



Letters of Recommendation and Gifts

DEC Meeting
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Letters of Recommendation

- There are two rules that are triggered when an employee writes a letter of recommendation:
 - 1) a federal employee cannot represent another person before the federal government (statutory, section 205); and
 - 2) limitations with respect to use of official title and official letterhead (regulatory, subsection 2635.702(b)).

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Representation Ban

- The representation ban is not applicable if the federal employee writing the letter does so without direction from the applicant.
- Examples:
 - the federal employee fills out a reference form supplied by the grant making organization.
 - the federal employee writes a personal letter where she is expressing her own opinion about the applicant. The
- Writer is not under the control of the applicant.
- Writer is responding to the established questions on the form, or is expressing her own views (and not merely signing a letter drafted by the applicant).
- Without control, there is no representation prohibition.

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Use of NIH Letterhead or Title

- An employee may use government letterhead and sign a letter using her official title when asked to write:
 - an employment recommendation; or
 - a character reference (these include character references that may be included in an award's nomination package or an application for funding; not a comment on the quality of the research) **if**:
 - the writer has personal knowledge of the applicant's ability or character; **and**
 - has dealt with (had actual interaction) the applicant in the course of her (the writer's) federal employment; **or**
 - is recommending the person for federal employment

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LoR Example 1

- Former NIH employee (who now works at a University) asks her former NIH supervisor to write a letter of recommendation for her to be used in application for a new position at the University. While the two former colleagues speak frequently, their relationship is now strictly personal.

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LoR Example 1: Answer

- Former NIH employee (who now works at a University) asks her former NIH supervisor to write a letter of recommendation for her to be used in application for a new position at the University. While the two former colleagues speak frequently, their relationship is now strictly personal.
 - No representation issue because letter going to university
 - Can use NIH letterhead and title because has personal knowledge of ability and had dealt with employee during the course of federal employment

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LoR Example 2

- Brother-in-law asks you to sign a letter he wrote for inclusion in a job application to GAO

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LoR Example 2: Answer

- Brother-in-law asks you to sign a letter he wrote for inclusion in a job application to GAO
 - Representation problem: under control because not expressing your opinion.
 - How fix? Write letter yourself.
 - Could use NIH letterhead and title because recommending brother-in-law for federal employment

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LoR Example 3

- Grad student in your lab when you were an investigator at State University is applying for tenure at State University and asks for a letter of recommendation.

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LoR Example 3: Answer

- Grad student in your lab when you were an investigator at State University is applying for tenure at State University and asks for a letter of recommendation.
 - No representation issue because not applying for a federal job (not submitting letter to the government).
 - However, since former colleague is not applying for a federal position and you have not dealt with him during your federal employment, no use of NIH letterhead and cannot sign letter using NIH title. BUT: can reference NIH position in the body of the letter.

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LoR Example 4

- Current subordinate asks you for a letter of support to be included in a visa application.

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LoR Example 4: Answer

- Current subordinate asks you for a letter of support to be included in a visa application.
 - No representation issue as long as you write the letter expressing your own views.
 - You have personal knowledge of subordinate's ability and have dealt with him during your federal employment. However, ***by policy***, NIH says no use of letterhead for visa applications unless NIH is seeking to get person the visa. In these cases, letter comes from NIH (not from an individual expressing his own views).

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Gifts Between Employees

- Gifts to Superiors
 - An employee may not directly or indirectly:
 - give a gift to or make a donation towards a gift for an official superior, or
 - Solicit a contribution from another employee for a gift to an official superior
 - Official superior is:
 - Immediate supervisor
 - Anyone who directs or evaluates your performance
 - Anyone who directs or evaluates your superior's performance

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Gifts Between Employees (con't)

- Gifts From Employees Receiving Less Pay
 - An employee may not directly or indirectly accept a gift from an employee receiving less pay unless:
 - No subordinate-official superior relationship;
 - and***
 - A personal relationship exists

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Gifts Between Employees (con't)

Three exceptions:

- 1) On an occasional basis, including occasions when gifts are traditionally given (e.g., birthdays, holidays), ok to give and receive if:
 - Market value of \$10 or less
 - Food and refreshments shared in the office
 - Personal hospitality if the type and value customarily provided to personal friends
 - Host/hostess gift if the type and value customarily given on such an occasion
 - Leave transfer

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Gifts Between Employees (con't)

Three exceptions (con't):

- 2) On special, infrequent occasions, ok to give and receive an appropriate gift for the occasion if:
 - In recognition of infrequently occurring occasions of personal significance such as:
 - Marriage;
 - Illness; or
 - The birth or adoption of a child
 - Upon occasions that terminate the subordinate-superior relationship, such as:
 - Retirement;
 - Resignation; or
 - Transfer
 - A cash gift is permissible on special, infrequent occasions, so you can give a cash gift for a wedding if that is what you usually give

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Gifts Between Employees (con't)

Three exceptions (con't)

3) Voluntary contributions can be solicited by subordinates and accepted by superiors for:

- Special, infrequent occasions; or
- Items occasionally shared in the office among several employees
- "Voluntary" means "given freely, without pressure or coercion."
 - Can set a price for a gift when included in the cost of a luncheon or reception; still voluntary if employee opts to come
 - If giving a suggested amount for contribution for a gift, must also say can give less or not at all

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Gifts From Outside Sources

Gifts cannot be directly or indirectly:

- Accepted or solicited from a prohibited source; or
- Given because of an employee's official position

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Gifts From Outside Sources (con't)

- Prohibited source is any person or organization who:
 - Seeks official action from the agency
 - Does or seeks to do business with the agency
 - Conducts activities regulated by the agency
 - Has interests affected by the employee's official duties;
 - Organization which the majority of the members are described above (e.g., trade organizations, professional societies)

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Gifts From Outside Sources (con't)

- Exclusions to the definition of a gift, so not a gift:
 - Modest food
 - Presentation items of small intrinsic value
 - Rewards or prizes open to the public
 - Things paid for by the government
 - Things paid for by the employee

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Gifts From Outside Sources (con't)

- Exceptions to gift prohibition, so still a gift but ok to accept:
 - Gift with a value of \$20 or less (other than cash or cash equivalents, e.g., gift cards)
 - Prizes associated with a bona fide award
 - Gifts based on a personal relationship
 - Widely attended gatherings
 - Speaking at the event on behalf of agency
 - Merely attending event b/c of agency interest
 - Gifts accepted under specific statutory authority, such as FGDA (e.g., in-country travel)

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Gifts Example 1

- Office staff decides to hold a gift exchange at the holidays.
- Staff decided that gifts may not have a value of more than \$15.
- Staff is both FTEs and contractors, subordinates and superiors. Ok for everyone to participate?

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Gifts Example 1: Answer

- If gifts are collected and then randomly handed out, no monetary limits are needed regardless of who participates (superior and subordinates, and/or contractors) because the purchaser does not know who will receive his/her gift.

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Gifts Example 1: Answer (con't)

- If employees are to select a name in advance, then need limits.
- What type of event is this?
 - Occasional, so gift limit is \$10 because superiors and subordinates are participating.
 - Fix by: 1) lowering value of gift (no more than \$10); or 2) setting a price for the gift (not a limit).
 - In the latter (#2) proposed fix, everyone is contributing an item of the same value. Thus, there is no gift because each staff member has paid market value for the item s/he will receive by contributing an item of the same value.

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Gifts Example 1: Answer (con't)

- Issues with contractors participating?
- Same as above: depends if name drawn in advance or items randomly handed out.
 - Four staff members are contractors and all work for the same company.
 - Contractors can give gifts valued at \$20 or less, so \$15 proposed gift is ok (but if supervisor participates **and recipients are assigned**, need \$10 limit).
 - Issue because four are participating in the exchange (if recipient assigned)?
 - No because each contractor gift will go to a different FTE, so less than \$20 per source per occasion, and less than \$50 for the calendar year.

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Gifts Example 2

- A member of your staff is about to have a baby. A card is circulated and it is suggested that everyone puts money in the envelope as the gift. No amount is set or suggested. Staff is both FTEs and contractors (three on staff) and everyone puts in \$20. Permissible?

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Gifts Example 2: Answer

- FTEs: What type of occasion is it?
 - Special, infrequent, so:
 - Gift of a value appropriate to the occasion is ok; and
 - Can give cash
- Contractors: What issues arise?
 - No exception for special, infrequent occasion from outside sources, so:
 - Cannot give cash
 - Individual gifts (other than cash) must be valued at \$20 or less. Assume gifts are from individual persons and not from the company, unless you have facts that state otherwise.
 - New fact: one of the contract employees was the college roommate of the mother-to-be.
 - Gift based on personal relationship
 - Recommend that that employee give a separate gift

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Gifts Example 3

- An NIH employee is invited to speak at the **one-day** Conference of Super Scientists. Like all of the other speakers, the employee is given free attendance at the conference which includes a waiver of the registration fee and lunch from the sponsor of the event. Is this gift acceptable?

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Gifts Example 3: Answer

- Yes. When an employee is assigned to participate as a speaker, she can accept a gift of “free attendance” at the event, provided:
 - She is speaking on behalf of the agency
 - Gift only for the day of the presentation
 - when provided by the sponsor of the event; and
 - at a conference or other event (not small meeting).
- “Free attendance” includes the provision of food, entertainment, and materials given to all attendees as part of the event.

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Gifts Example 4

- An NIH employee has been selected as the 2010 awardee by the Organization of Really Smart People. Along with the honor, the employee and his guest are invited to the Organization’s dinner gala at which he will be presented with a plaque. (No cash prize is associated with this award.) 500 people are expected to attend the gala. Is this gift acceptable?

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Gifts Example 4: Answer

- Employee can accept gift of free attendance if the Deputy Ethics Counselor determines that the employee's attendance is in the agency's interest because it will further agency programs and operations.
- Event needs to be:
 - Widely attended
 - Attendees represent a range of persons interested in a matter
 - Large number of participants
 - Unsolicited
 - Value of gift \$335 dollars or less if non-sponsor offers