

LEGADMINMAN

CHAPTER 12

GIFTS

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CHAPTER 12

GIFTS TO THE MARINE CORPS

12000. SCOPE. This chapter implements policy and procedures for accepting gifts to the Marine Corps pursuant to SECNAVINST 4001.2G and SECNAVINST 1650.1F. It covers:

1. Gifts under 10 U.S.C. § 2601. Acceptance of gifts for the establishment, operation, or maintenance of a school, hospital, library, museum, cemetery, or any other organization under the jurisdiction of the Marine Corps authorized by 10 U.S.C. § 2601;
2. Gifts from foreign governments;
3. Gifts to the Commandant's House;
4. Gifts to a Marine Corps special service recreation fund;
5. Gifts given to MWR activities.
6. Gifts of Travel under 10 U.S.C. § 1353. Acceptance of payment from a non-Federal source for travel expenses authorized under 31 U.S.C. § 1353 (implemented by 41 C.F.R. § 301-1 and 304-1); and
7. Gift acceptance authority and delegations.

12001. DEFINITIONS

1. Gift, unless otherwise qualified, means a gift, devise, bequest, or loan (other than of money) of real or personal property without consideration.
2. Money means cash, checks, or other forms of negotiable instruments.
3. Personal property includes clothing, jewelry, household furnishings, money, vehicles, stocks, bonds, and all property not defined as real or intellectual property.
4. Real property includes land and any buildings, improvements, or fixtures on that land.
5. Intellectual property includes any patent, trademark, copyright, or other intangible property interest of a similar nature.
6. Organization includes any activity under the jurisdiction of the Marine Corps including, but not limited to, any defined organizational

unit or activity, nonappropriated fund activity, research and development facility, school, hospital, library, museum, or cemetery.

7. Acceptance authority is the DON official or officer who, on behalf of the Secretary of the Navy, may accept gifts that satisfy the criteria found in this chapter. The acceptance authorities for particular categories of gifts are listed below.

8. Foreign government includes any unit of foreign governmental authority (including any foreign national, state, local, or municipal government or armed force), any international or multinational organization whose membership is comprised of any of the units of foreign governments described above, and any agent or representative of any such unit or organization while acting as such.

9. Prohibited source means any person who (1) is seeking official action by the Marine Corps or the DON; (2) does business or seeks to do business with the Marine Corps or the DON; (3) conducts activities regulated by the Marine Corps or the DON; (4) has interests that may be substantially affected by the performance or nonperformance of official duties by Marine Corps or DON personnel; or (5) is an organization a majority of whose members are described in (1) through (4) above. No person or organization shall be deemed a prohibited source for the purposes of this chapter solely because of the offer of a gift or because the stated purpose of the organization includes the provision of financial support to DON, its components, or DON personnel.

10. For the purposes of this chapter, Marine Corps personnel include:

a. All members of the Marine Corps, regular or Reserve, on active duty, active duty for training, and periods of inactive duty training, such as drills or other appropriate duty;

b. All Navy military personnel, regular or Reserve, on active duty, serving with the Marine Corps; and

c. All civilian employees of the DoD serving with the Marine Corps, including personnel of nonappropriated fund instrumentalities.

12002. POLICY. Any gift, regardless of value, will be refused by the Marine Corps if at some future time it might embarrass or lead to criticism of the Marine Corps or the DON by reason of favors which might be expected as a result of the gift, by creating the appearance of a relationship in which favors are granted, or if it might result in unwarranted publicity for the donor at the expense of the Government.

1. Conditional Gifts. An offer of a gift to the Marine Corps with specified conditions, other than the use to which the gift shall be

put, will normally not be accepted. Such gifts might include loans of property, property donated with unduly burdensome conditions or conditions that improperly discriminate among beneficiaries, or gifts requiring expenditures of funds or administrative effort that outweigh the value of the gift.

2. Solicitation of Gifts. Unless specifically authorized by the Secretary of the Navy, Marine Corps personnel shall not solicit gifts for the Marine Corps or its personnel and no gift that is the result of an unauthorized solicitation shall be accepted. Further, as provided in DoD Publication 5500.7-R, Joint Ethics Regulation (JER), the solicitation of gifts from prohibited sources by Marine Corps personnel for themselves, their spouses, minor children or members of their household is prohibited and may result in disciplinary action.

