

A SPECIAL ETHICS FLASH

THE HOLIDAY EDITION

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This Ethics Flash is brought to you by:

5 CFR Part 2635, Subpart B
5 CFR Part 2635, Subpart C
5 CFR Part 2635, Subpart G
5 CFR § 2635.808
32 CFR § 234.13

The Joint Ethics Regulation
Federal Acquisition Regulation

DECK THE HALLS ‘CAUSE IT’S PARTY TIME!

Move on out pumpkin spice—you had your chance to shine. Over to you, hot chocolate!

The holidays are just around the corner (no, really, look at the calendar!). Party invitations are piling up in e-mail and plans are underway for office parties and gift exchanges. Cookies, pies, and carolers are showing up in office spaces. It truly is the most wonderful time of the year (with kids going back to school a close second!). While the holiday season fills our halls with cheer, the ethics rules do not share the same holiday sentiment—they’re still hanging around, haunting us, much like the creepy Halloween decorations still hanging

out in our yards! Sadly, there are no special exceptions for holiday gifts or parties hosted by Department of the Air Force (DAF) organizations or non-federal entities (NFEs).

To make sure you do not



inadvertently violate the ethics rules, this Ethics Flash will cover a summary of the applicable laws and regulations. We’ll discuss how they apply to holiday parties hosted by an NFE or a colleague, fundraising for office holiday parties, and the ever popular office gift exchanges. In addition, we will cover some common situations we often see during the holidays.

This Holiday Edition is an overview of the laws and regulations. It is not a substitute for ethics advice. It is not all inclusive. If you have any questions, please contact an ethics official. Without further ado, let’s take a sleigh ride through this Holiday Edition of the Ethics Flash.

HOLIDAY GIFTS FROM OUTSIDE SOURCES

Generally, Federal employees may not accept (or solicit!) a gift from a prohibited source or offered because of their official position. A prohibited source is anyone who (1) seeks official action by the employee’s agency; (2) does business or seeks to do business with the employee’s agency; (3) conducts activities regulated by the employee’s agency; (4) has interests that may be substantially affected by the employee’s performance of duty; or (5) is an organization a majority of whose members are described above. A gift is anything of value. An invitation to a holiday party hosted by an NFE, a dinner, or a tangible item wrapped in lovely, shiny holiday paper complete with festive bows—all gifts!

There are several exclusions (not a gift) and exceptions (a gift but you may be able to accept) to the general rule. How and if they apply depends on the facts. Who is giving the gift? Is it from a prohibited source or offered because of your official position? If so, below are the most commonly used exclusions and exceptions.

Exclusions: Events open to the public, all government personnel, or all military personnel— NOT a gift. Modest items of food and **non-alcoholic** refreshments not served as part of a meal—NOT a gift. Yes, we emphasized non-alcoholic. A “dry” holiday reception serving light snacks may not be a gift but a reception with alcohol is a gift. If the host is serving alcohol, we

look to the cost of the event and determine if an exception applies. A cocktail hour followed by dinner may not fall under this exclusion, even if you’re not staying for dinner.

Exceptions: Employees may accept a gift (no cash!) if the fair market value is \$20 or less per source, per occasion, but no more than \$50 from the same source, per calendar year (20/50 rule). This means if the reception serving hors d’oeuvres with an open bar has a value of \$20 or less per person, you can accept free attendance under this exception. Now you can drink alcohol on someone else’s dime. (I know, right?) But, what if it is more than \$20?

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HOLIDAY GIFTS FROM OUTSIDE SOURCES

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It may qualify as a widely attended gathering (WAG). Employees may accept an offer of free attendance provided an ethics official determines, in writing, the event qualifies as a WAG and the agency designee makes a written determination there is an agency interest in the employee's attendance. Attendance at a WAG is in a personal capacity



so you may not use government resources (e.g., vehicles) to attend the event.

Another exception allows acceptance of an invitation offered to a group or class not related to government employment. For example, if the building owner of your office throws a holiday party for all tenants, this invitation is unrelated to your government employment.

