

DHA OGC ETHICS BRANCH INFORMATION PAPER ETHICS ISSUES - SPEAKING IN OFFICIAL CAPACITY

Purpose: Discuss important rules you should know to avoid ethical violations while speaking or engaging in events in your official capacity.

Overview: You are representing DHA when you speak in your official capacity. You must seek approval in advance by completing and submitting the [Speaker Request Form](#). Once approved, it is important for you to follow the ethics rules.

Reference to Official Position/Matters: You may use your official DHA title if you are approved to speak on behalf of DHA. This means that you may be introduced or listed on the agenda with your DHA title. However, there are some misuse of position issues that may arise when speaking:

- As a federal employee, you may not use your public office for your own private gain. 5 CFR § 2635.702. For example, you may not promote your personal interests when you are speaking on behalf of DHA.
- You may not use your government title or position to endorse a non-Federal entity (NFE). 5 CFR § 2635.702(b). For example, your name or picture should not be used as the main tool to promote the event.
- You may not divulge non-public information, including specific pending matters, such as cases and investigations. 5 CFR § 2635.703.

Giving Preferential Treatment/Favoritism: Federal employees should avoid the appearance of favoritism toward NFEs. Therefore, you (and other employees in your office) should be willing to accept invitations from other NFEs to speak about similar topics, regardless of audience size or whether attendees must pay to participate, to avoid the appearance of partiality.

Conflicts/Impartiality: If there is the potential for a conflict of interest or impartiality concern with the NFE(s) sponsoring the event, those concerns should be discussed with OGC before engaging. For example, it would be a conflict of interest for you to speak in your official capacity at an event sponsored by a professional organization when you also serve as a board member or officer with the professional organization in your personal capacity. 18 U.S.C. § 208; 5 CFR § 2635.502.

Compensation: You may not be paid by someone other than the United States for performing your official Government duties. 18 U.S.C. § 209. Therefore, you may not accept payment from any source for speaking in your official capacity.

Gifts: In general, DHA personnel should actively dissuade NFEs hosting events from giving a gift for speaking as it is part of the employee's official duties. However, it frequently happens at the conclusion of a presentation in the form of recognition coins or other modest items. If the fair market value cost of the gift is less than \$20, the employee may generally accept the gift in accordance with 5 CFR § 2635.204(a) (i.e., an employee may accept an unsolicited gift with a market value of \$20 or less per source, per occasion, so long as the total value of all gifts

received from a single source during a calendar year does not exceed \$50). If the gift is more than \$20 or if there are any questions regarding the item, the employee should contact OGC. The following gift rules also apply:

- An employee may accept items that have little intrinsic value intended solely for presentation, such as cards, plaques, certificates, and trophies. 5 CFR § 2635.203(b)(2).
- An employee may also accept a meal that is solely offered to participating presenters if the meal is hosted by the event sponsor and takes place on the date that the employee is giving their presentation. 5 CFR §§ 2635.203(b)(8); 2635.203(g).
- Free attendance offers to post-conference events from a prohibited source or given because of the employee's position may be considered a gift. There are a few exceptions to the prohibition on acceptance of such gifts, but an employee should seek advice if they are not sure. 5 CFR §§ 2635.204(a)(20/50 rule); 2635.204(g)(Widely Attended Gatherings must be approved in advance). Note: it is not considered a gift if an employee pays for attendance to such an event.
- If an employee is not sure about whether a gift may be accepted, the Standards of Conduct provide safe harbor for Federal employees who accept a gift, promptly seek ethics advice from an ethics official, and follow the advice of the ethics official. 5 CFR § 2635.107(b).

Engaging with Industry: When industry presence is expected at an event, it is important to note some of the key rules for industry engagements by DoD officials:

- Do not release non-public information, including any sensitive procurement information.
- Treat all industry representatives impartially and avoid any overt or implied favoritism, endorsement, or preferential treatment.
- Do not discuss any ongoing acquisitions/litigation with industry representatives.
- Do not make promises or suggest a defense contractor will receive future business -- remain in "receive mode."
- Do not solicit nor accept a gift from an agency contractor or a gift that is given because of the employee's official position.
- After a significant engagement with a member of industry, document the encounter with a memorandum for record or other appropriate writing.

Fundraisers: DHA must determine that any fundraising event at which an official speech is to be given provides an appropriate forum for the dissemination of the information to be presented, and employees may not request donations or other support for the organization. 5 CFR § 2635.808(a)(3). There are certain limitations to how employees may participate in fundraising events in their official capacity. 5 CFR § 2635.808. If you have been invited to speak at a fundraising event in your official capacity, you should contact an ethics official for specific advice.

You can find more information on [the Ethics Resources page](#) in the Topics and FAQs/[Teaching, Speaking Writing section](#) or email a question to: DHA-OGCEthicsOffice@health.mil.