

Information Paper

OSJA
8 February 2011

SUBJECT: Gifts to Wounded Warriors and Their Families

1. Purpose. To provide a summary of general gift rules for federal employees and Servicemembers from outside sources and the special exception for “Wounded Warriors and Their Families.”
2. References.
 - a. Joint Ethics Regulation, DOD 5500.7, (29 November 2007)
 - b. National Defense Authorization Act of 2006, 119 Stat. 3136, Public Law 109-163, (6 January 2006)
 - c. 5 C.F.R. Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch (Office of Government Ethics Rules).
 - d. DOD SOCO Gifts to Service Members and Their Families from Non-Federal Sources, August 28, 2008.
3. Background. The general rules applicable to federal employees receiving gifts from outside sources is fairly settled, however, the exception involving gifts to Wounded Warriors and Their Families came about more recently in 2006. A grasp of this exception will prevent ethics counselors from looking foolish, or worse, having to respond to a congressional complaints against them.
4. Discussion.
 - a. **General Gift Rules:** There are three main general ethical principles applicable to gifts: 1) Public service is a public trust – 5 C.F.R. §2635.101(b)(1); 2) Employees shall not solicit or accept a gift (either directly or indirectly), or other item of monetary value from any person or entity seeking action from, doing business with, or conducting activities regulated by the employee’s agency, or whose interests may be substantially affected by the performance or nonperformance of the employee’s duties, (i.e. a “prohibited source”) – 5 C.F.R. §2635.101(b)(4); and, 3) Employees shall not use public office for private gain – 5 C.F.R. §2635.101(b)(7).
 - b. **Acceptance of Gifts by Injured or Ill Service Member and Their Families:** Section 8127 of P.L. 109-148, the FY 2006 Defense Appropriations Act provides that “covered employees and their families” may accept in their personal capacities gifts from non-federal entities. Covered employees are defined as those that are active duty members of the Armed Forces, for the purposes of title 10 authority (including enlisted members of the Reserve and all National Guard Servicemembers), who, while on active duty on or after September 11, 2001 incurred an illness or injury as described in 10 U.S.C. §1413a(e)(2) – as a direct result of armed conflict; while engaged in hazardous service; in the performance of duty under conditions

simulating war; or through an instrumentality of war; or in an operation or area designated by the Secretary of Defense as a combat operation or combat zone, "Family Members" is defined in Section 3-402 of the JER as "parents, siblings, spouse, children, and dependent relatives."

This exception to the regular gift rules does not apply to gifts from foreign governments, or gifts that are accepted in return for being influenced in the performance of an official act, solicited or coerced, or are accepted in violation of any other statute.

This exception is retroactive to September 11, 2001 and requires a written ethics opinion when the gift is valued at over \$335.00 in a single occasion or \$1,000.00 per year. While an opinion is required, there is ultimately no "official limit" on the cost of the gifts. As you can easily note, this is a significant departure to the "20/50 Rule" that relates to the rest of the federal employee population.

c. Gift Analysis in the Military:

1. For Ethics Counselors, there are several preliminary considerations that should be considered with regards to gifts to military personnel (wounded or not). First, is the item or service being offered a "gift," and if so, is it conditional or unconditional? Conditional gifts are generally prohibited as they require an act or omission by a servicemember to receive the proffered gift. Next, why did they receive the gift? Was it based upon purely humanitarian reasons or was it given to advertise a product or service or as an attempt to curry favor within the military procurement system? Next, does an exclusion or exception apply? Finally, is there an appearance problem?

2. Questions the recipients of gifts should ask are similar to those considered by the Ethics Counselor. Recipients should ask whether the item is a "gift" and identify who it is from. They should ask themselves why they are receiving the gift, does it relate at all to the employees official position? Finally, what is the (fair market) cost of the item or service? From a "best practice" perspective, gifts of any amount should be raised to the attention of the ethics counselors for advice.

3. The fair market value of the item or service is a key to legal reviews. When a gift exceeds \$20.00 per occasion or \$50.00 per year from a prohibited source for a military member (who is not wounded), a written legal review by an ethics counselor is required. A written legal review is also required for wounded warriors when the gift exceeds \$335.00 per occasion from a prohibited source or \$1000.00 per year. It is very important to note that there is no defined limitation as to the ultimate value of the gift or service offered with regards to wounded warriors and their families. When written legal opinions are required pursuant to these thresholds, the ethics counselor must include three specific findings in their opinions:

a. First, the gift or service must not be offered in a manner that specifically discriminates among covered DOD employees merely on the basis of the official responsibility or by favoring those of higher rank or rate of pay;

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b. Secondly, the donor cannot have interests that may be effected substantially by the performance or nonperformance of the covered DOD employee's official duties; and,

c. Finally, acceptance of the gift cannot cause a reasonable person with knowledge of the relevant facts to question the integrity of DOD's programs or operations.