

Fundraising and Other Solicitations: An Overview of Key Authorities

This document is an updated version of one that was first developed by the Ethical Implications of Emergency Response Working Group in the wake of Hurricanes Katrina and Rita in 2005. It provides an informal overview of the main authorities that may apply to various fundraising and other solicitation events.

Depending upon the nature of the solicitation or collection, where it takes place, whether it targets Federal employees, and whether it is undertaken in an official or personal capacity, different authorities will apply. These authorities include: the Combined Federal Campaign regulations at 5 C.F.R. part 950, various provisions of the Standards of Ethical Conduct at 5 C.F.R. part 2635, and/or the Federal Management Regulations (FMR) at 41 C.F.R. part 102-2.

This document does not provide interpretive guidance on the specific application of any authority. Neither does it presume to be exhaustive of all potentially applicable authorities. Ethics officials with specific questions about the application of any particular authority should consult with the appropriate agency for guidance.

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I. KEY AUTHORITIES

The authorities that most often apply in situations involving fundraising and other solicitations are the following:

Authority	Citation	Responsible Agency
Combined Federal Campaign (“CFC”) regulations	5 C.F.R. part 950	OPM
Standards of Ethical Conduct (“Standards”) regulations	5 C.F.R. part 2635	OGE
Federal Management Regulations (“FMR”)	41 C.F.R. part 102-2	GSA
Your agency’s organic statute		Your agency

These authorities are discussed throughout the document.

II. KEY QUESTIONS TO ASK

To determine which of these authorities apply in a given situation, the ethics official should ask the following questions:

1. What is being solicited? Money or a tangible item?
2. On whose behalf is the solicitation being made? A non-profit, charitable organization or individual employees?
3. Where is the solicitation taking place? In the workplace or outside of the workplace?
4. Who is being solicited? Federal employees, prohibited sources or others?
5. In what capacity is the solicitation being made? Official capacity or personal capacity?

III. DEFINITIONS

A. What is “fundraising?”

For purposes of this document, “fundraising” means:

- the raising of *funds*
- for a *nonprofit organization* (other than a political organization as defined in 26 U.S.C. 527(e)).

For purposes of 5 C.F.R. part 950 “raising of funds” is a “**solicitation**” meaning:

- any action requesting money, either by payroll deduction or credit card, on behalf of a charitable organization.

For purposes of 5 C.F.R. section 2635.808 “raising of funds” means:

- solicitation of funds or the sale of items, or
- participation in the conduct of an event where any portion of the cost of attendance or participation may be taken as a charitable tax deduction by the person incurring the expense.

B. What is *NOT* “fundraising?”

Fundraising does *NOT* include:

- the solicitation or collection of **gifts-in-kind**, such as food, clothing, or toys.

For example, the solicitation and acceptance of in-kind donations of food to be given to a nonprofit organization like a food bank would NOT constitute fundraising.

- the raising of “funds” for persons **other than a nonprofit organization**.

For example, the solicitation or acceptance of monetary contributions to be given directly to individuals, such as individual Federal employees and their families, or individual members of a community would NOT constitute fundraising.

C. What is “the workplace?”

The term “in the workplace” is not defined in 5 C.F.R. part 950. However, OPM has stated in its CFC FAQs that because the CFC is the only authorized solicitation of employees in the Federal workplace on behalf of charitable organizations, no other fundraiser for charitable organizations is permitted *on federal property*. See OPM’s FAQs at <https://www.opm.gov/combined-federal-campaign/cfc-faqs/>

IV. FUNDRAISING IN THE WORKPLACE

A. Official Fundraising in the Workplace

1. The CFC

The CFC is the *only authorized solicitation of employees in the Federal workplace on behalf of charitable organizations*. Authorized by Executive Order 12353, as amended, the CFC is conducted under regulations issued by the OPM, in 5 C.F.R. part 950. No fundraising involving the solicitation of Federal employees in the workplace on behalf of charitable organizations is permitted outside of the CFC except for new employee pledges made within 30 days of entry on duty, “special solicitations” for victims of disasters, and solicitations conducted by and in support of employee welfare groups (see sections 2 and 3 below).

Employees assigned by their agencies to assist in the CFC campaign do so as part of their official duties. Therefore they may use their titles, positions, authority, and Government resources to the extent authorized by their departments and agencies in conducting CFC activities.