3. Selective Endorsement. DoD and DON policies proscribe giving preferential treatment to any organization or person. No gift from a commercial enterprise, non-profit organization, or individual shall be accepted if such acceptance would reasonably create the appearance of selectively endorsing the donor, its products, or its services.

4. Future Gifts. A gift may not be accepted until actually offered. An offer by a donor to raise funds for future donation to the Marine Corps, for example, shall be treated as a pledge for a future gift. If the ultimate gift is acceptable under this chapter, the acceptance authority should so advise the donor that the gift cannot be finally accepted until fund-raising is completed and the funds, or the property purchased with the funds, offered to the Marine Corps.

5. Gifts from Foundations and Similar Entities Foundations and other non-profit organizations may provide valuable support to the Marine Corps; however, such organizations should not be used as a conduit for such sources to make gifts indirectly that would not be permitted under the gift acceptance policies if they were offered directly to the Marine Corps. Acceptance authorities must exercise caution before accepting a gift from a foundation (or similar entity) that solicits funds or other property for future donation to the Marine Corps, its organizations or personnel to ensure that the donation is not an attempt to circumvent the policies contained in this chapter.

6. Fund-Raising by Marine Corps Personnel. Participation by Marine Corps personnel in activities to raise funds for future presentation to the Marine Corps, or for the purchase of real or personal property to be presented to the Marine Corps in the future, is governed by DoD policy which prohibits DoD personnel from participating in their official military capacity in fund-raising activities which are not recognized for on-the-job solicitation with the Federal service. This prohibition applies to official participation during duty and non-duty hours, but does not preclude participation in fund-raising activities

as a private citizen during non-duty hours. Refer to the JER for specific guidance.

7. Gifts from Prohibited Sources. Acceptance of gifts from prohibited sources requires heightened sensitivity because acceptance may create embarrassment to the Marine Corps or the DON, or the appearance of influencing official decision-making or actions of the Marine Corps or the DON. Consequently, before accepting a gift of more than \$5,000.00 from a prohibited source, the acceptance authority shall inform the Staff Judge Advocate to the Commandant (CMC (JA)) of the offer. CMC (JA) shall then consult with and request a determination from the Office of General Counsel for the Navy (Attn: Assistant General Counsel (Ethics)) whether the donor is involved in any claims, procurement actions, litigation, or other matters involving the DON, and will provide this information to the gift acceptance authority. Additionally, gift acceptance authorities shall provide a copy of each gift acceptance decision involving a gift from a prohibited source to CMC (JA), who will provide a copy to the Office of General Counsel for the Navy.

8. Gifts From Foreign Governments

a. Gifts of Minimal Value. Table favors, mementos, or other remembrances bestowed at official functions, and other gifts of minimal value (less than \$245.00) received as souvenirs or marks of courtesy from a foreign government may be accepted and retained by the recipient.

b. Gifts of More than Minimal Value. When a gift of more than minimal value (\$245.00) is tendered, the donor should be advised that statutory provisions and DoD policy prohibit Marine Corps personnel from accepting such gifts. If it appears that refusal of a gift would be likely to cause embarrassment to the donor or could adversely affect the foreign relations of the United States, it may be accepted as a gift to the Marine Corps and becomes Marine Corps property. The gift may be retained for official use by the command or forwarded to CMC (JAR) as excess property for disposal by the General Services Administration (DoD Directive 1005.13 and SECNAVINST 1650.1E provide additional guidance). If forwarded for disposal, include a cover letter with all information specified in subparagraphs 12002.8c(1) through (5).

c. Reporting Requirement. Each command shall maintain records of gifts of more than minimal value received by their employees from foreign governments. A report of all such gifts received during the preceding calendar year (Report Control Symbol EXEMPT) shall be forwarded annually to CMC (JAR) no later than 15 January (negative reports not required). The report (figure 12-1) shall include the following information:

- (1) Name and title of recipient

(2) Brief description of the gift, date of acceptance, estimated value, and current disposition or location

(3) Identity of foreign donor and government

(4) Circumstances justifying acceptance

(5) Whether recipient desires to participate in sale of gift if sold by GSA.

