

GIFTS AND BEQUESTS

Number: DAO 203-9

Effective Date: 2001-05-31

SECTION 1. PURPOSE.

.01 This Order prescribes policies and procedures for accepting gifts and bequests to the Department of Commerce (the Department) and for their use.

.02 This revision updates the Order, and explains the controls necessary for management to support and account for all donations.

SECTION 2. LEGAL AUTHORITY.

.01 Sections 1522-1524 of Title 15, United States Code (U.S.C.), authorize the Secretary to accept and use gifts and bequests.

.02 Section 1353 of Title 31, U.S.C., governs the acceptance by an agency of payment(s) from a non-Federal source for travel, subsistence, and related expenses with respect to the attendance of an employee in a travel status at any meeting or similar function relating to the official duties of the employee.

SECTION 3. EXCLUSIONS.

This Order does not cover the following:

- a. Funds, property, and services contributed and accepted pursuant to the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law (P.L.) 87-256 (22 U.S.C. 2451);
- b. Gifts tendered by and accepted from foreign governments to employees of the Department. Policies for such gifts are contained in DAO 202-739, "Gifts and Decorations from Foreign Governments and to Foreign Individuals." Gifts to foreign individuals are subject to the policies contained in that Order;
- c. Contributions, awards, or other expenses for training employees of the Department under the Government Employees' Training Act (5 U.S.C. 4111), and related instructions of the Office of Personnel Management (see DAO 202-410, "Employee Development"). Where no training is involved, contributions for travel expenses for employees to attend meetings or other official functions should be accepted and administered under this Order and not DAO 202-410;
- d. Funds intended to defray expenses incidental to services rendered to a public or private organization on a reimbursable basis, as authorized by law (e.g., 15 U.S.C. 273, 275a, and 1525);
- e. Personal services by persons offered on a gratuitous or cooperative basis for advisory or other purposes. Such services shall not be considered a gift under this Order;
- f. Gifts and bequests to employee organizations which are not Government entities;
- g. Personal gifts to employees or members of their families. Regulations addressing such gifts are found in the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR 2635.202 to 2635.205; and

h. Revenues generated from fees or charges for special events or functions sponsored by the Department. Such funds may be used only to reimburse the Department for the actual costs it incurs for such special event or function. Revenues generated in excess of actual costs shall be refunded to the payers, or if a refund is not possible, deposited into the Treasury account, "Gifts to the United States--not otherwise classified--1299."

SECTION 4. DELEGATION OF AUTHORITY.

.01 The authority delegated to the Chief Financial Officer and Assistant Secretary for Administration (CFO/ASA), in Department Organization Order 10-5, includes carrying out the Secretary's responsibilities for gifts and bequests under 15 U.S.C. 1522. Limited authority to accept, reject, hold, administer, and use gifts and bequests of personal and real property is hereby delegated to Secretarial Officers and heads of operating units with restrictions as specified in subparagraphs .04a. and b. below. This authority may be redelegated, except as otherwise provided in this Order. Those persons authorized to accept gifts or bequests are hereinafter referred to as "authorized officials."

.02 The authority to accept a gift or bequest under this Order includes the authority to negotiate the terms of acceptance of a gift or bequest, or to refuse to accept a gift or bequest.

.03 When on official travel, or in other circumstances where an offer of a donation may arise, Department employees may be designated by authorized officials to accept gifts and bequests on an ad hoc basis. Such authority may be granted retroactively, but only if circumstances prevented the employee from seeking authorization prior to the acceptance of the gift or bequest.

.04 The delegated authority in paragraph 4.01, above, is limited as follows:

a. The Secretary must approve the acceptance of gifts valued in excess of \$25,000.

b. The CFO/ASA must approve the acceptance of:

1. Real property or interest in that property, regardless of the value.

2. Gifts and bequests offered:

(a) on the condition that the Department undertake activities or expenditures not part of regular Departmental programs;

(b) on the condition that the Department adhere to particular requirements as to deposit, investment, or management of the funds donated;

(c) which require more than incidental expenditures in connection with administration and use;

(d) which involve unusual conditions or requirements; or

(e) which involve an in-kind donation for travel, subsistence, and accommodations valued at \$500 or more over the amount allowable under the Department's Travel Handbook.

