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Bulletin

Title: Accepting Unconditional Gifts of Personal Property

Number: 12-220.0

Date: May 11, 2012 **Expiration:** Until Rescinded

Originating Office: Acquisition and Property Division, Property and Support Services Branch, AFM, ARS

Distribution: Business Service Centers-Directors and Deputy Directors
Business Service Centers-Acquisition & Property Branch Chiefs
Business Service Centers-Property Management Officers
Business Service Centers-Budget and Fiscal Officers

This Bulletin revises the delegated authority for accepting unconditional gifts to accommodate REE and within the Business Service Center structure. It also clarifies the definition for prohibited sources.

1. Introduction

This bulletin revises the authority for accepting unconditional gifts of personal property, including monetary gifts, within the Business Service Center structure and clarifies the definition of a prohibited source. The Bulletin establishes the policies and procedures when accepting a gift on behalf of USDA. It defines prohibited sources and explains the process to request permission to accept a gift from an agency-prohibited source. This Bulletin complies with Department Regulation 5200-3, Gift Acceptance Policy. Refer to DR5200-3 for detailed information regarding USDA's Gift Acceptance Policy.

2. Unconditional Gifts

An unconditional gift is a gift where the potential donor establishes no specific terms for use, other than offering the gift with a general use statement, such as "to the Pest Management Center for continued research." Acceptance of the gift does not imply an endorsement of the gift or the donor. The gift does not impose any obligation on the part of the Government to provide data, materials, information, or results to the donor.

When there are specific outcomes or mutually desired actions between the donor and the agency/office, consider pursuing options available under cooperative agreements, when conditions exist.

3. Delegated Authority

Within REE, the BSC Directors have the authority to accept unconditional gifts on behalf of USDA/REE agency. The BSC Director may delegate this authority to the BSC Deputy Director.

4. Limitations

- **No agency shall accept a gift from a source prohibited by USDA. (See Section 5.)**
- There are two exceptions that allow agencies to accept a gift from a source defined as an "Agency- Prohibited Source" (See Section 6.) However, the official must obtain approval from the Agency Administrator and consult with USDA's Office of General Counsel (OGC).

5. USDA Prohibited Sources

USDA prohibits agencies from accepting gifts from the following:

- Any person/organization who conducts activities regulated by USDA or any of its staff offices or agencies. The term "activities regulated by USDA" refers to activities regulated under programs within the Food Safety and Marketing and Regulatory Programs mission areas of USDA.

- Any person/organization where either: a majority of its members are persons who conduct activities regulated by USDA agencies; or a majority of an organization's funding is provided by persons who conduct activities regulated by USDA agencies.
- Any person/organization engaged in criminal, civil, or administrative litigation with USDA, or the US, based on issues relating to programs or operations of USDA agencies.
- Any person/organization whose ability to participate in USDA programs, including loans, grants, contracts, etc., has been suspended/terminated for cause by USDA staff offices or agencies.

A person/organization refers to an individual, corporation, and subsidiaries it controls, company, association, firm, partnership, joint stock company, or any other organization, director, trustee, general partner, or agent of the individual/corporation. For purposes of gift acceptance, USDA determines that a corporation controls a subsidiary if it owns 50 percent or more of the subsidiary's voting securities.

6. Agency-Prohibited Sources

USDA prohibits agencies from accepting gifts from the following:

- Any person/organization (defined above under USDA prohibited source) who is engaged with the Agency as a contractor or contractor, bidder, borrower, grantee, cooperator, lessee, permittee, or other program participant.

When the donor is an agency-prohibited source, there are two exceptions that allow an agency to accept the gift; Commemorative Nature or Public Interest.

Exception to Agency-Prohibited Sources

Commemorative: Agencies may accept a gift that is of a commemorative nature from other than a for-profit entity if it is intended for use/display in the office, or when the gift is from a State, local, tribal or foreign government incidental to cooperative work in carrying out a Federal program. Agency Heads will notify the REE Under Secretary of such gifts. If the value is greater than \$1 million, the Agency must consult with OGC. When the value is under \$1 million the Agency Head may accept.

Public Interest: Officials may request acceptance of the gift when accepting is in the public interest because the benefits relating to accepting the gift substantially outweigh the appearance of loss of impartiality by the agency in its dealings with the donor.

However, officials must obtain approval from the Agency Administrator and then request consultation from USDA's Office of General Counsel. While there may be benefits to the agency in accepting the gift, the public interest exception is intended to be a high hurdle to clear. We do not recommend that agency officials accept gifts when the Office of General Counsel does not concur and believes there is an appearance of loss of impartiality.

