



Acceptance of Benefits

An HHS Ethics Office Guide

August 24, 2018

Generally

This guide discusses the prohibition on the acceptance of benefits and the exceptions to the HHS Ethics policy. Public servants are generally prohibited from accepting certain gifts or "benefits." Violations of these laws carry criminal penalties, and local prosecutors handle complaints alleging such violations.

The statutory definition of "benefit" is "anything reasonably regarded as pecuniary gain or pecuniary advantage, including the benefit of any third party in whose welfare the employee is interested—such as a family member." This definition does not include benefits received from another governmental entity.

The HHS Ethics Policy prohibits the acceptance of any benefit or gift, which may include food, from a "prohibited source," unless a legal or policy-based exception applies. A "prohibited source" includes but is not limited to a vendor or entity that contracts with or is likely to become interested in a contract or other transaction with the agency; lobbying firms or lobbyists; an affiliated interest of a lobby firm; anyone employed by or affiliated with a vendor or lobbyist; an entity subject to regulation, audit, inspection or investigation by HHS; and legal counsel for a party adverse to HHS.

Bribery

The Texas Penal Code prohibits the offering, solicitation, and/or acceptance of a gift in return for your decision, opinion, recommendation, vote, or other exercise of official discretion. A violation of this law is a criminal offense. An attempt to bribe is an "offer to confer any benefit with the intent of influencing the employee in a specific exercise of official action." A bribery offense occurs even if a benefit is offered after an employee leaves the agency if the benefit relates back to a discretionary act on the job.

Honoraria

The Texas Penal Code also makes it a criminal offense for a public servant to accept an honorarium, *i.e.*, money or other monetary compensation, for services the public servant would not have been asked to provide but for the person's status as a public servant. This prohibition extends to a request for or acceptance of a payment

of an honorarium to a third party if the speaker agrees to speak in exchange for such payment.

What exceptions apply?

An HHS employee may accept a gift, payment, or contribution as long as the gift, payment, or contribution fits into *any one* of the following categories.

Items Worth Less Than \$50: As long as the item is not from a prohibited source and is not a gift of cash, checks, gift cards or a negotiable instrument.

Independent Relationships: Gifts from others based on kinship or personal, professional or business relationships independent of your official status as an HHS employee.

Fees for Services: You may accept a payment to which you are lawfully entitled in a capacity other than your official status. In this case, you may accept the offer without restriction. Remember, you may not take an honorarium for a service that you would not have been asked to provide but for your official status.

Political Contributions: You may accept a political contribution as a candidate or officeholder as defined by Title 15 of the Texas Election Code.

Government Property: You may accept an item issued by a governmental entity that allows use of property or facilities owned, leased, or operated by the entity.

Food & Entertainment: Benefits in the form of food or entertainment are permissible if accepted as a "guest" at a local reception, event or gathering of persons attending from *a variety of organizations in addition to HHS agencies*. This type of event is sometimes referred to as a widely attended gathering and requires attendance of 25 or more people; attendance is related to work responsibilities; and a sponsor of the event issued the invitation.

Transportation, Lodging and Meals: You may accept these in connection with a work-related speech as long as they are not from an entity your agency is or intends to audit, examine, or investigate and your speech is substantive. You may also accept a thank you gift of minimal value.

Services to a First Responder: You may accept free legal services relating to estate planning if you are a first responder, if the services are provided by a local bar or State Bar of Texas program or clinic and approved by your agency.

Inspections: If an employee's job requires the employee to accept something e.g., a sample of food at a regulated entity, it is not considered a benefit.

Benefits from an External Source Because of an Agency Approved

Collaborative Effort: An HHS agency may accept goods and services received from external sources as a result of a negotiated effort to benefit a program that the agency is authorized to administer.

Disaster Response Personnel: Employees working in response to disaster situations may accept food, beverages and small sundries provided during their time of service.

Gifts to State Agencies: The statutes applicable to each HHS agency will determine whether the agency has the authority to accept gifts. If the agency has such authority, it may only accept gifts that can be used in carrying out the agency's powers and duties.

Gifts from an HHS Agency: An HHS employee may receive and accept a gift from an HHS agency in accordance with various provisions of the HHS HR Manual.

Gifts from Consumers and the Community: A state supported living center or state hospital employee may accept from a consumer, consumer's family member, or consumer's friend unsolicited baked goods that can be shared and eaten during work hours or arts and crafts of minimal monetary value. This is also true of gifts received by agency employees from local community groups.

Contact Information

- **Ethics Office Helpline:** Callers can seek guidance and remain anonymous: (512) 424-6630
- **HHS Ethics Officers:** If you have a question, please visit the HHS employee website and review the Rights & Responsibilities Section to obtain contact information for the HHS Ethics Office and to view additional resources.
<https://hhsconnection.hhs.texas.gov/rights-responsibilities/ethics-office>
- **Ethics Mailbox:** You can also submit your questions to us by writing to the general Ethics Mailbox at the following address.
Ethics_in_Action@hhsc.state.tx.us

Acceptance of Benefits

This guide is not intended to encompass all the laws and HHS Ethics Policy provisions regarding the acceptance of benefits, but is intended to give a broad overview of this subject. Always check with the HHS Ethics Office, the HHS Ethics Policy and/or your supervisor about the offer or acceptance of a gift or benefit.