NIH Policy Manual

2400-10 - Gifts From Outside Sources

Issuing Office: OD/NEO **Phone:** (301) 402-6628

Release Date: 6/18/2008 ?

Transmittal Notice

1. **Explanation of Material Transmitted:** This new chapter implements the rules that NIH employees are subject to regarding the acceptance of gifts from outside sources, that is, from individuals or entities outside of the Federal Government. This chapter is part of the new NIH Ethics Manual (in the 2400 series of NIH policy chapters). It incorporates some information from the obsolete NIH Manual 2300-735-4 regarding interactions with outside organizations.
2. **Filing Instructions:**

   Remove: NIH Manual Chapter 2300-735-4
   Insert: NIH Manual 2400-10 dated 06/18/08

PLEASE NOTE: For information on:

- Content of this chapter, contact the issuing office listed above.
- NIH Manual System, contact the Office of Management Assessment, OM , on 301-496-4606.
- On-line information, enter this URL: http://oma.od.nih.gov/manualchapters/

A. Purpose

Federal employees are subject to rules regarding accepting gifts from outside sources, that is, from individuals who are not employees of the Federal Government. The applicable rules are found in the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635, Subpart B) and the Supplelmental Standards of Ethical Conduct for Employees of the Department of Health and Human Services (5 CFR Part 5501). This chapter summarizes and implements the guidelines for employees at the National Institutes of Health (NIH), within the US Department of Health and Human Services (HHS).

B. Coverage

This chapter covers all employees and individuals as outlined in the introductory chapter, NIH Manual 2400-01. Contract employees are not subject to these guidelines; they are an outside source from whom employees may not accept gifts unless permitted under the exclusions or

exceptions detailed in this manual chapter.

C. General Standards

The regulations concerning gifts from outside sources are found at 5 CFR Part 2635, Subpart B.

1. General Prohibitions: An employee may not solicit or accept any gift from a prohibited source or one given because of the employee's official position.
2. Limitations on Use of Exceptions: Notwithstanding any exception, an employee shall not:

    1. Accept a gift in return for being influenced in the performance of an official activity;
    2. Solicit or coerce the offering of a gift;
    3. Accept gifts from the same or different sources so frequently that a reasonable person could believe that the employee is using his/her public office for private gain.
    4. Accept a gift in violation of any statute (including 18 USC 201, the prohibition on accepting bribes to perform your official duties, and 18 USC 209, the prohibition on supplementation of official salary); or
    5. Accept vendor promotional training except as permitted under regulations, policies or guidance relating to procurement of supplies and services. See 5 CFR 2635.204(l).

3. Limitations on Gifts and Awards from Foreign Governments: The US Constitution and the Foreign Gifts and Decorations Act may restrict an employee's ability to personally accept gifts, including some or all of the gifts associated with an award or other honor, from a foreign governmental entity. Because gifts and awards from foreign government entities are subject to different requirements, employees must consult with their ethics official prior to acceptance. See NIH Manual 1135-1, Foreign Gifts and Decorations.

D. Definitions

To better understand the rules, employees need to understand the following definitions.

1. Gift: The full, regulatory definition of a gift is found in 5 CFR 2635.203(b). A gift includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value, including travel (whether provided in kind or through payment or reimbursement). However, certain specific items, as specified in the regulation, are not deemed gifts. These include:

    1. Modest items of food or refreshments which are not part of a meal, e.g., coffee and donuts, cookies, sodas, other snack items not intended to be a meal;
    2. Greeting cards and items of little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;

3. Loans from banks and other financial institutions on terms generally available to the public;
4. Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all Government employees or all uniformed military personnel, regardless of whether it is restricted based on geographic considerations;

   Example: The opportunity to join frequent flyer programs is open to the public. Federal employees may join and receive all benefits from these programs, including accruing and using miles earned on official trips for personal travel. (See Federal Register, Vol. 67, No. 71, pages 17946-17947, April 12, 2002.)
5. Rewards and prizes given to competitors in contests or events, including random drawings, open to the public unless the employee's entry into the contest or event is required as part of his/her official duties;

   Example 1: At a conference which you attend as part of your official duties, all attendees are automatically entered into a drawing. The prize you win from that drawing belongs to the Government because your attendance was in an official capacity.

   Example 2: At a different conference open to the general public, there is an opportunity to purchase raffle tickets to win a television. Anyone attending can purchase a ticket. You buy a ticket and win. You may keep the television because you personally purchased a raffle ticket to be part of the drawing. Entry into the drawing was not automatic based on your official attendance.
6. Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer;
7. Anything which is paid for by the Government or secured by the Government under contract;

   Example: You attend a conference in an official capacity, and your registration fee is paid for by the Government. All meals covered by that registration fee are 'paid for' and therefore are NOT a gift.
8. Any gift accepted by the Government under specific statutory authority, including travel, subsistence, and related expenses accepted by the agency (sponsored travel), and gifts accepted under its agency gift acceptance authority; and
9. Anything for which the employee pays market value.