SECTION 5. RESPONSIBILITIES.

a. Secretarial Officers and heads of operating units shall designate a responsible official as Gifts and Bequests Manager. The Gifts and Bequests Manager is to provide liaison with the CFO/ASA and the Office of the General Counsel (OGC) in connection with gifts and bequests activities. This designation shall be reported to the Director, Office of Executive

Budgeting and Assistance Management.

b. Operating units shall establish internal operating procedures consistent with this Order for accepting, holding, administering, and using gifts and bequests. Basic requirements for operating unit procedures are listed in Exhibit 1 to this Order.

SECTION 6. POLICY FOR ACCEPTING GIFTS AND BEQUESTS.

.01 A gift or bequest may be accepted by an authorized official only if the donation would:

a. Aid or facilitate some part or aspect of the work of the Department;

b. Constitute a bona fide gift or bequest rather than a payment in exchange for goods or services (e.g., the donor has not expressly or impliedly requested some particular Department action which directly benefits the donor in return for the gift or bequest (a quid pro quo)); and

c. Not cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of agency programs or operations. In making this determination, an authorized official shall consider all relevant factors, including, but not limited to, the following:

1. The identity of the donor;

2. The purpose of the gift or bequest;

3. The identity of other expected recipients of the gift or bequest on the same occasion, if any;

4. The nature and sensitivity of any matter pending at the Department affecting the interests of the donor;

5. The significance of the employee's role in any such matter; and

6. The monetary value and character of the gift or bequest offered by the donor.

.02 An authorized official, in accepting and using gifts and bequests to the Department, must be careful not to take any action which creates a conflict of interest or the appearance of impropriety. Conflict of interest regulations and statutes may place additional limitations on employee conduct and may bar acceptance or use of a gift or bequest in particular circumstances.

.03 Authorized officials should seek advice and assistance from the Assistant General Counsel for Administration if a question arises regarding the propriety of accepting a gift or bequest or other matters in connection with a gift or bequest.

SECTION 7. POLICY FOR USE OF GIFTS AND BEQUESTS FUNDS.

.01 Every effort shall be made to use gifts or bequests donated for a specific purpose in accordance with the terms of the respective gift or bequest.

.02 Unconditional gifts and bequests, and the income from their investment, shall be used for any purpose that aids or facilitates the work of the Department. This includes, but is not limited to, the following:

- a. Program support, whether or not appropriated funds exist, provided that such expenditures are not barred by law or regulation;
- b. Official travel of employees (see Section 9. below);
- c. Official entertainment and representation (see DAO 203-10, "Official Entertainment and Representation Authorization," for dollar limitation requiring CFO/ASA approval); and
- d. Any other activity where an authorized official determines that a mission-related necessity exists.

.03 Gift and bequest funds shall not be used for the following types of expenditures:

- a. Office parties or social events primarily for the benefit of Government employees or which would otherwise not be authorized under DAO 203-10;
- b. Gifts or tokens for Government employees; and
- c. Travel expenses of family members accompanying employees on official travel, unless such members are performing Governmental functions, including serving in a representational capacity during foreign travel. Advice from the Assistant General Counsel for Administration should be obtained in such circumstances.

SECTION 8. PROCEDURES FOR ACCEPTING GIFTS AND BEQUESTS.

.01 Gifts or bequests may be accepted in the form of a check or other negotiable instrument made to the order of the United States Government, the Department, or one of the Department's organizational units; a check or other negotiable instrument made to the order of an individual which is endorsed over to the United States Government, the Department, or one of the Department's operating units; real or personal property; or goods or services in-kind.

.02 A check or other negotiable instrument offered to an individual employee in his or her name, but intended as a gift to the Department, may be accepted by the employee by endorsing it to the United States Government, the Department, or one of the Department's operating units (preferably in the presence of the donor) if the employee is authorized to accept the gift but first:

- a. Advises the donor that the check or other negotiable instrument should not be payable or titled to him or her because he or she may not accept a personal gift or donation; and
- b. Requests that the donor make the check or negotiable instrument payable to the United States Government, the Department, or one of the Department's operating units, and the donor does not or cannot do so.

