

VOLUME 12, CHAPTER 34: “DIRECT ACCEPTANCE OF GIFTS BY MEMBERS OF THE ARMED FORCES, DEPARTMENT OF DEFENSE EMPLOYEES AND THEIR FAMILIES AND SURVIVORS”

SUMMARY OF MAJOR CHANGES

All changes are denoted by [blue font](#).

Substantive revisions are denoted by an asterisk (*) symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by [bold, italic, blue, and underlined font](#).

The previous version dated [September 2016](#) is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	This chapter has been certified as current.	Current

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CHAPTER 34

**DIRECT ACCEPTANCE OF GIFTS BY MEMBERS OF THE ARMED FORCES,
DEPARTMENT OF DEFENSE EMPLOYEES AND THEIR FAMILIES AND
SURVIVORS**

3401 GENERAL

340101. Overview

Congress enacted Title 10, United States Code (U.S.C), § [2601\(a\)](#) which authorized the direct acceptance of gifts from outside sources by members of the armed forces and civilian employees of the Department of Defense (DoD), their family members and survivors, for injuries or illnesses incurred as a result of combat and other covered circumstances. Prior to enactment, employees and Service members were authorized to receive gifts from within the Department.

340102. Purpose

This chapter establishes policy and assigns responsibilities to implement 10 U.S.C. § 2601a. The authority in 10 U.S.C. § 2601a is in addition to, and in no way limits, any other statutory or regulatory authority of covered members or employees, their family members, and their survivors to accept gifts from non-federal entities.

340103. Authoritative Guidance

10 U.S.C. § 2601a provides authority to the Secretary of Defense to prescribe regulations allowing covered members of the armed forces, covered employees of the DoD, their family members, and their survivors to accept gifts from nonprofit organizations, private parties, and other sources outside the DoD under specified circumstances.

3402 POLICY

340201. Definitions

A. Covered Employee. A civilian DoD employee who, while an employee on or after September 11, 2001, incurred an illness or an injury under the criteria in this chapter.

B. Covered Member. A Service member who, while performing active duty, full-time National Guard duty, or inactive-duty training on or after September 11, 2001, incurred an injury or illness under the criteria in this chapter.

C. Designated Agency Ethics Official. A DoD employee appointed in writing by the head of the DoD agency to coordinate and manage the agency's ethics program.

D. Ethics Counselor. A DoD employee appointed in writing by the designated agency ethics official or designee to assist in implementing and administering the DoD component command's or organization's ethics program.

E. Family Members. Parents, siblings, spouse, biological and adopted children, and dependent relatives of covered members or employees.

F. Gift. Any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services, as well as gifts of transportation, local travel, lodgings, and meals. It does not include those items excluded from the definition of “gift” in [5 Code of Federal Regulations \(C.F.R.\) § 2635.203\(b\)\(1\)-\(9\)](#).

G. Secretary Concerned. The Secretary of a Military Department who has jurisdiction over the military reservation, installation, ship, aircraft, or facility where an event occurs that meets the criterion of this chapter. The Secretary of Defense or designee, if the event meeting the criterion of this chapter occurs at a location that is not a military reservation, installation, or facility, or where more than one Secretary has jurisdiction.

H. Survivors. Living family members of a covered member or employee who is killed.

340202. Gift to Covered Employees

Pursuant to the authority in 10 U.S.C. § 2601a, covered members of the armed forces in the DoD and covered employees of DoD, their family members, and their survivors may accept gifts directly from nonprofit organizations, private parties, and other sources outside the DoD when, while performing military duties or performing duties as a civilian employee on or after September 11, 2001, they incur an injury or illness: (1) as a direct result of armed conflict; while engaged in hazardous service; in the performance of duty under conditions simulating war; or through an instrumentality of war; (2) in an operation or area designated as a combat operation or combat zone by the Secretary of Defense; or (3) under other circumstances determined by the Secretary concerned to warrant treatment similar to members covered by the first criterion of this section.

340203. Impermissible Gifts

The authority in 10 U.S.C. § 2601a does not apply to gifts from foreign governments or international organizations or their representatives, nor does it apply to gifts that: (1) are accepted in return for being influenced in the performance of an official act; (2) are solicited or coerced; (3) are accepted in violation of any other statute or regulation, including [18 U.S.C. § 201](#) and [209](#), and [5 C.F.R. § 2635](#) and [3601](#); or (4) will reflect adversely on the DoD.

340204. Criteria for Gift Acceptance

A. Nonprofit organizations, private parties, and other sources outside DoD. The following individuals may accept gifts from nonprofit organizations, private parties, and other sources outside DoD:

a. A member of the armed forces described in subparagraph
340204.B.

340204.C.

- b. A civilian employee of the DoD described in subparagraph
- c. The family members of such a member or employee.
- d. Survivors of such a member or employee who is killed.

B. Covered members. Applies to a member of the armed forces who, while performing active duty, full-time National Guard duty, or inactive-duty training on or after September 11, 2001, incurred an injury or illness:

- 1. As described in section 10 U.S.C. 1413a(e)(2);
- 2. In an operation or area designated as a combat operation or a combat zone, respectively, by the Secretary of Defense in accordance with the regulations prescribed under subparagraph 340204.A; or
- 3. Under other circumstances determined by the Secretary concerned to warrant treatment analogous to members covered by subparagraph 340204.A.1.

C. Covered Employees. Applies to a civilian employee of the DoD who, while an employee on or after September 11, 2001, incurred an injury or illness under a circumstance described in subparagraph 340204.B.

D. Gifts From Certain Sources Prohibited. Members and employees may not accept a gift from a foreign government or international organization or their agents under this authority.

E. Application of Certain Regulations. These regulations shall apply to the acceptance of gifts received after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2012 for injuries or illnesses incurred on or after September 11, 2001. The military services must apply uniformly to all elements of the DoD and require review and approval by an ethics counselor before acceptance of a gift to ensure that acceptance of the gift complies with the Joint Ethics Regulation.

3403 RESPONSIBILITIES

340301. Under Secretary of Defense for Personnel and Readiness

The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) has the overall oversight responsibility on the implementation of this guidance. USD(P&R) monitors compliance with the provisions of this chapter pursuant to [DoD Directive 5124.02](#).

340302. Secretary Concerned

The Secretary concerned determines whether an event occurring within his or her jurisdiction meets the criterion of “other circumstances” as described in paragraph 340202.

340303. Designated Agency Ethics Official

The relevant designated agency ethics official ensures that an ethics counselor reviews and, when appropriate, approves the acceptance of a gift in accordance with 10 U.S.C. § 2601a (a)(2)(B). That review and approval includes a determination that: (1) the gift is not offered in a manner that specifically discriminates among covered members or employees on the basis of type of official responsibility or favors those of higher rank or pay; (2) the donor does not have interests that may be affected substantially by the performance or nonperformance of the covered member’s or employee’s official duties; and (3) acceptance would not cause a reasonable person with knowledge of the relevant facts to question the integrity of DoD programs or operations.