   Example: An employee receives a ticket to a local sports event from a prohibited source. The employee reimburses the giver the face value of the ticket; it is no longer considered a gift.

2. Market Value: Market value is the retail price that you, the recipient of the gift, would have to pay to purchase it. If you cannot readily determine the retail value of a gift, you may estimate its value by reference to the retail cost of items of similar quality. If a

ticket entitles you to food, refreshments, entertainment, or any other benefit, the market value is the face value printed on the ticket. Example: A prohibited source offered an employee a ticket to a charitable event consisting of a reception followed by an evening of chamber music. Even though the food, refreshments, and entertainment may be worth only $20, the market value of the ticket is its $200 face value.

3. Prohibited Source: A prohibited source is any person or organization who:

    1. Is seeking official action by the employee's agency (NIH);
    2. Does business or seeks to do business with the NIH;
    3. Conducts activities regulated by NIH;
    4. Has interests which may be substantially affected by performance or nonperformance of the employee's official duties; or
    5. Is an organization a majority of whose members are described in a through d above.

4. **Gifts Based on Official Position:** A gift is solicited or accepted because of an employee's official position if it is from a person other than an employee, and would not have been solicited, offered, or given had the employee not held the status, authority or duties associated with his/her Federal position.
5. **Indirect Receipt:** A gift is solicited or accepted indirectly when it is:

    1. Given with the employee's knowledge and acquiescence to his/her parent, sibling, spouse, child, or dependent relative because of that person's relationship to the employee; or
    2. Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee.

    Example: After giving an official speech, an NIH employee is offered an honorarium, which the employee may not accept because the speech is official. The employee may not suggest that the honorarium be given instead to one of his/her favorite charitable organizations. If the giver wants to know who to contact about giving the honorarium to the NIH, the employee may refer the giver to an IC administrative officer who can provide information to the giver about the IC's gift fund.
6. Vendor Promotional Training: Training provided by any person or organization for the purpose of promoting its products or services is vendor promotional training. It does not include training provided under a Government contract or by a contractor to facilitate use of products or services it furnishes under a current Government contract.

    Example: The Clinical Center purchases a new piece of equipment for the Laboratory. The contract price includes training for staff to use the new equipment. This is training provided under the contract, and paid for as part of the purchase. It is not vendor promotional training.

E. Exception: Gifts of $20 or Less

An employee may accept unsolicited gifts having an aggregate market value of $20 or less from a single source per occasion, provided that the aggregate value of individual gifts received from the same source does not exceed $50 in a calendar year. The source may be an individual or entity. Representatives of a single entity are considered one source, e.g., the company is the source, not each individual. This exception does not permit an employee to accept cash or investment interests, even if below the $20 threshold. Where the market value of a non-cash gift exceeds $20, the employee may not 'pay the difference' over $20 and accept the gift; to accept, the employee must pay the full market value. If the gift is comprised of separate and distinct items, the employee may accept those items whose aggregate value does not exceed $20, and decline the remainder.

Example: On four occasions during the calendar year, an employee was given gifts worth $10 each by four employees of a prohibited source company. For the purpose of applying the yearly $50 limitation, the four gifts must be aggregated because the four employees all represent the same company.

F. Exception: Awards from Outside Organizations

Employees at the National Institutes of Health (NIH) make numerous outstanding contributions to their professions. These contributions are frequently recognized by outside organizations in the form of awards. Receipt of gifts associated with awards from outside organizations is governed by 5 USC 7353 as implemented in the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Section 2635 Subpart B). Additional regulations regarding awards given to NIH employees are provided in the Department of Health and Human Services (HHS) Supplemental Standards of Ethical Conduct (5 CFR 5501.111 and 5501.112). Employees may accept gifts associated with awards and honors subject to the following guidelines and limitations. Specific procedures for processing an award request are available on the NIH Ethics Program web site, Procedures page.

The regulations do not prohibit the acceptance of the honor of an award. Rather, they regulate the acceptance of the gifts associated with the honor (award), such as a cash prize, travel expenses, and other associated gifts. Whether an employee may accept any or all of the gifts associated with the award does not reflect on the honor to the employee, and which regulatory provisions are used to accept those gifts does not diminish the legitimacy of the honor. Thus, even if an employee may not accept the gifts associated with an award, the honor of being named the award recipient is not affected.