The Federal Management Regulations (FMR)¹ at 41 C.F.R. section 102-74.410(a) expressly allow solicitation on Federal property for “[n]ational or local drives for welfare, health, or other purposes as authorized by 5 C.F.R. part 950.”

Activities Conducted in the Context of CFC²

While section 950.502(b) of the CFC regulations encourages non-solicitation events (such as kick-offs, victory events, awards and other non-solicitation events), *no funds may be raised or collected at these events*. Likewise no costs of food or entertainment at a special CFC event may be charged to the CFC.³ Finally, any special CFC event and associated prize or gift *must be approved in advance* by the agency’s ethics official.

While OPM does not provide a list of “approved” non-solicitation events, OPM regulations at 5 C.F.R. section 735.201 generally prohibit gambling on Federal property. Similarly, the FMR at 41 C.F.R. section 102-74.395 generally prohibits gambling except that the “provision is not intended to prohibit prize drawings for personal property at otherwise permitted functions, provided that the game or drawing does not constitute gambling per se. Gambling per se means a game of chance where the participant risks something of value for the chance to gain or win a prize.” 41 C.F.R. section 102-74.395(b). Thus, while raffle-type events may be held at non-solicitation events, these non-solicitation methods must be approved by the agency and *may not involve the*

¹ The FMR applies to space that is operated under, or subject to, the authorities of the Administrator of General Services. In the case of privately-owned buildings, the FMR applies only to those spaces that are leased by the General Services Administration.

² The discussion in this section may also apply to activities undertaken in the context of special solicitations and solicitations conducted by, and in support of, employee welfare groups.

³ See also CFC Memorandum 2013-04, June 27, 2013.

collection of funds or constitute gambling per se.

Solicitation of Non-Government Persons in Support of CFC campaigns

When conducting kick-off campaigns and other special CFC events, agencies may expend some appropriated funds for such activities.⁴ However, when agencies authorize the solicitation and acceptance of contributions from sources outside of the Government in support of these activities, such acceptance may constitute a gift to the agency. Consequently, if an agency does not have statutory or other authority to accept such gifts, these contributions may constitute an unauthorized augmentation of appropriations.

Of particular note: when an employee is *authorized by his agency* to solicit and/or accept contributions from sources outside the Government *on behalf of the agency*, this conduct is not regulated by the Standards of Ethical Conduct at 5 C.F.R. part 2635 (hereafter the Standards). The Gifts from Outside Sources provisions in the Standards do not reach to gifts solicited or accepted *by an agency*.

Finally, according to the CFC rules at 5 C.F.R. section 950.502(b), any special CFC event, prize, or gift must be approved *in advance* by the agency's ethics official to ensure that the special event is consistent with Office of Government Ethics regulations and the agency's own regulations and policy.

2. Special Solicitations—5 C.F.R. section 950.102(a)(2)

Upon written request, the Director of OPM may grant Federal departments and agencies permission for special solicitations. Special solicitations are official fundraising events held outside of the CFC that allow for the solicitation of Federal employees in the workplace in support of organizations providing assistance to victims in cases of emergencies and disasters. Emergencies and disasters eligible for special solicitations include any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the world.

All special solicitations must be approved by the Director of OPM and will be managed through a Disaster Relief Program developed by OPM.

Special solicitations are by definition NOT part of the CFC and are conducted outside of the CFC procedures. Because the special solicitation is outside of the CFC, the Federal department or agency conducting the solicitation is responsible for establishing policies and procedures for the oversight and administration of all aspects of the solicitation,

⁴ See 67 Comp. Gen. 254 (1988).

For more information on Special Solicitations and other CFC questions see OPM's FAQs at <https://www.opm.gov/combined-federal-campaign/cfc-faqs/>.

including the collection of contributions. OPM recommends that Federal departments and agencies holding special solicitations request that the charities receiving the funds be responsible for the collection and substantiation of all contributions.

Employees assigned to assist in the special solicitations do so in their official capacities. Therefore, subject to the policies and procedures established by the department or agency for conducting the special solicitation, employees may solicit contributions from fellow Federal employees in the workplace and may use their Government titles, authority, and resources.