7. Considerations and Conditions

Before accepting gifts, agency officials will:

- Ensure that potential donors, or multiple donors with identical interests, do not offer gifts in order to affect the impartiality of the agency.
- Ensure employees do not solicit gifts from prohibited sources or accept gifts to create an additional funding stream for routine operational expenses in lieu of appropriations.
- Ensure potential donors are aware that the gift in no way implies an endorsement of the gift or the donor.
- Ensure potential donors are aware that the gift does not impose any obligation on the agency to provide any data or information to the donor, and
- Ensure that the potential donor is aware that the Government does not provide information on the value of the gift. The donor is responsible for establishing the estimated gift value.

8. Procedures

Donors must submit offers, in writing, stating the intention to offer an unconditional gift. The letter should include the following information:

- a complete property description,
- the value (the owner must provide this, not the agency),
- the offer is unconditional,
- the donor is the sole owner of the gift.

Employees will forward a copy of the donor's offer through their management officials to the BSC for review and approval. The specific office should prepare a preliminary written justification to accept (or reject) the offer.

The BSC is responsible for ensuring that the donor is not someone that currently conducts business with the Agency. BSCs will conduct agency/system searches to determine whether the donor is a contractor, grantee, cooperator, etc. Note any information obtained on the donor. **If the donor currently conducts business with the agency, the donor is an agency-prohibited source.**

When the donor **is not** an agency-prohibited source:

- Review all supporting information to ensure the gift meets gift acceptance criteria,

- Prepare an acceptance letter for the BSC Director/Deputy Director's signature, ensuring the letter states the following:
 - acceptance is on behalf of USDA and the Agency,
 - the gift in no way implies an endorsement of the gift or the donor, and
 - the gift does not impose any obligation on the part of the agency to provide data, information, or any materials to the donor.

When the donor **is** an agency-prohibited source and officials wish to pursue acceptance:

- The accepting office and BSC will work together to determine whether acceptance meets the strict requirements that the public interest **substantially outweighs the appearance** of loss of impartiality by the agency.
- The accepting office will forward a detailed justification to the BSC that thoroughly details how the public interest benefits of accepting the gift substantially outweigh the appearance of loss of impartiality.
- The BSC Director/Deputy Director will obtain written support from the Agency Administrator. E-mail is acceptable.
- The BSC Director/Deputy Director will forward the complete gift acceptance package to the ARS Acquisition and Property Division (APD)/Property and Support Services Branch (PSSB) who will work with OGC for concurrence. The gift package includes:
 - gift offer from the donor,
 - detailed justification,
 - list the office name/address and the description of the type of work that the donor currently conducts with the Agency,
 - Administrator's approval.
- APD/PSSB will review the information and forward it to OGC requesting approval.
- If approved, APD/PSSB will prepare the gift acceptance letter for the Administrator's signature, with a copy to the BSC.

9. Agency Reporting Requirements

Agencies must submit an annual report listing all gifts accepted during the calendar year that have a **value of \$5,000 or more**. The reporting requirements are:

- Date the gift was accepted,
- Donor name address and telephone number,
- Name of accepting official,

- Description of gift, and
- Estimated value.

APD/PSSB will request information from each BSC and submit a consolidated REE report. This report is due to USDA's Office of Procurement and Property Management (OPPM) and Departmental Management Science Ethics Branch by January 31 of each year.

10. Accountability

Monetary Gifts. Agencies must establish proper receiving accounts for monetary gifts by working with the BSC Budget and Fiscal Officer. The office must establish an accounting classification code for obligations of expenditure against monetary gifts. The Treasury Accounting Symbol for monetary gifts is 12x8203, followed by the agency code. Currently ARS is the only REE agency that has established codes. Contact the National Finance Center, Accounting Control Branch to establish codes.

Personal Property. Gifts of personal property are subject to Federal and USDA property management regulations. Property management officers will update gifts of personal property with a value of \$5,000 or more to the official inventory system as a "donation". When the office no longer needs the gift or when it becomes unserviceable, employees will report property as excess to their property management officer. Assets acquired as gifts are Government property and follow the same excess/disposal process.

11. Contacts

Refer questions regarding this bulletin to Cheryl Brumback, Chief, Property and Support Services Branch (PSSB)/APD. Call 202-720-2359 or email Cheryl.Brumback@ars.usda.gov

APD will refer questions concerning ethical aspects to the Science Ethics Branch and questions concerning legal aspects to OGC.



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