Various professional and constituency groups have programs of recognition specifically intended to reward young scientists for their work (generally, as demonstrated through abstracts or posters submitted in advance of or during conferences and symposia). Recipients are selected on a competitive basis, and the award values are generally between $500 and $2000. The recipients are notified in advance since they must attend the conference in order to receive the monetary gift. It is commonly understood that these programs are established to

assist students (including post doctoral fellows) in attending such events in furtherance of their scientific and professional development, and they are commonly referred to as "travel awards" because they often enable students who would not otherwise have the means to attend. There are two types of these so-called "travel awards," one that involves in-kind travel support or reimbursement for actual travel expenses, and another that involves a predefined lump sum payment. Since the recipients in these latter cases are not required by the award donor to spend the money on travel expenses, the payments associated with these honors are properly treated as gifts associated with an award for meritorious public service or achievement, and will be processed as such. If approval to accept is granted, the recipient is permitted to personally receive and retain the payment.

1. Relevant Authorities:

    1. 5 CFR 2635.204(d) General Acceptance of Gifts Associated with Awards: With prior approval, an employee may accept gifts, other than cash or an investment interest, with an aggregate market value of $200 or less if such gifts are a bona fide award or incident to a bona fide award that is given for meritorious public service or achievement by a person who does not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties, or by an association or other organization the majority of whose members do not have such interests. Gifts with an aggregate market value in excess of $200, and awards of cash or investment interests offered by such persons as awards or incident to awards that are given for these purposes may be accepted upon a

        - Under which awards have been made on a regular basis or which is funded, wholly or in part, to ensure its continuation on a regular basis; and
        - Under which selection of award recipients is made pursuant to written standards.

    2. 5 CFR 2635.204(g)(2) Widely Attended Gatherings and Other Events: When there has been a determination that his/her attendance is in the interests of the agency because it will further agency programs and operations, an employee may accept an unsolicited gift of free attendance, for him/herself and one other person, at all or appropriate parts of a widely attended gathering of mutual interest to a number of parties from the sponsor of the event. A gathering is widely attended if it is expected that a large number of persons will attend and that persons with a diversity of views or interests will be present. Where the person who has extended the invitation has interests that may be substantially affected by the performance or nonperformance of an employee's official duties or is an association or organization the majority of whose members have such interests, there must be a written finding that the agency's interest in the employee's participation in the event outweighs the concern that acceptance of the gift of free attendance may or may appear to improperly influence the employee in the performance of his/her official duties. For more information see Section H of this chapter, and the NIH Ethics Program web site, Topics page.

3. CFR 5501.111 Limits Applicable to Employees with Official Responsibility for Matters Affecting the Award Donor: An employee may not accept gift(s) with an aggregate market value of more than $200, or that is cash or an investment interest, that is an award or incident to an award from a person, organization, or other donor that:

    1. Is seeking official action from the employee, any subordinate of the employee, or any agency component or subcomponent under the employee's official responsibility;
    2. Does business or seeks to do business with any agency component or subcomponent under the employee's official responsibility;
    3. Conducts activities substantially affected by the programs, policies, or operations of any agency component or subcomponent under the employee's official responsibility; or
    4. Is an organization a majority of whose members are described in 1, 2, and 3 above.

4. Sponsored Travel (Gift to the NIH): The sponsored travel mechanism permits an agency to accept reimbursement for official travel expenses for an employee. If travel is offered incident to an award, a note that sponsored travel will be used must be added to the award form, and the sponsored travel annotated that it involves an award. The NIH sponsored travel policy is available on the NIH Manual Chapters web site. See NIH Manual 1500, Travel Policies and Procedures, Appendix 6, Sponsored Travel Requirements/Procedures: scroll down left frame to Appendix 6.

2. **General Standards:**

    1. Official Duty Activity: Subject to prior approval, employees may generally attend an event at which they will receive an award from an outside source as part of their official duties. If an award is not presented locally, employees may travel in their official capacities, under government travel orders, and the agency may use the sponsored travel mechanism. It is also permissible for employees to attend such an event in their personal capacity while on approved leave (annual leave or leave without pay). Even if employees accept the award in their personal capacity, they must still follow the procedure for permission to accept any gifts associated with an award and are subject to the recusal requirements noted later in this chapter (see section F.2.c., below).
    2. **Advance Approval:** Employees must secure advance approval from their Deputy Ethics Counselor (DEC) before accepting an award and any associated gifts. Approval shall be granted only upon a determination that acceptance of the award and gifts is consistent with applicable statutes and regulations.
    3. Disqualification: An employee who accepts an award and associated gifts under the authorities noted at sections F.1.a. and/or F.1.c. above, will be disqualified from any official particular matters involving the specific party giving the award from the time the employee receives the notification of the award (written or

verbal) until: 1) the employee notifies the organization in writing that s/he will not accept the award; or 2) one year after receipt of the award. This disqualification is automatic, and begins immediately when the employee receives notice that the organization intends to present the award, even if the employee chooses to accept the award in a personal capacity. In some special circumstances, an employee may be authorized to participate in an official matter involving the donor organization if authorized to do so by the DEC under 5 CFR 2635.502(d).

