

# **GIFT ISSUES DURING COVID-19 PANDEMIC**

## **SECTION I: CROWDSOURCED FUNDRAISING**

Employees may be experiencing a range of hardships due to the COVID-19 pandemic and may want to seek financial assistance from crowdsourced fundraising platforms such as GoFundMe. However, crowdsourced or web-based fundraising poses several ethical challenges, especially if the solicitation reaches the general public or the federal employee receives donations from a prohibited source (from which an employee generally may not accept a gift).<sup>1</sup> A prohibited source is any person that seeks action from the employee's agency, does or seeks to do business with the agency, conducts activities regulated by the agency, has interests that can be affected by the performance or non-performance of the employee's official duties, or is an organization the majority of whose members are in any of those classes. Other problematic donors include subordinates or other DoD employees who make less pay than the person receiving the crowdsourced fundraising. Employees must be able to identify the source of any donations received, so that they do not accept impermissible gifts from prohibited donors such as individual subordinates or contractors. Therefore, anonymity of donors does not mitigate or resolve concerns about violation of the ethics rules. Given the potential ethical pitfalls, we encourage employees to consult with their local ethics office before any such campaign begins.

## **SECTION II: GIFTS BETWEEN EMPLOYEES**

**GENERAL RULE:** 5 CFR part 2635, Subpart C covers Gifts Between Employees and prohibits DoD employees both from giving, donating to, or soliciting contributions for a gift to a superior AND from accepting a gift from an employee receiving less pay UNLESS an exception applies, or if the employees are not in a subordinate-official superior relationship and there is a personal relationship that justifies the gift. Even if an exception applies, there must be no coercion in the offering of a gift from a subordinate.

An "official superior" is defined as any other employee, other than the President and Vice President, including but not limited to an immediate supervisor, whose official responsibilities, include directing or evaluating the performance of the employee's official duties or those of any other official superior of the employee (5 C.F.R. § 2635.303(d)).

**EXCEPTION FOR SPECIAL, INFREQUENT OCCASIONS:** A "special, infrequent occasion," includes recognition of an event of personal significance, such as marriage, illness, or birth/adoption of a child (NOT an event occurring annually, such as Christmas), and circumstances that terminate the senior/subordinate relationship, such as retirement or departure from the organization, but does not include promotions or reassignments that do not terminate the subordinate-official relationship. For special, infrequent occasions, an employee may give an

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<sup>1</sup> For a detailed analysis, see SOCO Advisory, 19-03, dated 12 Jul 19.

individual gift that is “appropriate to the occasion” to a superior; accept appropriate individual gifts from subordinates and group gifts that do not exceed \$300; or solicit voluntary contributions up to \$10 per person for a group gift.<sup>2</sup>

GIFTS TO AND FROM EMPLOYEES’ SPOUSES are considered gifts between employees subject to the same restrictions and exceptions contained in this guidance.

### **SECTION III: GIFTS FROM OUTSIDE SOURCES**

**GENERAL RULE:** Generally, DoD employees may not accept gifts from a prohibited source or gifts offered because of their official position. A prohibited source is any person or group that does, or seeks to do, business with the employee’s agency, conducts activities regulated by the agency, seeks official action from the agency, or is an organization comprised of prohibited sources. This includes all the contractor employees assigned to DoD offices. Employees may accept gifts from contractors and their employees, as long as the total amount from each contractor (which includes all its employees) does not exceed a market value of \$20 per occasion or \$50 dollars per calendar year. Employees may not solicit such gifts. If contractor employees volunteer to make a contribution to the donating group, the donation collector may accept as long as the total amount for that contractor does not exceed \$20.

### **SECTION IV: GIFTS TO THE AGENCY**

**AUTHORITIES.** There are various gift acceptance authorities permitting certain DoD organizations and commands to accept gifts of property or services offered to the Department, the most common of which are 10 U.S.C. §§ 2601 and 2608. Section 2601 authorizes the Secretary to “accept, hold, administer, and spend any gift, devise, or bequest of real property, personal property, or money made on the condition that the gift, devise, or bequest be used for the benefit, or in connection with, the establishment, operation, or maintenance, of a school, hospital, library, museum, cemetery, or other institution or organization under the jurisdiction of the Secretary. Section 2608 authorizes the Secretary to “accept from any person, foreign government, or international organization any contribution of money or real or personal property made by such person, foreign government, or international organization for use by the Department of Defense and may accept from any foreign government or international organization any contribution of services made by such foreign government or international organization for use by the Department of Defense. DoD Financial Management Regulation

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<sup>2</sup> Remember that a gift between employees, including a collection made via an online tool, is subject to the regulations in 5 C.F.R. § 2635.302 and 5 C.F.R. § 3601.104. See Section II above. Thus, anyone organizing a gift collection that includes employees earning less pay/subordinate to the recipient should consult with an ethics counsel to ensure that an appropriate exception, such as for special infrequent occasions, applies and that the solicitation and gift are in compliance with any applicable limitations (e.g., for a group gift in DoD, suggested donation does not exceed \$10 and the gift value does not exceed \$300.)