If an invitation to a holiday gathering is not from a prohibited source, a social invitation exception allows acceptance provided none of the other attendees paid admission to attend, and if the invitation is not coming from an individual, the agency designee determines, in writing, that your attendance will not lead to questions about your integrity or impartiality.

You may also accept gifts from your spouse's employer, or from your outside business or employment activities, provided the invite was not enhanced by your official position.

FUNDRAISING FOR HOLIDAY PARTIES

Office holiday parties are not official events. You may never use appropriated funds to pay for a party. You also cannot solicit outside sources (including contractor co-workers) for donations (e.g., cash, food, and other items) to your party. So, how do you pay for them? Employees may contribute to a holiday party; however, it must be truly voluntary. Solicitations for contributions are permissible (with some limitations—call us!); and make sure it is not the boss asking for funds! What about a bake sale or breakfast burrito sale to raise funds for the party?

Generally, Federal personnel may not engage in fundraising in an official capacity, unless authorized by statute, executive order, regulation, or agency determination. Also permitted are "by our own, for our own" (BOOFOO) fundraisers. Under this exception, commands may host fund-

raising events (e.g., bake sales) within the workplace to raise funds. These fundraisers may only be held in your office area, or areas primarily occupied by the members of the group who will benefit. Everyone working the event must be in a non-duty status (e.g., leave or pass, lunch break, etc.). You must also comply with any local policies or regulations pertaining to fundraising.

Fundraising outside of your command but on an installation requires you to comply with DAF instructions as well as local regulations. Please note, unofficial unit activities are Federal entities. This means all the ethics rules apply. They do not have spe-

cial exceptions (see AFI 34-223).

Fundraising at the Pentagon:

There is **no** fundraising in any public area on the Pentagon reservation. The only exception is for the Combined Federal Campaign, Feds Feed Families, and Toys for Tots. Nor are BOOFOO fundraisers permitted to occur anywhere in the Pentagon except for within component office spaces. This includes a prohibition on advertising your fundraising effort (e.g., hanging signs in public locations, such as the outside of your office door) — no, your section of the E-Ring is not an extension of your office spaces! To post anything outside your office spaces, you must have a Pentagon building permit.



PRIZES AND RAFFLES AT HOLIDAY PARTIES

No one likes a door prize more than us! And yes, you most certainly can have door prizes, but you cannot solicit NFEs to donate prizes and winning cannot involve gambling. Department of Defense regulations prohibit gambling in the Pentagon and on Federal property or while in a duty status. General Services Administration (GSA) regulations prohibit gambling in GSA-owned or controlled buildings. Door prizes or drawings where individuals purchase a chance to win a prize constitutes gambling. Let's

Federal gift regulations prohibit employees from soliciting prohibited sources for gifts or using their official position to solicit gifts.

break it down a bit.

Gambling has three elements: (1) pay to play, (2) a game of chance, (3) to win a prize. If you are selling holiday party tickets and each ticket to the party gives the purchaser a chance to win a door prize, that is gambling. If you have to purchase a ticket to attend the command holiday party, and that ticket is also your chance to win a door prize, that is gambling.

If you sell raffle tickets so people can

increase their chances on winning a door prize—gambling.

So what do you do? The easy answer? Don't have door prizes. But, that is no fun. So, eliminate one of the elements of gambling. For example, remove the pay to play. Sure, sell the holiday tickets, but everyone in the command has a chance to win, even those not purchasing a ticket and not attending. Yeah, we know, it's not "fair" to those who spend money on attending, but those are the rules of the house....and the house always wins (ba dum tss....#SorryNotSorry).

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PRIZES AND RAFFLES AT OFFICE PARTIES

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At the risk of repeating ourselves (who are we kidding...we're lawyers, we love repetition!), should an NFE offer to provide prizes, that is a gift. A gift from outside sources has limitations (see page 1) and a gift to the DAF technically becomes government property.