4. Exclusion: This chapter excludes the receipt of cash and other things of value provided in connection with events which may be called "award" events, but which do not meet the regulatory criteria to be considered bona fide awards for meritorious public service. For instance, many scientists are offered payment or things of value in connection with "lectureships" or "lecture awards" sponsored by outside organizations. Payments for speaking activities are compensation for a service or activity. Even though an invitation to give many of these lectures is an honor, the payment or other item is not a gift for purposes of the Standards of Ethical Conduct. Whether an employee may accept the pay or item is judged by different standards. In such cases, employees may request permission under the Outside Activity mechanism, or, the activity may be deemed appropriate as an Official Duty Activity speech, in which case the compensation could not be accepted. See the NIH Ethics Program web site, Outside Activities page, for more information on Outside Activities.

3. Criteria for Acceptance of Gifts Associated with an Award: The Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635 - Subpart B) provide general conditions for accepting gifts from outside sources, including those associated with awards from outside organizations. The HHS Supplemental Standards of Conduct (5 CFR 5501.111 and 5501.112) provide specific rules regarding acceptance in certain cases.

    1. Gifts of Cash, Cash Equivalent, or Tangible Gifts: Where an NIH employee must rely on the authority cited at sections F.1.a. and/or F.1.c. to accept gifts associated with an award, approval can only be granted if the award is bona fide award, and the donor's interests could not be substantially affected by the performance or non-performance of the recipient's official duties. For these awards, submit the most recent award request form (currently the non-numbered HHS Form for Review/Approval of Awards, available on the NIH Ethics Program web site, Forms page).

        In addition, an employee may be approved to accept gifts of cash in any amount, or other gifts valued in excess of $200 only if the following conditions are met:

        1. The gifts are a bona fide award or incident to a bona fide award that is given for meritorious public service or achievement as part of an established program of recognition under which:

- awards have been made on a regular basis or which is funded, wholly or in part, to ensure its continuation on a regular basis; and
- under which selection of award recipients is made pursuant to written standards;

AND

2. The donor is not a person or entity in relation to which the employee has official responsibilities, such as an entity:

    - seeking official action from the employee, any subordinate of the employee, or any agency component or subcomponent under the employee's official responsibility;
    - doing or seeking to do business with any agency component or subcomponent under the employee's official responsibility;
    - that conducts activities substantial affected by the programs, policies, or operations of any agency component or subcomponent under the employee's official responsibility; or
    - that is an association or other organization the majority of whose members are described above.

2. Pre-Screening of Cash Awards: Awards that confer a gift of cash or an investment interest, regardless of the value, must be pre-screened before any NIH employee can be approved by the DEC to accept the gift. This process is handled by the NIH Ethics Office. The NIH Advisory Committee to the Director (ACD) reviews each such award to advise the NIH DEC on whether the award meets the regulatory requirements for approval.

   A list of pre-screened awards is maintained on the NIH Ethics Program web site, on the Ethics Topics page.

3. Other Gifts: Awards that confer only some or all of the following items are not subject to the criteria noted above and will be approved under other relevant authorities (see F.1, above):

    1. an honor (no cash component);
    2. a plaque or trophy of little intrinsic value;
    3. travel expenses to an event (if IC determines to accept as sponsored travel);
    4. waiver of registration fee, or other attendance at the award ceremony, dinner, or gala (may be accepted under a Widely Attended Gathering for the employee and one other person or sponsored travel approval, as appropriate).

   Note: If the invitation to attend the event at which the award will be conferred is extended to the employee and more than one guest, the award form must be used.

Submit the most recent award request form (form NIH-2854, available on the NIH Ethics Program web site, Forms page).

4. Review and Approval Authority (NIH Delegation of Authority Ethics 4):

    1. IC Deputy Ethics Counselor: An IC Deputy Ethics Counselor (DEC) may review and make final determination for any of the following :

        1. Awards which confer cash or other gift(s) having an aggregate value of less than $2500, excluding any travel to be accepted as sponsored travel (awards with cash gift must be pre-screened by ACD and confirmed to be bona fide prior to approval); or
        2. Awards which confer Other Gifts (see F.3.c. above).

    2. NIH Deputy Ethics Counselor: The NIH DEC will review and make final determination for any of the following:

        1. Award requests submitted by NIH Senior staff; and
        2. Awards which confer a cash or equivalent gift, or other gifts valued at $2500 or greater (excluding items which are accepted by the agency under the sponsored travel mechanism).
        3. Awards which confer Other Gifts, applicable to NIH Senior employees and DECs (see F.3.c. above).