Note that the authority to conduct special solicitations granted under 5 C.F.R. part 950 is limited to *the solicitation of Federal employees in the workplace*. It does not extend to the solicitation of other persons, nor does it extend to solicitations outside of the workplace (see Section IV—Fundraising Outside of the Workplace). Departments and agencies must have a separate authority to conduct such fundraising.

Special solicitations also do not include workplace solicitations made on behalf of individual employees or their families (see Section VI – Solicitations and Collections on Behalf of Federal Employees). Such solicitations do not constitute fundraising. Consequently, a department or agency does not require OPM’s approval to solicit and collect funds for these purposes.

As is the case with the CFC, the FMR at 41 C.F.R. section 102-74.410(a) expressly allows solicitation on Federal property for “[n]ational or local drives for welfare, health, or other purposes as authorized by 5 C.F.R. part 950.”

3. Solicitations Conducted by and in Support of Employee Organizations - 5 C.F.R. section 950.102(e)

Heads of departments or agencies may establish policies and procedures governing solicitations conducted by organizations composed of civilian employees or members of the uniformed services among their own members for organizational support or for the benefit of the welfare funds of their members. Such solicitations are NOT subject to the regulations at 5 C.F.R. part 950, and therefore do NOT require permission from the Director of OPM.

Subject to the policies and procedures established by the department or agency, employees may conduct solicitations among their own members in the workplace on behalf of their employee organizations for organizational support or for the benefit of the welfare funds of their members. Because these solicitations do not require OPM approval and may, subject to agency policies, be conducted at any time, agencies may wish to consider restricting such solicitations to periods outside of the annual CFC campaign.

As is the case with the CFC, the Federal Management Regulations at 41 C.F.R. section 102-74.410(a) expressly allow solicitation on Federal property for “[n]ational or local drives for welfare, health, or other purposes as authorized by 5 C.F.R. part 950.”

B. Personal Fundraising in the Workplace

The CFC regulations at 5 C.F.R. section 950.102 state explicitly that the CFC is the only authorized *solicitation of employees* in the Federal workplace. Consequently, Federal employees, either individually or as a group, are prohibited from soliciting funds *from other Federal employees* in the workplace on behalf of charitable organizations in their personal capacities.

Regarding solicitations of others in the workplace, section 2635.808(c) of the Standards also prohibits employees from personally soliciting funds from persons known to be “prohibited sources” within the meaning of section 2635.203(d) of the Standards. Except as may be permitted by a department or agency, employees generally may not use or permit the use of their official titles, positions, or any authority associated with their public offices to further the fundraising effort when engaging in fundraising in a personal capacity. This would include provisions in Subpart G of the Standards regarding misuse of position, Government time, space, and equipment.

Employees may, subject to the FMR at 41 C.F.R. section 102-74.410(b) and their own department or agency’s policies, post personal notices on authorized bulletin boards. Such notices may still be subject to the restrictions noted above.

V. FUNDRAISING OUTSIDE OF THE WORKPLACE

A. Official Fundraising Outside of the Workplace

Any official solicitations of funds outside of the workplace, by Federal employees and on behalf of a charitable organization are subject to the Standards at 5 C.F.R. section 2635.808(b). An employee may participate in such fundraising in an official capacity if authorized to participate in the activity as part of official duties pursuant to a statute, Executive order, regulation, or otherwise as determined by the agency. The phrase “or otherwise as determined by the agency” does not provide an agency with authority to engage in fundraising simply because the fundraising is consistent with the agency’s mission or in furtherance of its programs.⁵

⁵ See OGE Informal Advisory Memoranda 93 x 19 and 96 x 2.

The CFC regulations at 5 C.F.R. part 950 do NOT extend to fundraising *outside of the workplace* or to fundraising that *does not solicit Federal employees*. Therefore an agency may not use the CFC as an authority for conducting official fundraising that does either.

Fundraising activities for purposes of the Standards mean the raising of funds through 1) the solicitation of funds or the sale of items or 2) participation in the conduct of an event by an employee where any portion of the cost of attendance or participation may be taken as a charitable tax deduction by a person incurring the cost. Consequently, an employee is deemed to be engaged in fundraising on behalf of a charitable organization not only when the employee solicits funds, but also when the employee actively and visibly participates in the promotion, production, or presentation of a fundraising event. 5 C.F.R. sections 2635.808 (a)(1) and (a)(2). Active and visible participation includes: serving as the honorary chairperson, sitting at a head table during the event, and standing in a reception line. It does not include mere attendance at the event. While it generally includes any public speaking at an event, it does not include the delivery of an “official speech,” provided the employee’s agency has determined the event is an appropriate forum for such speech and the employee does not request donations or other support for the organization.

