

**INTERPRETING THE GIFT BAN – FREQUENTLY ASKED QUESTIONS<sup>1</sup>**

Executive Order (EO) 2015-01 (Gift Ban) amends Part I of the Governor’s Code of Conduct, Executive Order 1980-18, as amended, with the intention of strengthening and expanding prohibitions on the receipt of gifts by employees, appointees and officials in the Executive Branch of the Commonwealth.

The following frequently asked questions and answers (FAQs) are designed to provide general guidance regarding the implementation of the Gift Ban. These FAQs will be updated as new issues and questions arise.

For assistance with the interpretation of the Gift Ban as it applies to particular situations, employees should seek direction from their agency human resources office and, if necessary, their agency office of chief counsel.

The Code of Conduct prohibits the acceptance or solicitation of the following:

- A gift
- Gratuity
- Favor
- Entertainment
- Hospitality
- Loan
- In-kind gifts
- Any other thing of value.

The only exceptions are the following:

1. The solicitation or acceptance of something of monetary value from a friend, parent, spouse, child or other close relative under circumstances that make it clear that the gift is motivated by a family relationship or personal friendship, rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship (for example, does the friendship pre-date employment by the Commonwealth) and whether the family member or friend pays for the gift.
2. The acceptance of loans from banks or other financial institutions on customary terms of finance for proper and usual activities, such as home mortgage loans.
3. Participation in widely attended gatherings free of charge is permissible when officials have been invited and are acting in furtherance of their official duties. But no food or drink may be accepted without payment at market value.

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<sup>1</sup> Marginal dots indicate revisions

### **THRESHOLD CONSIDERATIONS**

To determine whether the solicitation or acceptance of a gift may violate the Gift Ban under Section 3(a) of the Code of Conduct, employees must first consider whether the entity offering a gift is subject to the Gift Ban.

**Q:** Who is a “person” for purposes of the Gift Ban?

**A:** If the entity offering a gift falls within *any* of the categories, below, the entity is covered by the Gift Ban. If not, then the Gift Ban does not apply.

1. The person is seeking to obtain business from or has financial relations with the Commonwealth;
2. The person conducts operations or activities that are regulated by the Commonwealth;
3. The person is engaged, either as principal or attorney, in proceedings before the Commonwealth or in court proceedings in which the Commonwealth is an adverse party; or
4. The person has interests that may be substantially affected by the performance or nonperformance of the official duty of the employee.

**Q:** Does “person” mean only an individual?

**A:** No. A “person” under the Code of Conduct is an individual, partnership, corporation, non-profit organization, political subdivision, or other entity.

**Q:** Are agencies of the United States government and other state agencies “persons” under the Gift Ban?

**A:** No. **Commonwealth agencies and the federal government are not “persons” under the Code of Conduct. Employees may attend training, conferences and other gatherings and accept hospitality from agencies of the federal government and other state agencies without violating the Gift Ban.**

**Q:** Is a local government, such as a county or city, a “person” under the Gift Ban?

**A:** Yes. A political subdivision, such as a local government or school district, is a “person” under the Gift Ban.

**Q:** What are some other examples of entities that are covered by the Gift Ban?

**A:** Some other entities that are considered to be a “person” under the Gift Ban appear below. This list is intended to be illustrative, not exhaustive. There are many other entities that are covered by the Gift Ban.

- Commonwealth contractors and vendors;
- Recipients of grants from the Commonwealth’s executive agencies, as well as grant applicants;
- Groups or individuals that lobby for the enactment of or change to legislation or regulations involving state action;
- Licensees;
- Regulated entities, such as financial institutions and public utilities.

### **UNSOLICITED ADVERTISING**

**Q:** A Commonwealth employee is attending a conference or trade show at which vendors, some of which have contracts with the Commonwealth, have display booths. All of the vendors have some advertising trinket that is free to all conference visitors. May the employee help himself to the advertising tokens that the vendors are giving away?

**A:** No, if the entity is covered by the Gift Ban. Executive Order 2015-01 does not permit the acceptance of unsolicited advertising materials or other trinkets from entities that are covered by the Gift Ban, such as organizations that have Commonwealth contracts.

**Q:** At a conference, a contractor is conducting a raffle for a prize. May the employee place his business card in the fish bowl as a raffle entry?

**A:** No, if the entity is covered by the Gift Ban. In this example, a Commonwealth contractor – an entity covered by the Gift Ban -- is conducting the raffle.<sup>2</sup> Therefore, Commonwealth employees may not enter the raffle.

**Q:** An employee is attending a work-related conference. When the employee registers, he is given a bag that contains his badge, itinerary, conference materials, and a lanyard, pens, and other advertising trinkets. What should the employee do?