9. Acceptance of Travel From a Non-Federal Source

a. Gifts of Travel. 31 U.S.C. § 1353 permits non-Federal sources to pay the Government, in kind or by reimbursement, for the expenses of travel, accommodations and meals for Government officials and employees attending meetings, conferences, or events of a similar nature.

b. Acceptance Procedures. Before payments for travel may be accepted from a non-Federal source, the travel approving authority should make the following determinations:

(1) Payment is for attendance at a meeting or similar function. This excludes events required to carry out an agency's statutory and regulatory functions. It also excludes promotional vendor training.

(2) Payment is for travel related to the employee's official duties.

(3) Payment is from a non-Federal source that is not disqualified on conflict of interest grounds. A "conflicting source" of payments is a non-Federal organization that "has interests that may be substantially affected by the performance or nonperformance of the employee's duties." In this case, the official must determine that "the agency's interest in the employee's * * * attendance at or participation in the event outweighs concern that acceptance of the payment may or may not reasonably appear to influence improperly the employee in the performance of his/her official duties."

(4) The travel is primarily for the benefit of the Government, not the organization.

c. Reporting Requirement. The offer of payment shall be accounted for and processed per Chapter 7, Part W (service members) of the Joint Federal Travel Regulations or Chapter 4, Part Q (civilian personnel) of the Joint Travel Regulations. Each travel-approving authority shall report gifts of travel (Report Control Symbol EXEMPT) to CMC (JAR) semiannually on 30 April and 30 October (negative reports not required). The DoD Standards of Conduct Office (SOCO) now requires two documents for each gift: (1) a memorandum reflecting

approval by the travel approving authority and concurrence of the ethics counselor, and (2) a memorandum reflecting specifics of payments, recipient, and event.

12003. PROCESSING OF GIFTS OF PERSONAL PROPERTY TO THE MARINE CORPS

1. Procedures. The following procedures shall be employed in processing gifts of personal property to the Marine Corps:

a. When any Marine Corps organization is offered a gift, the recipient shall acknowledge the offer and advise the prospective donor that the offer has been forwarded to the appropriate acceptance authority.

b. Offers of gifts shall be forwarded promptly to the acceptance authority via the chain of command. The forwarding correspondence should contain the information provided in the sample at Figure 12-2.

c. If tangible property of any kind other than money is received, the receiving organization shall temporarily assume custody of the property. The property shall not be taken up on the property account records of the organization concerned, however, until after final acceptance by the appropriate acceptance authority.

d. When money is offered as a gift, it shall be forwarded to the appropriate acceptance authority as an attachment to correspondence that conforms to Figure 12-2. (Gifts of money tendered in the form of negotiable instruments must be made payable to the Department of the Navy.) The funds shall then be forwarded to CMC (RFO) for submission to the Assistant for Administration, Deputy Under Secretary of the Navy (AAUSN). Once the gift has been properly accepted, the funds will be deposited and, in most cases, returned to the receiving activity.

e. Gifts offered to Morale, Welfare and Recreation (MWR) organizations should be processed in accordance with MCO P1700.27. The requirements of paragraph 12003 are waived for gifts to MWR activities including the requirement to forward the gift or money to CMC (RFO) for submission to the Assistant for Administration, Deputy Under Secretary of the Navy (AAUSN).

f. Birthday Balls. If the gift is to an MWR activity, gift acceptance rests with MWR. If a private organization has been set up to plan the Marine Corps birthday ball, the private organization will be the acceptance authority for all gifts. Private organizations must be set up in accordance with Chapter 2 of the JER. Finally, the gift may be accepted as a gift to the Marine Corps and the procedures of paragraph 12003 apply.

g. Any gift offered by a foreign government must be processed under the procedures in Chapter 2 of the JER. Offers of gifts of travel may be accepted under paragraph 12002.9.