There is one recurring issue we want to put to rest. **Myth:** A door prize an attendee

wins at a command holiday party is not gambling. **Reality:** If you have to be in attendance to possibly win a door prize and the only way to attend is to purchase a ticket, that is gambling. Now, if a party is free for all and anyone in attendance could win a door prize? Not



gambling because there is no "pay to play." The other option is to still charge to attend but the ticket isn't how you win a door prize. Instead, names are drawn from a "hat" or "bag" filled with the names of all members of the organization, whether they are in attendance or not. Again, this eliminates the "pay to play."

GIFTS BETWEEN EMPLOYEES

Each year, we all look forward to the annual gift exchange at office holiday parties. Just note, there is no special exception for holiday gifts between employees. We *generally* can't give our boss a gift. And bosses—listen up! You *generally* cannot accept a gift from someone making less pay than you unless there is a personal relationship that justifies the gift **and** you are not the official superior of the employee giving you the gift. But, some bosses make less than their employees (it's true!) so if your boss makes less than you and gives you a gift, take it and enjoy it!



Like with most of our gift rules, there are exceptions. On traditional, gift giving occasions, *like the holidays*(!), you may

give your boss and your boss may accept a gift (no cash) with a fair market value of \$10 or less. You read that correctly. It's not a typo. \$10 or less. This is something to consider if your office does a holiday gift exchange. Gift exchanges where employees purchase gifts for employees whose names they randomly drew may create situations where a subordinate is purchasing a gift for a superior. A best practice would be to limit gifts to \$10 or less.

If you are a prolific baker (please contact us immediately!), and you want to bring the boss goodies, so long as they are shared in the office among several employees (again, contact us immediately for sharing guidance. We'll stop by, and, um, make sure the gift is being properly shared...), the boss and others may accept.

If you are hosting a holiday party, your

boss or anyone who makes more in salary may attend and accept personal hospitality provided your holiday party is the kind you would throw for personal friends. For all you super bosses out there hosting holiday parties (don't forget to invite us!), if your subordinates or someone who makes less than you arrives with a thank you gift for your hospitality, you may accept the gift provided it is of a type and value customarily given on such occasions. So drink the reasonably priced bottle of Prosecco, but give back the \$200 bottle of bourbon. Of course, if you really want to keep that bottle of bourbon, you can pay the employee who gifted it the fair market value.

We saved the best part for last—get your pen and paper ready to draft that wish list (joking!), there is no limit to the value of a gift from a superior to subordinate. But, common sense should prevail, and the gift should be appropriate to the occasion and avoid the appearance of favoritism.

CELEBRATING HOLIDAYS WITH CONTRACTORS

We work with contractors daily and the lines between contractor and government employee are blurry. Remember, you may not accept a gift from a prohibited source or offered because of your official position, nor may you solicit. Contractors are prohibited sources. Unless an exception applies, you may not accept a gift from a contractor, including a gift as part of a gift exchange. You must make sure you do not exceed \$50 from the same source during the calendar year. So watch out for multiple gifts from the same source. Another exception that may apply is gifts based on a bona fide personal relationship. Usually, this exception is limited to family and close friends arising outside of the workplace. When presented with a gift from a contractor, we look to whether the

gift was paid for, or reimbursed by, the contractor employer.

But, if a contractor employer gifts their employee, say two tickets to The Nutcracker, and that employee, without any direction from the contractor employer, in turn passes on the gift to you, and you're their friend who just happens to also be a DAF employee, the personal relationship exception *may* apply. Again, it must be a bona fide personal relationship. We look at a number of factors including the length of the friendship, how it started, whether gifts of this nature have previously been



exchanged, and more.

You may not solicit contractors for contributions to office holiday parties (or anything else). As for inviting contractors to office parties, generally, the federal Government does not reimburse contractors for morale and welfare expenses. The contractor must decide whether its employees may attend an office holiday party and forego payment for their time, or direct they continue to work. If they attend, they cannot bill the Government for time spent at the party. Before inviting contractors to the office holiday party, contact the contracting officer and your ethics official.

HOLIDAY FREQUENTLY ASKED QUESTIONS

Our favorite part! We love a good frequently asked questions section. This is not a one size fits all so remember to contact your ethics official with questions specific to your circumstance.

I received an invitation in my official capacity to attend a holiday reception hosted by a NFE. May I use a government vehicle to and from the reception?