**A:** The employee should keep the conference-related items and leave the unsolicited advertising materials behind.

### **MEALS, REFRESHMENTS AND REIMBURSEMENT**

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<sup>2</sup> Raffles are small games of chance and are regulated by the Small Games of Chance Act.

Hospitality in the form of snacks, drinks, and meals are frequently offered at meetings, conferences and receptions. Commonwealth executive branch employees, appointees and officials are required to pay for any refreshments consumed at events hosted by entities covered by the Gift Ban. There is no exception for items of nominal value; bottles of water and cups of coffee must be paid for if they are consumed.

Individuals may be eligible for reimbursement for such expenses. See Management Directive 230.10 and Manual 230.1 and Gift Ban Guidance – Employee Meeting and Event Expenses. A synopsis of the travel reimbursement rules is included with this guidance as Appendix A. Employees covered by collective bargaining agreements may have contractual provisions that govern travel status. Covered employees should consult their collective bargaining agreements in addition to Management Directive 230.10.

Receipts should be obtained in order to establish payment and to obtain reimbursement where permitted.

## 1

**Q:** Will the employee be reimbursed by his agency for the cost of the meal?

**A:** If the employee is in approved travel status, the employee may claim reimbursement for the luncheon in accordance with the Commonwealth's travel policy, Management Directive 230.10. If the employee attends the event at the direction of his Commonwealth employer, the expense may be eligible for reimbursement. See: Gift Ban Guidance – Employee Meeting and Event Expenses, and STD 194. **Q:** Must an employee pay for meals and refreshments at conferences, continuing education courses or training that include a registration fee?

**A:** Ordinarily, no. Meals provided at a conference, training, or continuing education presentation that are provided by the event sponsor are generally included in the registration fee and therefore do not require additional payment.

**Q:** Must an employee pay for meals or refreshments at a conference or other meeting when they are paid for by a third party, such as a vendor? The meals and refreshments are available to all attendees.

**A:** When meals or refreshments are provided by an entity other than the conference sponsor (and therefore are not included in the registration fee), and the entity is subject to the Gift Ban, the employee must pay the fair market value of the food if the employee wishes to consume it. The employee must obtain a receipt for the payment from the third party. If the employee is in travel status and eligible to seek reimbursement for the meal, the employee must submit the receipt as proof of payment for the food.

**Q:** Must an employee pay for meals and refreshments when speaking at a meeting or conference?

**A:** If the sponsor of the event is covered by the Gift Ban, then the employee must pay for meals and refreshments. The employee may qualify for reimbursement of the expense by the agency.

**Q:** May an employee accept a meal or refreshments that are provided and paid for by the employee's agency or other Commonwealth agency?

**A:** Yes. The Commonwealth and its agencies are not persons under the Gift Ban. Note that under certain circumstances, such as when the employee of one agency is reviewing or investigating the conduct of another agency, acceptance of a meal or refreshments might give rise to the appearance of a conflict of interest, which is prohibited by the Governor's Code of Conduct

**Q:** May an employee accept a meal or refreshments at a meeting of state and local government representatives when a local government provides the food and drink?

**A:** The employee must pay for the meal or refreshments if the employee chooses to consume it. Local governments are subject to the Gift Ban because they have and seek financial relationships with the Commonwealth and their activities are regulated by the Commonwealth. The Commonwealth's travel policy will determine whether the expense is reimbursed to the employee.

**Q:** A company under contract with the Commonwealth is required under the terms of the contract to conduct quarterly training meetings for Commonwealth employees, among others. The training is a day-long session and includes a luncheon provided by the contractor. May employees attending the training session accept the luncheon?

**A:** Yes. The cost of the luncheons is included in the contract.

**Q:** A Commonwealth employee, such as an auditor, is conducting Commonwealth business at the taxpayer's place of business. The taxpayer maintains a kitchen area in which food is available to all employees. The taxpayer invites the auditor to help himself. May the auditor consume the food in the taxpayer's kitchen?

**A:** No. The employee may not eat the food. Not only would doing so violate the Gift Ban, it would give rise to the appearance of a conflict of interest, which is also prohibited by the Governor's Code of Conduct.

**Q:** A private sector statewide organization is planning a celebration at which drinks and hors d'oeuvres will be served. The organization invites Commonwealth officials to attend free of charge. Must the officials pay for the refreshments?

**A:** The officials may attend the event, but must pay fair market value for the refreshments they consume.

**Q:** Local Customs and International Travel/Hospitality: Commonwealth travelers generally will pay for their own meals and be reimbursed in accordance with the Commonwealth travel policy. However, in some instances, a foreign government or company will provide a meal or other refreshments. To refuse the meal would be considered an insult and may jeopardize the success of the Commonwealth's undertaking. May employees and officials accept the hospitality?

