

## DHA OGC ETHICS INFORMATION PAPER GIFTS FROM OUTSIDE SOURCES

**Purpose:** Provide a brief overview of the ethics rules on gifts from outside sources given to DHA employees. This information paper does not cover gifts given to the Agency.

**Overview:** The gift rules are complex, with exclusions to the definition of a gift and exceptions that may allow acceptance of an otherwise impermissible gift. What should an employee do if a contractor or contractor employee offers tickets to a baseball game? Or if a military association invites an employee to a dinner or offers to pay for attendance at an event? This highlights the most common issues with gifts given to employees from outside sources. We recommend speaking with an ethics official *before* accepting a gift from an outside source. Remember, you must seek advice and approval if the gift is given to DHA.

**General Rule:** A gift is anything that has monetary value. 5 CFR § 2635.203(b). Federal personnel may not accept gifts offered because of their official positions or offered by a “prohibited source.” 5 CFR § 2635.202. A prohibited source is anyone who:

- 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 of the employee’s official duty; or
- Is an organization composed of members described above.

5 CFR § 2635.203(d).

Before determining if a gift may be accepted under the regulations, DHA personnel should evaluate whether the gift *should* be accepted. It is never inappropriate to decline a gift, even if acceptance is permitted under one of the gift exceptions.

Remember, DoD/DHA contractors and contractor employees are prohibited sources!

### What is excluded from the definition of a gift?

The most common items that are excluded from the definition are:

- Modest items of food and non-alcoholic refreshments (e.g., soft drinks, coffee, donuts) that are not part of a meal.

*Example 1. Pastries, coffee, and orange juice on a table as you enter a conference are not considered gifts.*

*Example 2. A lunch buffet that includes sandwiches, pasta, and drinks is a meal and considered a gift.*

- Greeting cards and items with little intrinsic value (e.g., plaques, certificates, trophies) which are intended primarily for presentation.

*Example 1. At the end of a presentation, the conference host presents a picture frame with an inscription and the date of the conference to the speaker as a thank-you gift. This is not considered a gift because it has little intrinsic value.*

*Example 2. At the end of a presentation the conference host presents a gift card valued at \$50 to the speaker. This is considered a gift and may not be accepted unless another exception applies.*

- Opportunities and benefits (e.g., favorable rates, commercial discounts, free attendance or participation) available to the public or to a class consisting of all Government employees or all uniformed military personnel.

*Example 1. On Veterans Day a local restaurant offers a free meal to all military veterans. This is not considered a gift because it is available to all military personnel.*

*Example 2. A conference sponsor offers free attendance to the conference for all Government pharmaceutical personnel. This is considered a gift because the benefit is only offered to a small group of Government personnel.*

- Rewards and prizes given to competitors in contests or events, including random drawings, open to the public *unless* the employee's entry into the contest or event is required as part of the employee's official duties. Note: This is different than awards.

*Example 1. A DoD contractor offers all uniformed personnel an opportunity to submit their name for chance to attend the Super Bowl. If the drawing is truly random and open to all uniformed personnel, a DHA service member may accept the prize.*

*Example 2. A DHA contractor offers attendees at a conference an opportunity to submit their business card in hopes of winning a trip to Hawaii. The employee may not accept the reward if the employee is at the conference on official time.*

- Free attendance at an event provided by the sponsor of the event to an employee who is assigned to present information on behalf of the agency at the event on the day when the employee is presenting.

*Example 1. A medical association offers a DHA employee a waiver of the \$3,000 registration fee that includes lunch because the DHA employee is a speaker. The employee may accept this, provided the employee's supervisor directed the employee to speak in an official capacity.*

*Example 2. An employee is offered free registration to a medical conference by a professional association sponsoring the conference. The employee is only attending to gain CME credit and is not presenting. The employee may not*

*accept this, unless another exception applies. The employee may also consider whether a gift of travel to the agency would be appropriate.*

- Anything for which fair market value is paid by the employee.  
5 CFR § 2635.203(b).