.03 An individual employee or authorized official shall not accept, under any circumstances, gifts or bequests in the form of cash. The donor shall be requested instead to make out a check or equivalent instrument payable to the United States Government, the Department, or one of the Department's operating units, which may then be accepted by an authorized official. Employees in such cases should explain the intent of this policy, i.e., the protection of the interest of the employee, the donor, and the Government; and that there is no exception to this policy.

.04 An employee not authorized to accept gifts and bequests to the Department should immediately report to his or her supervisor any offer or receipt of a gift or bequest. The employee shall also tell the donor that he or she will put the donor in contact with a Department official specifically designated to accept gifts.

.05 Gifts and bequests shall be acknowledged in writing to the donor. The acknowledgment shall not make reference to the value of the property received other than monies. At least within 30 days of accepting each gift or bequest, the appropriate authorized official shall prepare and approve Form CD-210, "Record of Gift or Bequest," (Exhibit 2 to this Order), for recording by their supporting finance and accounting offices. Donations of goods or services in-kind must be reported on this form as well as other types of gifts and bequests. By signing the form, the authorized official certifies that the acceptance is in accordance with this Order.

.06 Gifts and bequests of property, other than monies or in-kind donations shall, upon their acceptance, be turned over to the bureau's property office for recording in the property records together with Form CD-210.

SECTION 9. GIFTS AND BEQUESTS FOR OFFICIAL TRAVEL.

Employees shall not solicit payment for travel, subsistence, and related expenses from a non-Federal source. Gifts and bequests for travel expenses received from a non-Federal source shall be accepted and reported in accordance with the policies contained in the Federal Travel Regulations, 41 CFR Part 304-1, and under the following conditions:

a. Funds accepted by the Department can be used to reimburse employees on official travel for travel expenses incurred. Generally, the travel expenses paid by the Gifts and Bequests Fund are limited to those authorized by the Department's Travel Handbook. However, when the non-Federal source makes full payment in excess of these limitations for reimbursable subsistence expenses or common carrier transportation expenses incurred, reimbursement to the employee shall be the amount of the payment from the non-Federal source. Reimbursement to the employee for expenses in excess of regulatory limitations shall not, in any case, exceed the amount of the expenses incurred.

b. Goods or services in-kind may also be accepted to provide employees on official travel with transportation and accommodations. Airplane tickets, hotel accommodations and meals, as opposed to funds, are examples of goods or services in-kind. Such in-kind donations must generally conform to the Department's Travel Handbook. Lavish travel accommodations in most circumstances shall not be accepted because they are considered personal compensation to the employee for performing his or her Government duties. Such compensation is barred by statute in 18 U.S.C. 209. However, in certain instances, if it were clear from the circumstances of the donation that the gift was for the convenience of the donor rather than of personal benefit to the employee, such donations may be accepted. Advice from the Assistant General Counsel for Administration shall be obtained in these circumstances.

c. An authorized official must approve, in advance of travel, all gifts or bequests for official travel (travel, subsistence, accommodations and related expenses) which exceed the value of expenses authorized by the Department's Travel Handbook. Approval for such a gift or bequest is appropriate only when the accommodation or other benefit furnished is comparable in value to that offered to, or purchased by, other similarly situated individuals attending the event. When circumstances indicate that a gift or bequest in excess of the value of expenses authorized by the Department's Travel Handbook may be offered to an employee on official travel, an authorized official may, pursuant to paragraph 4.03 of this Order, delegate the authority to accept gifts and bequests on behalf of the Department to this employee on an ad hoc basis, except that the prior written approval of the CFO/ASA must be obtained when the value of an in-kind donation exceeds by \$500 the total value of travel, subsistence, accommodations, and related expenses available under the Department's Travel Handbook. Form CD-210 must be used to obtain the prior approval of the CFO/ASA.

d. An authorized official accepting donations for payment of travel expenses shall report

those donations on Form CD-210 with a copy attached to the travel voucher. (See Department's Travel Handbook for additional information.) The official shall report all donations received for payment of travel expenses whether made by check or provided as goods or services in-kind.