**A:** When planning for international travel, it is important to research these types of issues in advance. International travel requires advance approval in accordance with the Commonwealth travel policy. Each trip will be considered on a case-by-case basis. If refusing or offering to pay for refreshments or a meal would insult the international host or jeopardize the undertaking, then the meal or refreshments may be consumed without payment. Under limited circumstances, the same may be true for local events sponsored here by a foreign country.

### **TRAVEL, EXPENSES, AND REIMBURSEMENT**

*Trade Association Business Meeting:* A Trade Association is defined as an organization of which some or all members are engaged in regulated activities or conduct business with the Commonwealth. The Commonwealth does not participate in the association as a dues paying member.

**Q:** An agency employee on agency business travels to speak at a trade association meeting. The association is a not-for-profit trade organization and its members are subject to regulation by the agency and other Commonwealth agencies. The event is a regular meeting of the association. It is customary for the association to reimburse the speaker's travel expenses. May the association pay for the employee's flight and expenses?

- **A:** The association is a covered person subject to the Gift Ban because it seeks to influence the actions of the Commonwealth and its members are regulated by the Commonwealth. Therefore, no Commonwealth employee is to accept any gift from the association. The employee should submit his/her travel expenses in accordance with the Commonwealth travel policy and will be reimbursed by the agency in accordance

with the travel policy. The entity may make a gift to the Commonwealth, in which case, the Commonwealth may accept the donation provided there is no conflict of interest or Adverse Interest Act implication. See: Interpreting the Gift Ban – Gifts to the Commonwealth.

*National and multi-state organizations comprised of state governments:* A National or multi-state organization is defined as an organization that collects dues from member states and conducts regular meetings. These organizations also may have other, industry-related dues-paying members who conduct business with or are regulated by the Commonwealth, such as constructors, insurance companies, IT firms, *etc.* The Commonwealth is a dues paying member. Some meetings require the payment of registration fees in order for members to attend; some meetings are conducted at no additional cost to the members based on the annual dues. These meetings usually involve travel, meals, refreshments, and occasionally commemorative items. (Examples: Multistate Lottery Association; National Association of State Personnel Executives; National Association of State Chief Information Officers; National Association of State Budget Officers.)

**Q:** Do such organizations fall within the restrictions of Executive Order 2015-01?

**A:** If an organization is comprised *solely* of state governments and does not have vendor memberships, then the organization is likely not an entity subject to the Gift Ban.

If any of the commemorative items is provided by a covered entity, the items may not be taken.

*National and multi-state organizations comprised of state government members that also have industry members that have business or seek business from the government members.*

**Q:** Agencies pay membership dues to the organization. As members, agencies receive informational and educational materials, attend and participate in meetings of the association, *etc.* The dues also pay for or reimburse the travel and subsistence of a certain number of member states' attendees for its semi-annual meetings, including air fare, hotel, and meals. What is the proper treatment of travel expenses paid by the association?

**A:** If the membership dues or registration fees are sufficient to cover travel expenses for participants, then a Commonwealth employee's travel may be paid through the dues or registration fees. The employee may not submit travel expense reimbursement claims to the Commonwealth for expenses that were paid for by membership or registration fees.

**Q:** May the organization reimburse the Commonwealth for the employee's travel expenses?

**A:** The association may make a donation or make some other payment, such as a grant, to the Commonwealth agency to cover the travel expenses associated with travel to participate in the association meetings; however, this should be considered on a case-by-case basis.

### **HONORARIA AND EXPRESSIONS OF GRATITUDE**

**Q:** An employee is honored by a non-profit organization for services provided in the course of the employee's employment. The commendation is to be presented at a dinner and the employee is to be presented with a commemorative plaque. May the employee attend the dinner, consume the meal, and accept the plaque?

- **A:** The plaque or other item recognizes the agency's achievements. Thus, the plaque may be considered a gift to the agency. The representative that attends the event should accept the gift on behalf of the agency, document its receipt, and display it at the agency offices. If an individual honoree wishes to accept the plaque as a personal gift, he or she must pay for it.

Food and drink consumed at the recognition event must be paid for at market value. Employees may seek reimbursement in accordance with applicable Commonwealth travel and expense reimbursement policies. **Q:** Holiday Cheer: Some businesses, including contractors, lobbyists, and law firms who regularly conduct business with Commonwealth agencies or appear before agencies, send food baskets or candy to the Commonwealth offices at the holidays. Prior to EO 2015-01, many offices opened the baskets and made the food available for all employees to partake. What should agency personnel do if such treats are delivered now?