    3. Review by the NIH Ethics Advisory Committee (NEAC):

        1. When the aggregate value of the gifts the employee will personally accept (excluding items that will be accepted by the agency under the sponsored travel mechanism) equals or exceeds $2500, the IC DEC will refer the case to the NIH Ethics office (NEO) for NEAC review and NIH DEC determination.
        2. All requests by senior NIH employees to personally accept gifts under the authority of 2635.204(d) require NEAC review, regardless of dollar value. Additional details are available on the NIH Ethics Program web site, Topics page.

5. Considerations in Review and DEC Decision, and Examples: When reviewing an employee's request for approval to accept gifts associated with any award, the DEC will consider the following issues to determine whether the employee may be permitted to accept the award.

    1. Gifts associated with an award from an outside organization (even one that is a prohibited source) may be accepted for work performed at the NIH, provided that the employee's acceptance is consistent with all applicable rules, including the limitations discussed above.
    Example 1: An intramural employee works in a laboratory which has a CRADA

and a contract with Bristol Myers Squibb (BMS). BMS selects the employee for an award that is part of their recognized awards program. The employee, however, has no personal or supervisory involvement in or responsibility for the CRADA or contract, or for the administration of either. In this situation, the employee may be approved to accept an award from BMS because BMS is not an organization with interests that would be substantially affected the employee's performance or non-performance of official duties. In addition, the employee's one-year disqualification will not negatively affect his/her ability to complete official duty responsibilities.

Example 2: A non-supervisory extramural Health Scientist Administrator (HSA) could be permitted to receive an award from Johns Hopkins University (JHU) as long as the HSA does not currently administer grants/contracts from JHU and can be recused (disqualified) from participating in all official matters involving JHU for one year from receipt of the award.

2. Any award with a gift of cash or investment interest must be pre-screened by the ACD and the NIH DEC before an employee may be given approval to accept the award. The IC DEC must ensure that such pre-screening is accomplished prior to approving the request.
3. If the aggregate value of gifts the employee will personally accept equals or exceeds $2500, the employee's request will be submitted to the NEO for review by the NEAC and decision by the NIH DEC.
4. If a senior NIH employee will accept gifts associated with an award that can <u>only</u> be accepted under the authority of 2635.204(d) (i.e. using an award form), NEAC review and approval by the NIH DEC is required, regardless of value.

   Example 3: The Director of an Institute may be approved to accept a crystal vase valued at $175, manufactured by a famous glass works, offered by the American Society for Cell Biology (ASCB) as an award for meritorious public service, if after NEAC review the NIH DEC determines that acceptance would be consistent with all applicable rules and the IC Director could be recused from specific party matters involving the ASCB for one year.

6. Exceptions: The NIH Director (or the DHHS Secretary with respect to awards tendered to the NIH Director), with the approval of the HHS Designated Agency Ethics Official (DAEO), may grant a written exception to permit an employee to accept gifts associated with an award from a donor who: 1) seeks official action from the employee, any subordinate of the employee, or any agency component or subcomponent under the employee's official responsibility; 2) does or seeks to do business with any agency component or subcomponent under the employee's official responsibility; 3) conducts activities substantially affected by the programs, policies, or operations of any agency component or subcomponent under the employee's official responsibility; or 4) is an association or other organization the majority of whose members are among these entities if:

   1. Considering the following criteria, the NIH Director determines that acceptance of the gift will further an agency interest because it confers an exceptionally high honor in the fields of medicine or scientific research:

1. the identity of the awarding organization;
2. the longevity of the awards program;
3. the source of award funds;
4. the size of the monetary component of the award recognition;
5. the identity and credentials of past award recipients;
6. the degree of publicity attendant to receipt of the award; AND
7. the impact of the substantive contribution being recognized.

2. Without the prohibition in the HHS Supplemental Standards of Ethical Conduct (5 CFR 5501.111(c)(1)), the gift would be permitted under 5 CFR 2635; and
3. The DAEO determines that application of the prohibition in the HHS Supplemental Standards of Ethical Conduct is not necessary to ensure public confidence in the impartiality or objectivity of NIH programs or to avoid a violation of the Government-wide Standards of Ethical Conduct.
   Employees may request an exception using the award request form with a cover memo through their IC DEC to the NIH Ethics Office. Submit the most recent award request form (currently the non-numbered HHS Form for Review/Approval of Awards, available on the NIH Ethics Program web site, Forms page).