e. A separate report, in addition to Form CD-210, shall be prepared for each payment from a non-Federal source for travel, subsistence, and related expenses which totals more than \$250 per event. Each Secretarial office and primary operating unit shall compile these reports and submit them on a semi-annual basis to the Office of the Assistant General Counsel for Administration. The deadlines for submission of these reports shall be April 30 with respect to payments received in the preceding period beginning on October 1 and ending on March 31; and October 31 with respect to payments received in the preceding period beginning on April 1 and ending September 30. The information required to be submitted on these reports is contained in Form CD-538, "Acceptance of Payment from a Non-Federal Source for Travel Expenses" (Exhibit 3 to this Order). These reports shall be included in the Department's semi-annual report to the Office of Government Ethics pursuant to 41 CFR 304-1.9.

SECTION 10. ACCOUNTING RECORDS AND REPORTS.

.01 Those operating units having gifts and bequests funds shall hold their supporting finance and accounting offices responsible for recording transactions. The finance and accounting offices shall maintain adequate systems of accounting and internal control in accordance with the Department and central agency directives. Appropriate project accounts will be established by program officials in conjunction with their respective Gifts and Bequests Managers as necessary for purposes of management and control.

.02 The finance and accounting offices shall make their own deposits and certify their own disbursement vouchers for gifts and bequests transactions under their individual Treasury station symbols.

.03 The Treasury Department has established the following account symbols for use in connection with the receipt and administration of funds under 15 U.S.C. 1522, (P. L. No. 88-611), Gifts and Bequests.

a. Receipt Accounts:

1. 13 X 8501.1 Gifts and Bequests, Commerce.
2. 13 X 8501.2 Income on Investments, Gifts and Bequests, Commerce.
3. 13 X 8501.3 Other Income, Gifts and Bequests, Commerce.

b. Expenditure Account: 13 X 8501 Gifts and Bequests, Commerce.

.04 Operating unit finance and accounting offices should refer to the DOC Accounting Principles and Standards Handbook for additional information on the proper accounting treatment of gift and bequest activity.

.05 Each operating unit shall ensure that, within 30 days of accepting a gift or bequest, Form CD-210 is sent to its finance and accounting office. In-kind donations shall also be reported. The CD-210 shall show the value of each gift or bequest accepted, including that of in-kind donations.

.06 The finance and accounting office for each primary operating unit shall prepare quarterly an SF-133, "Report on Budget Execution," and submit the report to the Office of Financial Services (OFS), supported by the National Institute of Standards and Technology (NIST). The OFS shall then prepare a consolidated SF-133 report for the

Department.

.07 A fiscal year-end report shall be prepared by the OFS by December 15 in conjunction with all the primary operating units having gifts and bequests funds. The report will show the number, source, nature, purpose, and amounts of gifts and bequests to each organization; the nature and purpose of expenditures; annual investment income or other income from gifts and bequests; and the status of balances in the fund.

.08 The finance and accounting office for each operating unit having Gifts and Bequests funds is responsible for recording transactions, making its own deposits and certifying its own disbursement vouchers under its own Treasury station symbol. Each operating unit finance and accounting office having gifts and bequests funds shall submit its financial information quarterly to the National Institute of Standards and Technology, Office of the Comptroller, Financial Services Group (FSG), for the preparation of Department-wide consolidated reports. The FSG shall prepare financial statements to report the financial position and results of operations of the Gifts and Bequests Trust Fund as required by the Chief Financial Officer Act of 1990, as amended by the Government Management Reform Act of 1994. The financial statements shall be prepared in accordance with the US Department of Commerce Accounting Principles and Standards Handbook and OMB Bulletin No. 97-01, Form and Content of Agency Financial Statements.

SECTION 11. EFFECT ON OTHER ORDERS.

This Order supersedes Department Administrative Order 203-9, dated May 14, 1996.