Employees authorized to engage in official fundraising are subject to those restrictions established by the agency consistent with its official fundraising authority. The personal fundraising prohibitions found at 5 C.F.R. section 2635.808(c) do NOT apply to official fundraising.

Additionally, employees who are authorized to engage in fundraising in an official capacity are subject to the restrictions of 18 U.S.C. section 208. Consequently, employees may not participate personally and substantially in any official fundraising matters that would, for example, directly and predictably affect the financial interests of organizations for whom they serve as an officer, director, trustee, general partner or employee. Likewise, employees who have a “covered relationship” with an organization within the meaning of 5 C.F.R. section 2635.502, should take into account any impartiality concerns before engaging in any official fundraising activities affecting that organization.

B. Personal Fundraising Outside of the Workplace

Employees acting in their personal capacities may solicit funds or other support for charitable organizations outside of the workplace subject to the restrictions found in the Standards at 5 C.F.R. section 2635.808(c). Employees may not personally solicit funds from subordinates or from persons known to be “prohibited sources” within the meaning of section 2635.203(d) of the Standards. Generally solicitations addressed to large groups are permissible unless the employee knows that the solicitation is targeted at subordinates or persons known to be prohibited sources.

As is the case with official fundraising outside of the workplace, personal fundraising activities for purposes of the Standards mean the raising of funds through 1) the solicitation of funds or the sale of items or 2) participation in the conduct of an event by an employee where any portion of the cost of attendance or participation may be taken as a charitable tax deduction by a person incurring the cost. Consequently, an employee is

deemed to be engaged in fundraising on behalf of a charitable organization not only when the employee solicits funds, but also when the employee actively and visibly participates in the promotion, production, or presentation of a fundraising event. 5 C.F.R. sections 2635.808 (a)(1) and (a)(2). Active and visible participation includes: serving as the honorary chairperson, sitting at a head table during the event, and standing in a reception line. It does not include mere attendance at the event. While it generally includes any public speaking at an event, it does not include the delivery of an “official speech,” provided the employee’s agency has determined the event is an appropriate forum for such speech and the employee does not request donations or other support for the organization.

Employees may not use or permit the use of their official titles, positions, or any authority associated with their public office (such as Government time, equipment, or resources) to further the fundraising effort. An employee who is ordinarily addressed using a general term of address or “honorific,” such as “The Honorable,” or a military or ambassadorial rank, may use or permit the use of that term or rank.

VI. OTHER COLLECTIONS FOR CHARITABLE ORGANIZATIONS

A. Official Collections in the Workplace of Non-Monetary Items for Charitable Organizations

The CFC regulations do not apply to the collection of non-monetary goods such as food, clothing, or toys in the Federal workplace. In fact 5 C.F.R. section 950.102(b) explicitly excludes such collections from the application of the CFC regulations. Likewise, the fundraising provisions in the Standards at section 2635.808 do not apply to non-monetary collections.

Official collections of non-monetary items in the workplace are subject to the restrictions imposed by the department or agency itself when authorizing such an official collection.

Additionally, employees who are authorized to engage in charitable collections in an official capacity are subject to the restrictions of 18 U.S.C. section 208. Consequently, employees may not participate personally and substantially in any official matters that would, for example, directly and predictably affect the financial interests of organizations for whom they serve as an officer, director, trustee, general partner or employee. Likewise, employees who have a “covered relationship” with an organization within the meaning of 5 C.F.R. section 2635.502, should take into account any impartiality concerns before engaging in any official collection activities affecting that organization.

The FMR at 41 C.F.R. section 102-74.410(e) allows for the “collection of non- monetary items that are sponsored or approved by the occupant agencies.”

B. Personal Collections of Non-Monetary Items in the Workplace for Charitable Organizations

Employees may engage in the collection of non-monetary items in the workplace only to

the extent permitted by their department or agency and subject to the relevant provisions of the Standards. The personal capacity fundraising provisions in Subpart H of the Standards do NOT apply to non-monetary collections; however other portions of the Standards may apply.