7000.14-R, Vol. 12, Chapter 30 provides implementing guidance on acceptance of gifts to the Department.<sup>3</sup> There are limitations on who can accept such gifts.

There is also authority to accept gifts of travel and related expenses to the Department under 31 U.S.C. § 1353. Use of this statute requires advance written approval and coordination with the employee's local ethics counsel. Approvals must be reported to the Office of Government Ethics in May and October of each year.

If your organization is offered a gift from a non-Federal source, consult with your local ethics and fiscal counsel to determine whether it can be accepted and by whom, and to determine the appropriate acceptance process. DoD personnel should NEVER solicit a gift to the Department unless specific statutory authority permits doing so.

## **SECTION V: Q&As**

1. What is Crowdsourced Fundraising? Crowdsourcing is the practice of soliciting monetary contributions or services from large groups of people, including the online community. Some examples of such platforms are GoFundMe, Kickstarter, and Fundly.
2. A DoD employee has medical bills due to COVID-19. May our office start a GoFundMe page for the employee? It depends. Generally, an employee (or a person acting on the employee's behalf) may not solicit a gift based on the employee's federal employment. This means that an employee's agency, title, or status as a federal employee may not be used in any such solicitation. For example, the narrative or posting cannot include reference to an employee's position or include photos of the employee wearing a DoD uniform or insignia. Additionally, crowdsourced fundraising platforms open the door to donations from a prohibited source or subordinates. Therefore, an employee would need to be able to identify and reject such prohibited donations, which can be very challenging to do when the source of the donation is from a crowdsourced fundraising campaign.
3. May I accept assistance from crowdsourced relief fund? It depends. Such offers may be accepted if (1) the assistance is offered to a broad class of government employees that does not discriminate based on responsibility, rank, or rate of pay, and (2) the campaign organizer is not a prohibited source. We encourage employees to contact their local ethics office for advice regarding the specific circumstances.
4. A DoD employee in my office has COVID-19. May I send my co-worker food or medicine? The ethics regulations regarding limitations on gifts between employees remain in effect during the COVID-19 pandemic. Generally, employees may not give, donate to, or solicit

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<sup>3</sup> The DoD FMR defines a gift to "include devises or bequests, and money, real property, personal property, or services collectively referred to herein as gifts." DoD FMR, Vol 12, Ch 30, para. 3002.D.

contributions for a gift to an official superior, and may not accept gifts from another employee receiving less pay, subject to certain exceptions. For example, it may be permissible for an employee to accept a gift of food or medicine from a subordinate if the gift qualifies as one being given on a special, infrequent occasion subject to the limitations stated in 5 C.F.R. §§ 2635.302 and 3601.104.

5. Can a gift to a DoD employee be solicited? It depends. If the special infrequent occasion exception applies, then employees can solicit for donations of up to \$10 from other employees for a non-cash group gift that does not exceed \$300 in value. Employees should only participate in one gift group so that the value of gifts of multiple groups don't have to be aggregated when applying the \$300 limit. Employees of DoD may never solicit gifts or encourage the solicitation of gifts from an outside source, to include a contractor employee.
6. Who can accept a gift to the Agency? Each Service or Agency has an instruction or regulation on acceptance of gifts by the component. Gift acceptance authority is delegated based upon the value of the gift being proffered. Gifts of travel under 31 U.S.C. § 1353 require advance approval in coordination with your local ethics counsel.
7. Can a gift to the Agency be solicited? No. Employees of DoD may not solicit gifts or encourage the solicitation of gifts to DoD absent specific statutory authority.
8. What role does the local Ethics Office have? An employee may not accept a gift to the agency without contacting the employee's local legal office to determine whether fiscal and ethics laws and regulations provide authority for the agency to accept the gift.

***This is not comprehensive guidance, nor should it be substituted for specific ethics advice. For specific guidance on particular situations, please contact your local ethics counselor.***