Signed - Chief Financial Officer and Assistant Secretary for Administration

Office of Primary Interest Office of Executive Budgeting and Assistance Management

APPENDIX A DAO 203-9

OPERATING UNIT ADMINISTRATIVE RESPONSIBILITIES INTERNAL OPERATING PROCEDURES

Each operating unit having a gifts and bequests fund shall develop and maintain published internal operating procedures consistent with this Order for accepting, holding, administering, and using gifts and bequests. Procedures should include the following requirements:

.01 Acceptance of Donations

a. An authorized official must notify his/her Gifts and Bequests Manager, upon confirmation by the donor, of expected gifts and bequests donations to the Department. This information will be used in the orderly planning of official functions, for the effective management of public funds, and to support the accounting records.

b. All gifts, including gifts in-kind, shall be approved by an authorized official before they are accepted. This includes gifts for travel valued at less than \$250 which are not reported to the Office of the Assistant General Counsel for Administration. The appropriate official should indicate approval by signing a CD-210, "Record of Gift or Bequest," prior to travel or acceptance of a gift. If a gift is offered while on official travel, the traveler shall contact the approving official for clearance before it is accepted, unless the approving official had delegated to the traveler the authority to accept the gift. The dollar amount recorded on a CD-210 should represent an estimate of the value of a future gift or the actual value of the assets or services which have been received. Employees must complete a travel voucher after a trip that involves a travel gift. This must be done even if the trip involved no expense to the Government. Employees must

retain evidence of all gifts by obtaining receipts, unless the gift is a meal.

c. A separate report shall be prepared for each travel gift which totals more than \$250 per event. These reports must be submitted on a semi-annual basis to the Office of the Assistant General Counsel for Administration by April 30 with respect to payment received in the preceding period beginning on October 1 and ending on March 31; and October 31 with

respect to payment received in the preceding period beginning on April 1 and ending on September 30. The information required to be submitted on these reports is contained in Form CD-538, "Acceptance of Payment from a Non-Federal Source for Travel Expenses," (Exhibit 3 to this Order).

d. The acceptance of gifts from foreign governments is covered in DAO 202-739, "Gifts and Decorations from Foreign Governments and to Foreign Individuals."

.02 Expenditure of Funds

a. The Gifts and Bequests Manager shall establish a system of administrative funds controls for Gifts and Bequests to ensure that obligations and expenditures do not exceed available funds.

b. The operating unit shall provide specific employee penalties for violations of gifts and bequests policy including, at a minimum, reimbursement of funds where inappropriate expenditures have been made or where they have exceeded available funds.

c. The use of in-kind gifts shall be documented with receipts or other related evidence (i.e., copies of hotel bills or airline tickets or other such evidence of value that identifies the expenses paid by the donor.).

d. All expenditures of Gifts and Bequests funds should be supported with an approved Form CD-464, "Request for Authorization for Official Entertainment" per DAO 203-10, or an equivalent form for non-entertainment expenditures.

e. The approval of the Chief Financial Officer and Assistant Secretary for Administration is required for all expenditures which exceed \$1000 per DAO 203-10.

.03 Property

a. An inventory of capitalized and accountable donated property shall be maintained.

b. A physical count should be taken of donated property at least annually. The finance office should assist in the inventory, both to provide independent verification and to fulfill the finance responsibility of being assured of the valuation of inventory when preparing financial statements.

c. Donated property inventory records should be updated each time an item is destroyed, excessed to GSA, or otherwise discarded.

.04 Documentation and Accounting Support

a. All gifts received by an operating unit shall be recorded and maintained in a log and each gift shall be given a control (reference) number. The log should be capable of cross-referencing the promise of a gift, the receipt of that gift and, if the gift is made/offered for a specific purpose, the payment of expenses associated with the gift.

b. Information is collected on all gift and bequest donations (monetary receipts, other assets, or services), expenses, and property dispositions, and forwarded to the bureau finance office at least monthly.

c. Information on gifts (listings of control numbers and dollar amounts) shall be forwarded to the finance office to support period activity and cutoff entries. This should be done as often as financial reports are produced. The following information is required:

1. Promises of gifts for services yet to be performed, as of the last day of the period;

2. Donations (funds, other assets, and in-kind services) received during the period and whether they will involve offsetting expenditures;

3. Donations received for which offsetting expenditures have not been made, as of the last day of the period; and

4. Expenses incurred, and charged to the Gifts and Bequests account, for which a gift reimbursement has not been received, as of the last day of the period.

d. Information on the disposal of property also shall be forwarded to the finance office to support financial reports.

Please call (202) 482-7873 for copies of the Exhibits