The Gifts from Outside Sources provisions of the Standards prohibit employees from directly or indirectly soliciting or accepting a gift from a prohibited source or given because of their official position. A gift is defined as anything having monetary value. Solicited or accepted indirectly includes, “given to any other person, including any charitable organization on the basis of designation, recommendation, or other specification by the employee...” 5 C.F.R. section 2635.203(f). Accordingly, federal employees who are granted permission to collect non-monetary items may not solicit or accept donations from prohibited sources or because of their official positions absent an applicable exception. Notwithstanding any applicable exceptions, employees are subject to the limitations on the use of those exceptions provided in 5 C.F.R. section 2635.205.

The Gifts Between Employees prohibitions at 5 C.F.R. section 2635.302(b) provide that an employee may not directly or indirectly solicit or accept a gift from an employee receiving less pay, unless the two employees are not in a superior subordinate relationship and there is a personal relationship that would justify the gift. Solicited or accepted “indirectly” means, among other things, “given to any other person including a charitable organization on the basis of designation, recommendation, or other specification by the employee...” 5 C.F.R. section 2635.203(f). Consequently, non-monetary charitable collections among federal employees may be subject to the Gifts Between Employees restrictions depending on the circumstances.

Likewise the provisions in Subpart G of the Standards regarding use of public office for private gain, use of title, position, time, and equipment also apply.

As noted above, the FMR allows for the “collection of non-monetary items that are sponsored or approved by the occupant agencies.” 41 C.F.R. section 102-74.410(e).

VII. SOLICITATIONS AND COLLECTIONS ON BEHALF OF FEDERAL EMPLOYEES

Subject to agency approval, and any policies and restrictions established by the department or agency when authorizing such activities, Federal employees may solicit and collect monetary contributions and/or non-monetary items from fellow Federal employees *in the workplace on behalf of individual employees or their families*. Provided such contributions will be given *directly* to those persons and not to a charitable organization or employee welfare organization, they do not constitute fundraising for purposes of Subpart H of the Standards, are not covered by the CFC regulations, and do not require approval from the Director of OPM.

These solicitations and collections are, however, subject to other provisions of the Standards. The Gifts Between Employees provisions in Subpart C generally prohibit employees from directly or indirectly giving a gift to or making a donation toward a gift

for an official superior, or soliciting contributions from other employees for a gift to their or another employee's official superior. 5 C.F.R. section 2635.302(a). Also an employee generally may not directly or indirectly solicit or accept a gift from an employee receiving less pay, unless the two employees are not in a superior subordinate relationship and there is a personal relationship that would justify the gift. 5 C.F.R. section 2635.302(b).

Notwithstanding these prohibitions, section 2635.304(c) of the Standards provides an exception for soliciting and making voluntary contributions of nominal amounts from fellow employees for an appropriate gift to an official superior on a special, infrequent occasion. Special infrequent occasions are defined at 5 C.F.R. section 2635.304(b)(1) as "infrequently occurring occasions of personal significance." The Standards provide a non-exhaustive list of occasions that would qualify for the exception (marriage, illness, etc.). However, *events such as natural disasters, fires, and other personal emergencies could also qualify as "special infrequent occasions"* for purposes of applying this exception. Consequently, employees might (subject to agency approval in those circumstances) solicit voluntary contributions from fellow Federal employees for an appropriate gift, and affected employees might accept such gifts without running afoul of the Gifts Between Employees rules. Official superiors are, of course, prohibited from coercing the offering of a gift from a subordinate notwithstanding any exception. 5 C.F.R. section 2635.302(c).

The Gifts from Outside Sources provisions in the Standards prohibit employees from directly or indirectly soliciting or accepting a gift from a prohibited source or given because of the employee's official position. There is no "special infrequent occasions" or similar exception that applies to gifts from outside sources. The exception for gifts of \$20 or less may not be used to accept gifts of cash or cash equivalents. Notwithstanding any applicable exceptions to the gift prohibitions, employees are subject to the limitations on the use of those exceptions provided in 5 C.F.R. section 2635.205.

As is the case with all solicitations and collections, the provisions in Subpart G of the Standards regarding use of public office for private gain, use of title, position, time, and equipment also apply.

As noted above, collections of non-monetary items may be permitted provided such collections are approved by the occupant agency. 41 C.F.R. section 102-74.410(e).