**A:** This practice is no longer permissible. The basket or other treat may not be accepted and must be returned to the sender. To avoid embarrassment, an agency employee may wish to contact the entities that previously provided gifts and advise them of the change in Commonwealth policy.

### **EMPLOYEE DISCOUNTS AND MEMBERSHIP BENEFITS**

**Q:** May employees accept discounts offered to Commonwealth employees by businesses?

**A:** Employees may accept opportunities and benefits, including, for example, reduced telephone contract fees, health club discounts, magazine subscriptions, automobile rentals, and other commercial discounts that are offered to *all* Commonwealth employees. Employees also may accept discounts that are negotiated by the Commonwealth as part of a contract.



**Q:** An employee joins a health club, paying the membership fee. The club offers free babysitting at the club facilities for its members. May the employee use this free service?

**A:** Yes. The membership fee includes the babysitting costs. In addition, the free babysitting is offered to all club members, not just the Commonwealth employees.

**Q:** Commonwealth employees work in the field and their jobs frequently require that they conduct their business in regulated businesses. Those businesses offer the Commonwealth employees their employee discount in the business' cafeteria and parking garage. May the employees accept the discount?

**A:** No. The Commonwealth employees may not accept the discount.

**Q:** A union, which represents a portion of the Commonwealth's rank-and-file work force, holds an annual picnic for its members and their families, free of charge. May the union members attend the event and consume refreshments, etc.?

**A:** The employees' union dues pay for the cost of the union picnic. As such, it is a benefit of membership and not a gift.

**Q:** A nationwide law firm conducts occasional webinars (without continuing education credits) on topics of interest. The law firm represents clients who are involved in litigation against the Commonwealth. The webinars are free and available to anyone who signs up. May Commonwealth employees watch the webinars?

**A:** Yes. The webinars are open to the general public at no charge. Therefore, the attorneys may sign up for and watch the webinars.

**Q:** A local credit union gives out free pens. May employees who are members of the credit union take them?

**A:** Yes. Free pens and other items are benefits of membership in the credit union.

**GENERAL GUIDANCE:**

These FAQs only address Gift Ban issues. It is important to be mindful of potential or actual conflicts of interest that may arise relating to the acceptance of gifts. If you have a question, consult with your agency human resources office.

Q: How do I arrange to pay for gift items?

A: If possible, contact the event sponsor in advance and obtain the cost of the refreshments, travel, etc. Otherwise, make payment to the sponsor at the time of the event or as soon thereafter as possible. Some entities will accept payment by credit card; others will accept checks or cash. The employee should always obtain a receipt in order to show that payment was made.

Q: What are the requirements for a receipt?

A: You want a record to show that you paid for items, whether or not you request reimbursement for the expense.

- It may be possible to pay by credit card or check, which will serve as evidence of payment. Many event sponsors will provide a receipt. You may also prepare your own receipt and obtain the signature of the event sponsor when you pay in person.
- Keep a log of payments, including, the event, date, amount paid and name of sponsor. The log will catalog your payments and receipts.
- Receipts are to be provided when seeking reimbursement for expenditures.
- Receipts will serve as evidence of payment for items if there is a question of compliance with the Gift Ban.

## **APPENDIX A**

### **TRAVEL AND SUBSISTENCE PAYMENT AND REIMBURSEMENT**

**International Travel:** From time to time, employees and officials may engage in international travel on behalf of the Commonwealth. All international travel is subject to prior approval of the Governor's Office, consistent with Management Directive 230.10.

**Out-of-State Travel:** Employees and officials occasionally travel outside of Pennsylvania on Commonwealth business. Travelers must receive prior approval from the Governor's Office consistent with the provisions of Management Directive 230.10. Travel and subsistence expenses are reimbursed in accordance with the Commonwealth's travel policies. See Manual 230.1.

**In-State Travel:** Employees' and officials' duties frequently require travel within the Commonwealth. In-state travel is approved by the employing agency; as a general rule, the Governor's Office does not review such travel requests.

**Management Directive 230.10 and Manual 230.1** outline the requirements for approved travel and travel expense reimbursements. Commonwealth employees are eligible for reimbursement for lodging and subsistence only under the following conditions:

- The employee is in “travel status,” defined as a traveler on official Commonwealth business away from home and headquarters.
- The employee is in “overnight travel status,” which is travel status that is more than 50 miles from both their headquarters and residence.
- The employee is represented by a union under a collective bargaining agreement or memorandum that provides for reimbursement of travel and subsistence.