### **What are the exceptions to the prohibition for accepting certain gifts?**

The most common gift exceptions<sup>1</sup> are:

- Gifts of \$20 or less: An employee may accept unsolicited gifts of \$20 or less per source per occasion, as long as the employee has not received more than \$50 of gifts from the same source during the calendar year. 5 CFR § 2635.204(a).

*Example 1. An employee attending a medical conference receives a ‘goodie bag’ valued at \$19 put together by a pharmaceutical company. The employee may accept the bag.*

*Example 2. The same employee later accepts a lunch valued at \$18 and an evening access to entertainment valued at \$20 from the same company. The employee may accept either the entertainment access or the lunch, but not both, as the total value exceeds \$50 in one year from a single vendor.*

- Gifts based on a personal relationship: An employee may accept a gift when it is clear the gift was given because of a family relationship or personal friendship rather than the position of the employee. 5 CFR § 2635.204(b).

*Example 1. Your best friend from college works for a health company that does business with DHA. She invites you to an NFL game. You may accept unless the tickets were paid for by the company and the friend is treating it as a business expenditure.*

*Example 2. A professional colleague, who works for a DHA contractor, that you routinely meet with offers to cover the employee’s dinner tab of \$100. This is unlikely to be permissible, unless the employee can show a substantial personal relationship with this colleague outside of the workplace.*

- Gifts of free attendance at widely attended gatherings: An employee may accept an unsolicited gift of free attendance to a “widely attended gathering” when an ethics official determines certain criteria are met and the employee’s manager approves. A gathering is “widely attended” if:
  - (1) many people are expected to attend;
  - (2) people with a diversity of views will be present; and

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<sup>1</sup> There are additional exceptions, including (1) discounts or similar benefits; (2) awards and honorary degrees; (3) gifts based on an outside business or employment relationship; and (4) social invitations. Please speak with an ethics official if you think you are offered a gift that falls into one of these categories.

(3) there will be an opportunity to exchange ideas and views among attendees.

Note: WAGs must be attended on the employee's own time (i.e., the employee must take leave if the event is during work hours and must attend in their personal capacity). 5 CFR § 2635.204(g).

*Example 1. An employee attending a medical conference is invited to an all-expenses paid river boat cruise put on by the host of the conference. The cruise is separate from the conference that was covered by the registration fee. The employee may not attend unless an ethics official has determined that the event is "widely attended." Alternatively, the employee may pay for the cruise themselves.*

*Example 2. A DHA contractor invites a group of DHA employees who are attending a conference to attend a Major League Baseball game. The employee may not accept this gift as a WAG because there is generally no opportunity to engage with a diverse group when seated at a game.*

- Gifts of informational materials: An employee may accept unsolicited gifts of informational materials provided that the employee has not received over \$100 in informational materials from the source in the calendar year. If the employee has received more than \$100 in informational materials from the source in a calendar year, an ethics official must provide a written opinion. Informational materials are writings, documents, or other items that are:
  - (1) educational or instructional in nature;
  - (2) are not primarily created for entertainment, display, or decoration;
  - (3) contain information related to the employee's official duties, position, profession, or field of study; or
  - (4) contain information of interest to the DHA. 5 CFR § 2635.204(m).

*Example 1. At a conference, a company gives a DHA employee a pharmaceutical manual. The employee may keep the manual if the manual is under \$100.*

*Example 2. An employee receives a subscription that is valued at \$800 for magazine on medical trends from a DHA manufacture. The employee may not accept this because the professional materials exceed \$100 in value.*

Remember, employees should consider declining otherwise permissible gifts if they believe that a reasonable person with knowledge of the relevant facts would question the employee's integrity or impartiality as a result of accepting the gift. 5 CFR 2635.201(b)(1).

If employees need further clarification or have additional questions, they may contact their local ethics official or DHA HQ Ethics Branch ([DHA-OGCEthicsOffice@health.mil](mailto:DHA-OGCEthicsOffice@health.mil)) for more information.