7. Disposition of Improperly Accepted Awards:

   1. Failure to Obtain Advance Approval for Permitted Awards: If an employee accepts gifts associated with an award for which approval through the use of an award form is required without obtaining advance approval, the employee may be required to forfeit the gift(s) by returning it to the donor. In addition, any penalty provided by law, applicable regulation, and/or NIH policy may be imposed.
   2. Receipt of Prohibited Award: If an employee accepts gifts associated with an award prohibited by regulation, the employee shall be required, in addition to any penalty provided by law, applicable regulations, and/or NIH policy to:

      1. reject the award and instruct the donor to strike the honoree's name from any list of award recipients;
      2. remove the recognition from the employee's resume or curriculum vitae;
      3. return any tangible indicia of the recognition to the donor; AND
      4. forfeit the gift(s) by returning it to the donor.

G. Exception: Honorary Degree

Normally, an employee may accept an honorary degree within the following guidelines.

1. Official Duty Activity: Subject to prior approval, employees may generally accept an honorary degree as part of his/her official duties. If the honorary degree is not presented locally, employees may travel in their official capacities, under government

travel orders, and the agency may use the sponsored travel mechanism. It is also permissible for employees to accept the honorary degree in their personal capacity while on approved leave (annual leave or leave without pay), provided that any travel is at the employee's personal expense (no gift or reimbursement is permitted). Even if employees accept the honorary degree in their personal capacity, they must still obtain permission to accept the degree.

2. Disqualification: To avoid any appearance of a conflict of interest, an employee must be disqualified from all matters involving the institution awarding the degree from the date that the employee receives notification (written or verbal) that the honorary degree will be conferred until the date of one of the following actions, whichever date is later: 1) the employee notifies the organization in writing that s/he will not accept the honorary degree; or 2) the date the degree is conferred. This disqualification is automatic, begins immediately when the employee receives notification of intent to confer degree, and applies even if the employee chooses to accept the honorary degree in a personal capacity.
3. Criteria for Acceptance of an Honorary Degree: Normally an employee may accept an honorary degree from an institution of higher education as defined in law (20 USC 1141(a)) based on a written determination by the Deputy Ethics Counselor (DEC) that the timing of the award of the degree would not cause a reasonable person to question the employee's impartiality in a matter affecting the institution. Each degree must be reviewed for conformance with the requirements; there is no 'blanket' approval for multiple degrees.
4. Associated Gifts: An employee who may accept an honorary degree pursuant to the above paragraph may also accept meals and entertainment given to him/her and to family members at the event where the presentation takes place. If travel is offered, the IC may accept it if consistent with applicable policy and the employee will travel in his/her official capacity.
5. Advance Approval by a Deputy Ethics Counselor (DEC): All honorary degrees must be approved in advance by the employee's DEC. Submit the most recent honorary degree request form (currently the non-numbered HHS Form for Review/Approval of Honorary Degrees, available on the NIH Ethics Program web site, Forms page).

H. Exception: Free Attendance for Speaking, Widely Attended Gatherings, and Other Events

1. Speaking and Similar Participatory Events: When an employee has been invited to participate as a speaker or panel participant or to present information on behalf of the agency at a conference or other event, as part of official duties, the employee may accept the offer of free attendance at the event on the day(s) of his/her presentation(s) when the invitation is from the event sponsor, including any meals, materials and entertainment furnished to all attendees as an integral part of the event. The employee's participation on that day is viewed as a customary and necessary part of the assignment and does not involve a gift to the employee or to the agency. Employees need only obtain permission to undertake the official duty activity as required by NIH policy. See information about official duty activities on the NIH Ethics Program web

site.

2. Free Attendance at Non-Participatory Events: When an employee is invited to attend an event that falls outside the scope of agency/official duties, an offer of free attendance is considered a gift to the employee. An employee may only accept an unsolicited gift of free attendance at all or appropriate parts of a widely attended gathering, under the conditions detailed below. Submit the most recent form (currently the unnumbered Review/Approval Form for Widely Attended Gatherings (WAG), available on the NIH Ethics Program web site, Forms page). Acceptance can be approved if:

    1. The DEC determines in writing and in advance that the employee's attendance will further agency programs and operations.
    2. The gathering will be attended by a large number of individuals with diverse views or interests; and
    3. If the sponsor has interests which may be affected by the employee's official responsibilities or is an organization the majority of whose members have such interests, the DEC must also determine that the agency's interest in the employee's attendance outweighs the concern that acceptance of the gift may or may appear to improperly influence the employee in the performance of his/her official duties. Relevant factors to consider include the importance of the event to the agency, nature and sensitivity of any pending matter involving the sponsor, the significance of the employee's role in the matter, purpose of the event, identity of other expected participants, and the value of the gift of free attendance.

