
Summary of Foreign Gifts and Activity Restrictions

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the General Counsel
Ethics Division



Current employees cannot accept gifts from certain foreign sources or serve certain foreign entities as employees or agents. The summary below outlines the basic rules, but other restrictions or exceptions, not discussed in this document, may apply. Former employees are subject to post-employment restrictions that limit representation of, and, in the case of senior employees, aid or advice to, foreign entities. Employees may be required to complete HHS Form 697, Foreign Activities Questionnaire. Contact your Deputy Ethics Counselor or the OGC Ethics Division at (202) 690-7258 for further information.

Restrictions Applicable to Persons Holding An Office of Profit or Trust under the United States

U.S. Constitution, art. I, § 9, cl. 8 Emoluments Clause. Without the consent of Congress, a person who holds an "office of profit or trust under the United States" cannot receive any present, emolument, office, or title of any kind whatsoever from a foreign state. As a result, most federal employees cannot accept concurrent outside employment with, or receive gifts from, a foreign government or a political subdivision of a foreign government, including certain public universities or commercial enterprises owned or operated by a foreign government. The constitutional ban does not apply to employment with, or presents or emoluments received from, a foreign corporation that is not state-owned or an international organization of which the United States is a member. An emolument includes salary, transportation, household goods shipment costs, and housing or per diem allowances.

Special Government employees who lack supervisory, decisional, or enforcement authority, have no role in regulating, supervising, or overseeing the handling of classified information, and perform only in an advisory capacity do not hold "offices of profit or trust" and are not subject to the employment and gift prohibitions of the Emoluments Clause, but are subject to the gift restrictions of the Foreign Gifts and Decorations Act (FGDA), 5 U.S.C. § 7342.

Restrictions Applicable to All Employees

5 U.S.C. § 7342 Foreign Gifts and Decorations Act. Under a separate statutory ban, an employee, as well as the employee's spouse and dependents, cannot solicit or accept a gift exceeding \$350 in value from a foreign government or an international organization. With agency approval, an employee, spouse, or dependent may accept a gift of travel expenses exceeding \$350 in value for travel occurring entirely outside the United States, if acceptance is appropriate and consistent with the interests of the United States. The law also provides congressional consent for Emoluments Clause purposes to the receipt by an employee of gifts of minimal value, defined as those having a retail value in the United States of \$350 or less, and for combat decorations and awards for merit. An employee also may accept certain foreign grants and other foreign government assistance provided under cultural exchange programs approved by the Secretary of State under 22 U.S.C. § 2458a. A tangible gift of more than the \$350 minimal value may be accepted by an employee on behalf of the agency, but the item becomes government property and must be deposited with the agency for retention or other disposition. In connection with official duty travel by an employee to a foreign meeting or similar function, an agency may authorize receipt of travel, subsistence, and related expenses from a foreign government or other foreign entity under the agency gift acceptance authority, 31 U.S.C. § 1353.

18 U.S.C. § 219 Foreign Agent Representation Prohibition. An employee cannot act as an "agent of a foreign principal" required to register under the Foreign Agents Registration Act (FARA), 22 U.S.C. § 611 *et seq.*, or a "lobbyist" required to register under the Lobbying Disclosure Act of 1995 (LDA), 2 U.S.C. § 1601 *et seq.*, in connection with the representation of a foreign entity. Representational contacts on behalf of foreign entities made by current federal employees before any federal agency or court are also proscribed by 18 U.S.C. §§ 203 and 205.

The FARA requires registration with the Department of Justice if an individual represents foreign governments or foreign political parties before the United States Government or performs a number of other activities conducted within the United States on behalf of such entities: (1) political activities; (2) public relations counseling; (3) publicity agent activities; (4) information services; (5) political consulting; and (6) solicitation or disbursement of contributions, loans, money, or other things of value; where such services are rendered with the intent to influence the American public or the Government, with reference to formulating the domestic or foreign policies of the United States, or with reference to the political or public interests, policies or relations of a government of a foreign country or a foreign political party. The FARA registration requirement extends as well to persons who act, with respect to such activities, as agents of foreign companies, associations, or individuals who do not register under the LDA. The FARA provides certain exceptions to the registration requirement related to trade or commerce, legal representation, humanitarian fundraising, and religious, scholastic, or scientific pursuits. The head of an agency may authorize the employment of an agent of a foreign principal as a special Government employee upon a certification that such action is in the national interest.

The LDA requires registration with the Secretary of the Senate and the Clerk of the House of Representatives if an individual, for compensation that exceeds certain monetary thresholds, is employed or retained to make multiple lobbying contacts (for which the time so expended when aggregated with time spent on research and preparation exceeds a certain percentage of total hours devoted to client services) that are directed to covered legislative and executive branch officials on behalf of, among other entities, foreign corporations, associations, or other organizations. Lobbying contacts are oral, written, or electronic communications with regard to (1) the formulation, modification, or adoption of federal legislation, rules, regulations, executive orders, or any other program, policy, or position of the United States Government; (2) the administration or execution of a federal program or policy (including the negotiation, award or administration of a federal contract, grant, loan, permit, or license); or (3) the nomination or confirmation of a person for a position subject to confirmation by the Senate. Registrants must indicate on the LDA disclosure form any federal government positions held during the previous 20 years.