If an employee is in travel status during a mealtime, he or she is eligible to receive reimbursement for the actual expense of the meal, up to certain dollar amounts, as follows:

Reimbursement while in Travel Status:

- A traveler not represented by a union may be reimbursed for a meal up to \$8.00, but only in the following circumstances:
  - The employee is 50 miles or more from his or her residence and headquarters and works more than two hours past a regular shift; or
  - The employee is less than 50 miles away from his or her residence and headquarters and is required to work two hours past a regular shift with less than two hours’ notice of the extra time requirement.
- Travelers who are covered by a collective bargaining agreement, memorandum or arbitration award also may be eligible for reimbursement for meals under certain conditions.

Example: Under the Master Agreement between the Commonwealth and AFSCME, an employee in the Clerical, Administrative, and Fiscal Unit who is required by an employer to travel at least 15 miles from the employee’s normal work site and whose work assignment requires that he or she remain away from the normal work site during their normal lunch period may be reimbursed for actual lunch expenses up to \$3.50, including sales tax.

- There is no reimbursement for alcoholic beverages.

Subsistence Reimbursement while in Overnight Travel Status:

- Travelers in overnight travel status on official Commonwealth business may be reimbursed for meals, including tax and tips; however, no reimbursement may exceed maximum federal General Services Administration (GSA) overnight subsistence allowance in a 24-hour period.
  - The 24-hour period begins upon departure from home or headquarters, whichever is applicable, on official travel status.

- GSA per diem subsistence rates currently range from \$46 to \$71. Detailed information is available at [www.travel.state.pa.us](http://www.travel.state.pa.us) or <http://www.gsa.gov>.
- Travelers in overnight travel encompassing less than 24 hours may be reimbursed for meals, including tax and tips. The subsistence reimbursement is limited to up to 12.5% of the maximum daily reimbursement rate per full three hour period. (Example: An employee in travel status for 18 hours is entitled to 74% of the daily subsistence amount.)
- If a meal is provided to a traveler by a third party during the course of overnight travel, the traveler's per diem subsistence amount is reduced. Travelers must deduct a corresponding meal rate from the maximum daily meal rate of their subsistence reimbursement: 22% for breakfast; 22% for lunch; 56% for dinner.

Example: A Commonwealth traveler in overnight travel status attends a conference at which lunch is served. The traveler is staying in a city for which the GSA per diem rate is \$50. Because the traveler is not incurring the expense of lunch, he may not seek reimbursement for the cost of the luncheon. Also, his maximum per diem rate – the maximum amount the Commonwealth will reimburse the traveler for his meals while traveling – is reduced by 22%. In this example, the per diem meal rate of \$50 would be reduced by \$11 (i.e., 22% of the daily rate), and the Commonwealth would reimburse no more than \$39 for meals.

For purposes of subsistence reductions, meals provided by third parties include those provided by hotels, meetings, conferences, or any other source. Meals classified as continental breakfast do not need to be deducted. When a meal is provided in the cost of the hotel room and the Commonwealth traveler opts to eat elsewhere, reimbursement for that meal would be made within the prescribed maximum daily meal reimbursement rate.

Subsistence Reimbursement while in Day Travel Status:

- Breakfast, luncheon, or dinner meetings sponsored by the Commonwealth are paid under contract; therefore, no claims for such expenses may be presented by the traveler. The employee must deduct the applicable subsistence percentage (22% or 56%) from the maximum daily meal rate allowance amount to calculate the maximum meal reimbursement rate for the remainder of the meals the traveler purchases.
- If a Commonwealth traveler attends a business meeting at which a meal is served and the meal is paid for by a third party, new rules apply under Executive Order 2015-01.

Under section 3(b)(3) of the amended Code of Conduct, “[p]articipation in widely attended gatherings free of charge is permissible when officials have been invited and are acting in furtherance of their official duties. But no food or drink may be accepted without payment at market value.” Under these circumstances, the traveler must pay for the market value of the meal if he or she consumes it, obtain a receipt, and submit the receipt for reimbursement in accordance with the travel policy. The traveler would be reimbursed at no more than the applicable Commonwealth travel reimbursement rate, based upon the type of travel status and the kind of meal.

- In some cases, the market value of the meal will exceed the Commonwealth meal allowance. Alternatively, the employee may decline the food and drink.
- If the meal is served at a meeting or conference for which the cost of the meal is included in the registration fee, the meal is already paid for. The employee is not to pay again for the meal. The employee must deduct the applicable subsistence percentage (22% or 56%) from the maximum daily meal rate allowance amount to calculate the maximum meal reimbursement rate for the remainder of the meals the traveler purchases.