

RETIREMENT / PCS GIFTS BY DOD EMPLOYEES TO A SUPERIOR

Note: Since the rules for retirement gifts are the same as for gifts for other occasions that terminate the superior-subordinate relationship (e.g., PCS), the guidance below applies to both types of gifts.

1. Gifts to the retiring employee from a group of government employees that includes subordinates. If the gift is from a group of government employees that includes a subordinate (which will be referred to in this paper as a “donating group”), the following rules apply.

a. \$300 limit. A retirement gift from a group that includes a subordinate may not have a market value of more than \$300. [DoD 5500.7-R, Joint Ethics Regulation (JER), para. 2-203a] However, the cost of food, refreshments and entertainment provided to the retiring employee and his or her personal guests to mark the occasion for which the gift is given shall not be included in determining whether the value of a gift or gifts exceeds the \$300 limit. [JER para. 2-203a(1)]

b. Donating groups. There is no limit on the number of donating groups that may give a retirement gift to a retiring employee. However, the number should be based on common sense and reasonableness. For example, if the retirement gift is for an installation commander and there are several organizations or units located on the installation, it would be appropriate for each of those organizations and units to be a donating group (if they want to be). Also, donating groups may not “pool” their money to buy a gift over the \$300 limit. For example, it is not permissible for two donating groups each with \$250 to combine their money and buy a \$500 gift.

c. Contributing to the gifts of more than one donating group. If an employee makes a contribution to the retirement gift of two donating groups, the two donating groups will then be considered to be one donating group, and the total market value of both retirement gifts will have to be \$300 or less. [JER para. 2-203a(2)] For example, let’s assume that all of the First Sergeants on base will be a donating group, and that the Engineers will also be a donating group. And let’s assume that the First Sergeant at the Engineers wants to contribute to both the First Sergeants’ gift and the Engineers gift. If he contributes to both gifts, then the group of First Sergeants and the Engineers will be considered to be one large donating group (and the two group gifts would have to total to \$300 or less). However, if he does not contribute to both gifts, then the two donating groups will remain separate, and each group will be permitted to give a gift up to \$300 in market value. This combining of separate donating groups into one donating group can be avoided if everyone contributes to only one group gift.

d. Soliciting contributions for a group gift. Here are nine rules on this subject.

(1) Government employees may solicit other government employees for a contribution for a retirement gift. [5 CFR 2635.304(c)]

(2) The solicitation may include a suggested dollar amount. [5 CFR 2635.304(c)(Ex 5)]

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(3) If the solicitation includes a suggested dollar amount, the solicitation must include the following language (or words to this effect): “You are free to give less or nothing at all.” [5 CFR 2635.303(f); 5 CFR 2635.304(c)(Example 5)]

(4) If the solicitation includes a suggested amount, the suggested amount may not be more than \$10. [JER para. 2-203b] However, “[a] voluntary contribution of a nominal amount for food, refreshments and entertainment for the superior, the personal guests of the superior and other attendees at an event to mark the occasion for which a group gift is given may be solicited as a separate, voluntary contribution not subject to the \$10 limit.” [JER para. 2-203b] For example, it is permissible to solicit \$10 for the retirement gift and an additional \$5 to help pay for the cost of the retirement dinner for the retiring employee and his or her personal guests.

(5) The solicitation should state that contributions must be purely voluntary. The solicitation should not tell people what their “expected” contribution should be. It should not contain any language that implies that a contribution is required, expected, or is “the right thing” to do. Also, senior personnel may not pressure subordinates or junior personnel to make contributions.

(6) To avoid collecting more than \$300 (or whatever the target amount is), a donating group may adopt a policy of simply returning any contributions made, or declining any contributions offered, once the target amount has been collected.

(7) A donating group may be comprised of smaller organizations. If so, the donating group may wish to limit the amount that each of the smaller organizations collects. For example, if the donating group is a headquarters that has 15 offices within it, and the goal is to collect \$300, one approach would be to ask each office to limit their collection to \$20.

(8) Government employees may not solicit contributions from “prohibited sources” (including DoD contractors or their employees). [5 CFR 2635.202(a)(1); 5 CFR 2635.203(d)(2)]

(9) A government employee may contribute more than the suggested dollar amount for a retirement gift. For example, if the contemplated gift costs \$100, and the solicitation yields only \$75, an employee may volunteer to contribute the remaining \$25.

e. Gift of a plaque. Under the Executive Branch ethics regulation, a plaque that has little intrinsic value is not considered to be a “gift.” [5 CFR 2635.203(b)(2)] As a result, there are no restrictions on giving a plaque that has little intrinsic value as a retirement gift. Also, the cost of a plaque that has little intrinsic value is not included when determining if the gift (or gifts) from a donating group has a market value of \$300 or less. [JER para. 2-203a(1)]

f. Contributing to a group gift and giving an individual gift. A government employee may contribute to a group retirement gift and may also give an individual retirement gift, so long as

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the giving of both of these gifts is “appropriate to the occasion” (i.e., the total amount spent is reasonable under the circumstances).

2. Gifts to the retiring employee from an individual subordinate. There is no dollar limit for this type of gift. However, the gift must be appropriate to the occasion. [5 CFR 2635.302(b)]

3. Gifts to the retiring employee from outside the government. Gifts from outside the government would include gifts from government contractors, non-contractor businesses, educational institutions, professional associations, and other community organizations. These gifts are governed by the \$20/\$50 rule. Under this rule, an employee may accept gifts of up to \$20 in market value per occasion, so long as the total value of gifts received (under the \$20/\$50 rule) from one source (e.g., one company or organization) does not exceed \$50 in a calendar year. [5 CFR 2635.204(a)] A gift of cash may not be accepted under the \$20/\$50 rule.