h. In exceptional circumstances where a limited time offer must be expeditiously accepted, such as an offer of tickets to a near-term event or a gift of travel taking place in a short time, the offer may be forwarded to the acceptance authority in message format or by facsimile, copying the chain of command.

i. Any offer of a gift of real property, regardless of value, made for the benefit of, or in connection with the establishment, operation, or maintenance of any Marine Corps organization, shall promptly be referred to the cognizant general officer in command or district director who shall forward the offer with comments and a recommendation regarding acceptance to the engineering field division of the Naval Facilities Engineering Command serving the area where the offered property is located for further handling per SECNAVINST 4001.2G. The general officer in command or district director shall forward a copy of such correspondence to CMC (CL). The engineering field division concerned shall staff through CMC any offer of a gift of real property to a Marine Corps organization. Under SECNAVINST 4001.2G, only the Secretary of the Navy can accept gifts of real property.

j. Any offer of a patent, trademark, copyright or other gift of intellectual property for the benefit of, or in connection with the establishment, operation, or maintenance of any Marine Corps organization shall be promptly referred to CMC (CL).

k. Any offer of a gift to the Marine Corps made through the religious offerings fund will be processed per MCO 7010.17A. This includes funds collected during church services. However, offers of gifts designated for a use other than that for which a church service offering is made shall be processed under this chapter rather than MCO 7010.17A (money donated for the purchase of a stained glass window for a base chapel is an example of such a gift).

l. Where money is offered as a gift and the donor has not specified a use for the money, the receiving organization shall recommend a use to the acceptance authority.

m. Acceptance authorities may accept gifts of personal property to the Marine Corps consistent with the policy stated in this chapter and within the value limitations specified in paragraph 12003.2. Acceptance authorities shall maintain records of gifts per paragraph 12006. Acceptance authorities shall direct the recipient of the gift to acknowledge the generosity of the donor in appropriate correspondence.

n. Acceptance authorities that approve gifts having significant public affairs implications shall notify the cognizant public affairs officer.

o. Gifts of an artistic or historic nature will be reviewed by the Director, Marine Corps History and Museums (CMC (HD)) if of a value exceeding \$5,000.00 to ensure suitability prior to their acceptance by any Marine Corps acceptance authority or, in the case of gifts valued at \$50,000.00 or more, prior to forwarding the gift to the Secretary of the Navy's acceptance authority per SECNAVINST 4001.2G.

2. Acceptance Authorities. The following officials are authorized to accept gifts within their cognizance:

a. Any Marine commander may accept gifts of consumable or perishable products such as food, nonalcoholic beverages, flowers, candy, etc., intended for personnel of that command provided that acceptance of such a gift does not violate the policies set forth in this chapter. Alcoholic beverages and tobacco products may not be accepted. This acceptance authority is limited to items which will be consumed at one specific event; e.g., command picnic, delayed entry pool party, etc. This authority may not be redelegated.

b. Officers exercising special court-martial jurisdiction are authorized to accept gifts of personal property to the Marine Corps of a value not exceeding \$1,500.00. This authority may not be redelegated.

c. The Director, Marine Corps History and Museums may accept gifts to the Marine Corps of personal property having historical significance or artistic work of museum quality of a value not exceeding \$10,000.00. This authority may not be redelegated.

d. General officers in command and district directors may accept gifts of personal property offered to the Marine Corps of a value not exceeding \$10,000.00. This authority may not be redelegated.

e. The Staff Judge Advocate to the Commandant and the Counsel for the Commandant may accept gifts of personal property to the Marine Corps of a value not exceeding \$10,000.00. This authority may not be redelegated.

f. The Commandant of the Marine Corps may accept gifts of personal property to the Marine Corps of a value not exceeding \$50,000.00. The authority to accept such gifts of a value exceeding \$10,000.00 may not be redelegated except with approval of the Secretary of the Navy. Gifts which may be accepted only by the CMC shall be forwarded to CMC (JAR) for processing.

g. The Director of an MWR activity may accept gifts of a value not exceeding \$3,000.00. The Director, Personnel and Family Readiness Division will be the acceptance authority for gifts to MWR activities in excess of \$3,000.00.

