee's agency.

Mere attendance at a charitable event does not constitute active and visible participation in fundraising, provided that, to the employee's knowledge, the employee's attendance is not used by the non-profit organization to promote the event. Consult 5 C.F.R. § 2635.808 or an agency ethics official for a detailed explanation of this subject.

Please remember that this guidance highlights many of the common questions that arise during the holiday season but does not cover every possible situation. If you are unsure about the rules that apply to a particular situation, be sure to contact your ethics official for further advice.