

Information Paper

SUBJECT: Disposition of Improper Gifts From Outside Sources

1. Purpose. To explain the disposition options available to a recipient of an improper gift from an outside source.

2. Background. Servicemembers are routinely receiving gifts that are either from a prohibited source or the gift was given to them because of their official position. Whether a Servicemember may keep such a gift and how to dispose of an improper gift are governed by several ethical rules. The recipient of an improper gift will always have the ability to either return the gift or pay the donor the market value of the gift. In limited circumstances the improper gift may also be converted to a gift to the Army and accepted for use by the Army.

3. Discussion.

a. The general rule is that a Servicemember shall not solicit or accept a gift from a prohibited source, or accept a gift given because of the employee's official position. (5 C.F.R. § 2635.202) A gift is defined as any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item of monetary value. (5 C.F.R. § 2635.203) There are certain items excluded from this definition, such as, modest items of food (coffee and donuts, soft drinks), items of little intrinsic value (trophies, plaques, certificates), and discounts available to all members of military.

(1) A prohibited source is any person who is seeking official action from the Army, does or seeks to do business with the Army, conducts activities regulated by the Army, or has interests that may be substantially affected by the performance or nonperformance of the Servicemember's official duties. (5 C.F.R. § 2635.203(d)) Any organization that has a majority of their members meeting the same categories is also a prohibited source. (5 C.F.R. § 2635.203(d)). An example of a prohibited source would be any contractors who have contracts with the Army.

(2) A gift given because of a Servicemember's official position is a gift that would not have been offered or given if the Servicemember did not hold the status, authority, or duties associated with his official position. (5 C.F.R. § 2635.203(e)) An example of a gift given because of an official position would be when the Commanding General of an installation meets with local business leaders and is given a gift during the meeting.

b. There are several exceptions to the general rule prohibiting the acceptance of a gift from a prohibited source or because of the Servicemember's official position. (5 C.F.R. § 2635.204) Before accepting a gift using one of the exceptions, a Servicemember must also consider whether the acceptance of the gift would create an appearance of an ethical violation. (5 C.F.R. § 2635.101(b)). The most common exception is commonly known as the 20/50 rule.

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A Servicemember can accept unsolicited gifts that have an aggregate market value of \$20.00 or less from one donor at one occasion and up to \$50.00 worth of gifts from the same donor in one calendar year. (5 C.F.R. § 2635.204(a)) For example, a contractor may give one of his Servicemember coworkers an \$18.00 dollar coffee mug and the Servicemember can accept the gift. However, if the contractor gives the Servicemember a \$22.00 coffee mug, the Servicemember must either refuse the gift or pay the market value of \$22.00 to keep the gift.

c. The general rule for a Servicemember who receives a gift that cannot be accepted under the exceptions is to either pay the market value of the gift or return the gift to the donor. (5 C.F.R. § 2635.205(a)(1)) There are two exceptions to this general rule.

(1) The first exception is when it is impractical to return the gift because it is a perishable item. (5 C.F.R. § 2635.205(a)(2)) Perishable items can be donated to an appropriate charity, shared within the office, or destroyed.

(2) The second exception is when the gift can be accepted on behalf of the Army under specific statutory authority. (5 C.F.R. § 2635.205(a)) The first step in converting the gift would be to contact the donor and inform them of the issue. The donor originally intended to give the gift to the Servicemember and to convert the gift to a gift to the Army without notifying the donor would result in the Servicemember giving the gift and not the donor. The donor would have to be informed that they have the option of taking the gift back or allowing the Army to accept the gift. The Army has very limited authority in receiving gifts from donors. The applicable Army Regulations (AR) are AR 1-100, Gifts and Donations, AR 1-101, Gifts for Distribution to Individuals, and AR 215-1, Military Morale, Welfare, and Recreation Programs and Non-Appropriated Fund Instrumentalities. These regulations provide specific guidance on the processing and acceptance of gifts to the Army.

4. The ethics advisor to the command needs to be proactive in ensuring that members of the command understand the gift rules and understand the ethics advisor's role in reviewing any gift issues.