3. Gifts of Personal Property Valued at \$50,000.00 or More Gifts of personal property of a value of \$50,000.00 or more shall be forwarded to CMC (JAR) for submission to the appropriate acceptance authority per SECNAVINST 4001.2G.

4. Costs of Gift Transfer from Donor to Recipient The Secretary of the Navy may pay all expenses in connection with the conveyance or transfer of accepted gifts. Under SECNAVINST 4001.2G, authority to pay such expenses is delegated to the activity head whose appropriations are properly chargeable in connection with the particular organization to be benefited.

12004. LEGAL QUESTIONS. Any questions of law which may arise in connection with this chapter should be referred to the staff judge advocate of the cognizant acceptance authority, or CMC (JAR) or CMC (CL), as appropriate.

12005. GIFT TAXATION. For the purposes of Federal income, estate, and gift taxes, gifts of property to the Marine Corps or its organizations shall be considered gifts to the United States. Donors not eligible for legal assistance should be advised to consult private tax experts for specific advice concerning permissible deductions.

12006. RECORDS, REPORTS AND FILES RELATING TO GIFTS MADE TO THE MARINE CORPS. Such records shall be maintained by the designated acceptance authority for the following periods:

1. Records relating to accepted gifts shall be retained for 3 years.
2. Records relating to gifts not accepted shall be retained for 1 year. Depending upon the nature of a gift and/or the circumstances surrounding its offer, the above retention periods may be extended at the discretion of the acceptance authority.

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From: Commanding Officer
To: Commandant of the Marine Corps (JA)
Via: Chain of Command

Subj: FOREIGN GIFT OF MORE THAN MINIMAL VALUE (REPORT CONTROL
SYMBOL EXEMPT)

Ref: (a) SECNAVINST 1650.1F
(b) LEGADMINMAN

1. A foreign gift of more than minimal value was received during
(*insert calendar year*). The following information is submitted per
the references:

- a. Name, grade, social security number, and position of recipient.
- b. Description of gift (composition, size, brand, etc.).
- c. Estimated retail value of the gift in the United States at the time of acceptance (a specific dollar amount is required).
- d. Name and position of donor and identity of foreign government.
- e. Date and place gift accepted by recipient.
- f. Circumstances justifying acceptance.
- g. Whether recipient desires to participate in sale of gift if sold by GSA.

Figure 12-1.--Foreign Gift of More Than Minimal Value.

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From: Commanding Officer (receiving organization)
To: (Acceptance Authority)
Via: (Chain of Command)

Subj: OFFER OF GIFT

Ref: (a) LEGADMINMAN

Encl: (1) Check or Money Order

1. _____, the donor, a (private individual) (corporation)(charitable organization), (doing)(not doing)(seeking) business with the U.S. Government, has offered the following gift to (the U.S. Marine Corps) (organization). The offer is forwarded for action per the reference.

2. The gift is a (check)(money order) in the amount of \$_____, made payable to the Department of the Navy, and is forwarded as an enclosure.

OR

2. The gift is a _____ of a value of \$_____. I have taken temporary custody of this gift pending action of the acceptance authority. Administrative, maintenance, security, and storage costs are estimated to be (minimal)(about \$_____ per year.)

3. This gift (was)(was not) solicited. It (does)(does not) have conditions other than to be used to _____. (If the gift is conditional, state those conditions.)

4. This gift (does)(does not) have the potential to embarrass the Marine Corps or to raise questions as to the integrity of the decision-making process within the Marine Corps. (If potential for embarrassment exists, explain.)

5. I believe this gift (will)(will not) be useful to the Marine Corps. I (do)(do not) believe that acceptance will result in embarrassment to the Marine Corps by reason of favors which might be expected as a result of the gift, by creating the appearance of a relationship in which favors are granted, or by resulting in unwarranted publicity for the donor. I recommend that this gift be (accepted)(declined).

6. If the gift is accepted, I will send an appropriate letter thanking the donor (and take up the gift on the property account of this command.)

Figure 12-2.--Sample Gift Offer Forwarding Letter.