Thus, a retiring employee may accept a retirement gift of up to \$20 in market value from a source outside the government (so long as accepting the gift will not result in the retiring employee receiving more than \$50 in gifts from that source under the \$20/\$50 rule in the same calendar year). In short, if the retiring employee has not accepted any gifts from an off-post organization during the current calendar year under the authority of the \$20/\$50 rule, then the retiring employee may accept a retirement gift from that organization up to a market value of \$20.

4. Gifts to the retiring employee’s spouse. The Executive Branch ethics regulation states that if a gift is given to a government employee’s spouse simply because he or she is the spouse of the government employee, then the gift is considered to be a gift to the government employee. [5 CFR 2635.203(f)(1)] Thus, if a gift is offered to the spouse of the retiring employee simply because he or she is the spouse of the retiring employee, then the gift is considered to be a gift to the retiring employee, and it may be accepted only in accordance with the rules discussed in this paper.

On the other hand, if a gift is offered to the spouse of the retiring employee, and there is an independent basis for the gift, i.e., the spouse has some type of relationship with the person or organization offering the gift (such as a friendship, or a business or professional relationship), then the gift is not considered to be a gift to the retiring employee, and the spouse may accept the gift. In short, there are no restrictions on gifts to the spouse of the retiring employee, if there is some basis for the gift other than the fact that the spouse is married to the retiring employee. Here are three examples.

a. If an off-post organization wants to give a gift to the retiring employee’s spouse, and the spouse does not have a relationship with the organization that would be the basis for the gift, then the gift is considered to be a gift to the retiring employee. This means that the \$20/\$50 rule would apply, i.e., the gift may be accepted only if it has a market value of \$20 or less and accepting it would not result in the retiring employee accepting more than \$50 in gifts under the

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\$20/\$50 rule in the same calendar year from that off-base organization. If the organization wants to give a gift to the retiring employee and a gift to the retiring employee's spouse on the same occasion, then, under the \$20/\$50 rule, the total dollar limit for both gifts would be \$20 (\$10 for each gift, for example).

b. If a group of spouses of government employees wants to give a gift to the retiring employee's spouse, and the government employee spouses have a personal relationship with the retiring employee's spouse, the gift is not considered to be a gift to the retiring employee, and the retiring employee's spouse may accept the gift. The ethics rules do not apply to this gift. This example assumes that the retiring employee's spouse is not also a government employee.

c. If a MACOM commander will retire, and there are individuals at the MACOM's field organizations who want to give a gift to the MACOM commander's spouse, and there is no independent basis for the gift (i.e., the reason for the gift to the MACOM commander's spouse is because she is the MACOM commander's spouse), then the gift would be considered a gift to the MACOM commander, and it would be limited by the rules discussed in this information paper.

5. Retirement gifts that come in sets. As noted above, donating groups may not pool their funds and buy a single gift that has a market value over \$300. The ban on splitting up a set of items into individual gifts applies to any group of items that are normally sold as a set (such as golf clubs or china). In short, a group of items that are normally sold as a set may not be split into individual gifts in order to avoid the \$300 limitation.

6. Gift certificates. A gift certificate can be an appropriate retirement gift, as long as it is not redeemable for cash. [5 CFR 2635.304(c)]

7. Reporting retirement gifts on the Public Financial Disclosure Report (OGE Form 278). General/Flag Officers, Senior Executive Service (SES) employees and SES-equivalent employees are required to file the OGE Form 278 within 30 days after their retirement. [5 CFR 2634.201(e)(1); JER 7-203(d)] This is called the termination report. Filers are required to report gifts received during the calendar year up to their date of retirement. If, during the reporting period, the employee receives a gift or gifts from one source that have an aggregate market value of more than \$350, the employee must report the gift or gifts on the OGE Form 278. When adding the value of the gifts from a single source to determine if they have a market value of more than \$350, one does not consider any gift that has a market value of \$140 or less. [5 CFR 2634.304, as updated by the Office of Government Ethics notice in the 1 Jul 11 Federal Register] If a gift meets the dollar threshold for reporting, it must be reported on the OGE Form 278. For example, if an individual subordinate gives a retirement gift with a value of more than \$350, the gift must be reported. On the other hand, if a subordinate or a group of subordinates gives a retirement gift with a value of \$350 or less, it does not have to be reported.

8. Use of government funds to pay for gifts. There is a general prohibition on using appropriated funds for gifts for individuals.

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9. Charities. 5 CFR 2635.203(f) states, "A gift which is solicited or accepted indirectly includes a gift: (2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee, except as permitted for the disposition of perishable items by § 2635.205(a)(2)." 5 CFR §2635.303(a) provides that the definition of "gift" used in 5 CFR §2635.203(f) will be used for gifts from subordinates. We believe this definition captures the situation so the charitable donations made at the behest of the retiring/PCSing soldier will be considered a gift. Although the other two regulations listed above do not directly discuss giving to charities in lieu of a normal gift, the basic rules still apply. Each group or directorate may spend up to \$300. If any of the directorate pools of money share a member, the amount of money from both directorates combined may not exceed \$300. It is not permissible for directorates to combine their money to make the donation, so a \$500 donation from two directorates is impermissible but a \$250 donation from each of the directorates is authorized.