3. **Free Admission:** Includes waiver of all or part of any entry fee, food, refreshments, entertainment, instructions and materials provided to all attendees. It does not include travel expenses, lodgings, entertainment or receptions collateral to the main event, or meals other than those taken in a group setting with all other attendees.
4. **Time:** Employees shall attend on their own time, or the agency can authorize attendance during an excused absence pursuant to applicable guidelines for granting such absence, or otherwise without charge to the employee's leave.
5. **Blanket Determinations:** A blanket determination of agency interest may be made based on the criteria above for a class or category of invitee.
6. Sponsored Travel and Registration: Free attendance under either H.1. or H.2. does not include the payment or reimbursement of travel and related expenses. When sponsored travel is offered in connection with an employee's official participation in a meeting or other conference, the IC may accept the offer as a gift to the IC as provided in the NIH Manual 1500 and any IC policies. If sponsored travel is offered in connection with an employee's attendance (without official participation) at a meeting or other conference to which the IC intends to send the employee for purposes of training or professional development, the IC may likewise accept the offer. Waived registration to all or part of such a meeting or other conference may be accepted as part of sponsored travel.

    Official and sponsored travel may not be used in relation to other widely attended gatherings.

7. Accompanying Guest: If others in attendance will generally be accompanied by their spouse or guest, or spouses and guests are specifically invited, the agency may authorize an employee to accept an invitation of free attendance for the spouse or guest.
8. Cost Provided by Sponsor of the Event: When the invitation for free attendance is from the organization actually sponsoring the event (planning and supporting financially), the cost is deemed to be provided by the sponsor. Invitations for the employee (and spouse/guest) may be approved regardless of the value of the gift of free attendance.
9. Cost Provided by Non-Sponsor of the Event: When another organization pays the sponsor or designates an employee to be invited, the cost is deemed to be provided by a non-sponsor of the event. Payment of dues or a similar assessment to am organization in support of the event does not constitute a payment intended to facilitate attendance by a particular employee. When a non-sponsoring organization purchases tickets or invitations, and then invites particular employees to attend, the cost is borne by the non-sponsor who purchased the tickets. Invitations from a non-sponsor to the employee (and spouse or guest) may be approved when at least 100 persons are expected to attend and the value of the free attendance (employee plus spouse) is $335 (2008 value) or less (this value is periodically adjusted).

   Example 1: An employee is invited to attend a 3-day conference and speak about NIH programs on one of the days. The sponsoring organization waives the full registration fee. The waived registration fee on the day the employee participates may be accepted under paragraph H.1. above. The free attendance on the other two days may be accepted only with advance approval from the DEC under paragraph H.2. above, or as sponsored travel if appropriate as described under H.6.

   Example 2: An employee is invited to a dinner honoring several people in the health care research arena. The employee must submit the WAG form to receive advance approval to attend. The DEC will review the responses and determine whether the dinner meets the definition of a WAG and whether the particular employee may attend the specific event. Neither official or sponsored travel may be used. The employee must be on leave or excused absence if necessary and personally pay all travel expenses, if any.

   Example 3: An employee is attending a 3-day conference. Each evening, an organization other than the sponsor of the conference is hosting a reception with entertainment for all conference attendees. These events are collateral to the conference, not part of the conference. Each requires separate permission to accept the gift of food and entertainment if the value is over the $20 limit for gifts from outside sources. The employee must obtain permission under the WAG exception to the gift rules from his/her DEC prior to attending any of the extra events.

I. Exceptions: Miscellaneous

1. Gifts Based on Outside Business or Employment Relationship: An employee may accept meals, lodging, transportation, and other benefits arising from outside business

or employment relationships, as follows:

1. Gifts resulting from the business or employment activities of an employee's spouse when it is clear that such benefits are not offered or enhanced because of the employee's official position;
2. Gifts resulting from an employee's outside business or employment activities, when it is clear that such benefits are not offered or enhanced because of the employee's official position; and
3. Gifts customarily provided by a prospective employer in connection with bona fide employment discussions. If the prospective employer has interests which could be affected by the employee's official responsibilities, the employee may accept the gift only if s/he has complied with the requirement to disqualify from official actions based on seeking employment.