No. Generally, participation at holiday parties is personal, not official, and so you may not use a Government vehicle to and from the reception. There are limited circumstances when use of a Government vehicle is permissible. For example, if an official is invited to attend the event in their official capacity **and** they will be performing an official function.

I send annual holiday cards in my official position and intend on having my staff procure greeting cards and postage using the government purchase card. Is this permissible?

No. Appropriated funds may not be used for greeting cards. You also cannot use your staff for personal tasks.

I am having a holiday party in my home after work and inviting the entire office. I would like to invite our contractor personnel as well. Does this violate the rules?

Nope! Providing food and refreshments to a contractor-employee does not violate the ethics rules. The contractor-employee may want to check with their employer's rules before accepting, as many contractors have similar ethics rules.

A contractor-employee invited me to a private holiday party sponsored by their employer. May I accept the invitation?

It depends. The invitation of free attendance is a gift and you may not accept unless one of the gift exclusions or exceptions discussed on page 1 apply. Please note, private parties where attendees may only be DAF/DoD personnel and employees of the company might not qualify for a WAG determination.

Our office is holding a holiday party during our lunch hour and we are asking each person to pay \$5 to cover refreshments and to bring a potluck dish to share. Can contractor-employees attend?

Yes, contractor-employees may attend, pay \$5, and bring food because these contributions are not considered gifts or solicitation of gifts. It is merely an attendee contributing their fair share of the costs of the event they are attending. **BUT** (of course, there's a but....), contributions must be voluntary, so "soliciting" must be done with care to ensure there is no pressure or appearance of pressure. And, you must verify that the time the contractor-employee spends at the party is not billed to the government.

I am a political appointee and received an invitation to Company A's annual holiday party. May I accept the invitation?

It depends (yes....another typical lawyer response!). As a political appointee, you are subject to the President's Ethics Pledge which further limits political appointees from accepting most gifts offered by a

lobbyist or lobbying organization. So it would depend on whether Company A is a lobbying organization. Political appointees are full-time non-career Presidential appointees, non-career Senior Executive Service appointees, and non-career appointees excepted from the competitive service by reason of being a confidential or policy-making character (e.g., Schedule C). Most of the gift exceptions we discuss on page 1 do not apply for gifts to political appointees from a lobbyist/lobbyist organization, unless the organization is a 501(c)(3) non-profit.

A friend of mine owns a restaurant and offered me the use of their private dining room for a holiday party. Can I accept this offer and have our command holiday party there?

Maybe. An exception to the gift rules allows employees to accept a gift from an individual under circumstances that make it clear the gift is motivated by a family relationship or personal friendship rather than an employee's official position. The facts would determine whether this offer is a gift to the employee or to the DAF. Was the offer so that the employee could host a personal holiday party? Or was it offered to host the command party? Remember, we can never accept a gift, even when an exclusion or exception applies, if the gift was solicited or given in return for being influenced in the performance of an official act.

HAPPY HOLIDAYS FROM OUR FAMILY TO YOURS

And that's a wrap on our special holiday edition of the Ethics Flash and the end of another year. Thank you all for your support over the year, your compliments on the Ethics Flashes released over 2024, and most of all, for seeking us out whenever you have a question.

Remember, this guidance only highlights the common ethics issues we encounter during the holiday season. It does



not, and could not, cover every situation. For advice specific to your circumstance,

please reach out to us or your local ethics official.

We will be back in 2025 with more Ethics Flashes tailored to your requests. Drop us a note on guidance you would like to see in future editions. We create these for you—so please do not hesitate to tell us what you want to see next.

We wish all of you an amazing holiday season and a Happy New Year — here's to 2025! (Cheers'ing with my hot chocolate!)

The Air Force Ethics Office directs the daily activities of the Department of the Air Force ethics program.

We serve as legal counsel to the Secretariat, Air, and Space Staff. While we are always happy to assist with any ethics issues, individuals outside of Headquarters should consult with their local ethics counselor.

Should you have any questions, please contact us at SAF.GCA.Ethics.Workflow@us.af.mil.