2. Gifts in Connection with Political Activities: An employee who, in accordance with the Hatch Act Reform Amendments of 1993, takes an active part in political management or in political campaigns, may accept from a political organization the meals, lodgings, transportation and other benefits, including free attendance at events, when those gifts are provided in connection with the employee's active participation. Any other employee, e.g., security officer, whose official duties require him/her to accompany another employee to a political event may also accept the meals, free attendance and entertainment provided at the event by the political organization.
3. Social Invitations From Non-Prohibited Sources: An employee may accept food, refreshments and entertainment, but not travel or lodgings, at a social event attended by several persons when the invitation is from a person who is not a prohibited source and no fee is charged to any person in attendance.
4. Meals, Refreshments, and Entertainment in Foreign Areas: An employee assigned to duty in (e.g., on official travel to) a foreign area may accept food, refreshments or entertainment in the course of a breakfast, luncheon, dinner or other meeting provided that the event and gift meet the criteria below. (See also NIH Manual Chapter 2400-09, Activities with Foreign Entities (pending release)):

    1. The market value in the foreign area of the food, refreshments or entertainment does not exceed the per diem rate as specified in the Federal Travel Regulations;
    2. There is participation in the meeting or event by representatives of foreign governments or entities, or other individuals who are not US citizens;
    3. Attendance at the meeting or event is part of the employee's official duties; and
    4. The gift of meals, refreshments and entertainment is not from a foreign government, as defined in the Foreign Gifts and Decorations Act (5 USC 7342).

5. Gifts Accepted Under Specific Statutory Authority: The prohibitions on acceptance of gifts from outside sources do not apply to any item when receipt of such items is authorized by statute, for example, sponsored travel.

J. Proper Disposition of Prohibited Gifts

An employee shall make every effort to not accept a gift from a prohibited source or that is based on his/her official position.

1. Employee Responsibilities: When an employee receives a prohibited gift, if that employee, on his/her own initiative, promptly complies with the requirements set forth here, the employee will not be deemed to have improperly accepted an unsolicited prohibited gift. An employee who promptly consults his/her agency ethics official to determine whether acceptance of an unsolicited gift is proper and who, upon the advice of the ethics official, disposes of a prohibited gift in an appropriate manner, will be considered to have complied with the requirements of this section on his/her own initiative. An employee who has received a gift which cannot be accepted, unless the gift is accepted by the Institute under its gift acceptance authority, must do one of the following:

    1. Return any tangible item to the donor or pay the donor its market value. If the market value is not obvious, the employee may estimate its market value by reference to the retail cost of similar items of like quality.
    2. When it is not practical to return a tangible item because it is perishable, at the discretion of the employee's supervisor or agency ethics official, the item may be given to an appropriate charity, shared within the recipient's office, or destroyed.
    3. For any entertainment, favor, service, benefit, or other intangible item, reimburse the donor the market value. Subsequent reciprocation by the employee does not constitute reimbursement.
    4. Dispose of gifts from foreign governments or international organizations in accordance with appropriate regulations. Because gifts and awards from foreign government entities are subject to different requirements, employees must consult with their ethics official. See NIH Manual 1135-1 Foreign Gifts and Decorations on the NIH Manual Chapters web site.

    Example 1: An employee receives a large fruit basket as a holiday gift from a contract employee working in the same office. The employee must either return the gift to the contract employee, or talk to the supervisor or IC ethics staff for permission to share the fruit with office colleagues. The employee should thank the giver on behalf of the office.

    Example 2: An employee gives an official speech in a foreign country. As s/he departs for the plane, one of his/her foreign colleagues from a non-governmental entity gives him/her a gift. It would be embarrassing for the foreign colleague, and in some countries contribute to 'loss of face' so the employee indicates that the gift was not necessary but expresses his/her thanks. When s/he gets on the plane and opens the gift, s/he finds a small jeweled pin. Upon return to NIH, s/he immediately discusses the issue with his/her IC's ethics staff. In examining jewelry in local stores, the employee determines that the value is over $20. Therefore, the jewelry becomes Government

property and the IC determines whether they will send it back or keep it (gift acceptance authority permits the IC to keep it). If the IC keeps the gift, a thank you note is sent to the giver on behalf of the IC. Return of the item and sending the thank you note may be done at Government expense.

Example 3: Change the scenario in the above example such that the employee was handed an envelope as s/he departed for the airport. Again, s/he indicates that a gift is not necessary but does not want to embarrass his/her foreign colleagues. Upon opening the envelope at the airport, s/he finds that it contains $500 in US currency. S/He immediately consults with his/her IC's ethics staff when s/he returns to work. Because his/her speech was official business, s/he may not keep the money.

2. Return of Gifts/Reimbursement: An agency may authorize disposition or return of gifts at Government expense. Employees may use Government envelopes to forward reimbursements required or permitted by this section.

K. Availability of Forms

Forms for requesting approval of awards, honorary degrees, and free attendance are available on the NIH Ethics Program web site, Forms page

L. Additional Information

For assistance in specific situations, contact your IC's ethics office staff, or review the information on the NIH Ethics Program web site. You may also contact staff in the NIH Ethics Office.http://ethics.od.nih.gov/

See the introductory chapter NIH Manual 2400-01, Introduction to Government Ethics at the NIH (6/18/08) for information regarding relevant Authorities and References (Section D), Records Retention and Disposal (Section H), and Management Controls (Section I).