

2 FAM 960

SOLICITATION AND/OR ACCEPTANCE OF GIFTS BY THE DEPARTMENT OF STATE

(CT:GEN-336; 02-26-2007)
(Office of Origin: A/ISS/DIR)

2 FAM 961 SCOPE AND APPLICABILITY

2 FAM 961.1 Policy

(TL:GEN-302; 02-23-2001)

- a. Donations by public spirited citizens can be a useful adjunct to appropriated funds in carrying out the Department's functions. The Department of State has the authority to accept gifts made for the benefit of the Department of State or for carrying out its functions.
- b. In recent years, the Department of State has received an increased volume of official gifts. Many of these gifts have contributed to capital improvements, such as the renovation of the Department's diplomatic reception areas. Other gifts have been used to benefit the work of specific embassies and to support international conferences. Some gifts are in-kind, such as antique furnishings or air travel; others involve cash donations. For the purpose of Federal income, estate and gift taxes, any gift, devise or bequest accepted by the Department is deemed to be a gift, devise, or bequest to and for the use of the United States. In some circumstances, donations may be treated for Federal tax purposes as unreimbursed business expenses (see 2 FAM 962.1-4).
- c. To ensure that the acceptance and use of these gifts further the Department's interests to preserve the integrity of government, and to avoid actual or apparent impropriety, Department officials may solicit, accept and use gifts on behalf of the Department only in accordance with the regulations in this section. Department officials must also follow the regulations governing solicitation in this section when soliciting gifts on behalf of outside organizations. To this end, Department officials should ensure that all employees involved in soliciting, accepting or using gifts become thoroughly familiar with the contents of these regulations.
- d. Questions regarding the interpretation of these regulations should be

directed to the Office of the Legal Adviser (L/Ethics) or to the Department’s Gift Fund Coordinator in the Bureau of Financial Management and Policy (FMP).

2 FAM 961.2 Scope

(TL:GEN-302; 02-23-2001)

- a. The regulations in this section govern the acceptance and use of gifts to the Department of State from non-Federal sources and the solicitation of gifts for the Department or outside organizations, when such solicitation assists the Department in carrying out its official functions in the United States and abroad. In general, a gift is offered for the “carrying out (of) official functions” if the gift, once accepted, would be used to supplement or take the place of funds appropriated to the Department or otherwise further authorized Department activities.
- b. These regulations generally do not address the acceptance by Department employees of gifts given to them or their family members personally from foreign governments or other sources. The acceptance of gifts by individual employees continues to be governed by various statutory and regulatory requirements, including the criminal conflict of interest laws (18 U.S.C. Sec. 201 et seq.), the Foreign Gifts and Decorations Act (5 U.S.C. Sec. 7342), the Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. Part 2635), and 3 FAM 4122.

2 FAM 961.3 Authorities

(TL:GEN-302; 02-23-2001)

The authorities for the activities in this subchapter include:

- (1) Foreign Service Buildings Act of 1926, Sec. 9, as amended (22 U.S.C. Sec. 300);
- (2) State Department Basic Authorities Act of 1956, Sec. 25, as amended (22 U.S.C. Sec. 2697);
- (3) Foreign Gifts and Decorations Act, as amended (5 U.S.C. Sec. 7342 and 22 C.F.R. Part 3);
- (4) Ethics Reform Act, as amended (31 U.S.C. Sec. 1353);
- (5) Mutual Educational and Cultural Exchange Act, Sec. 105(f), as amended (22 U.S.C. Sec. 2455(f));

- (6) 41 C.F.R. Sections 301 and 304; and
- (7) 5 U.S.C. Sec. 4111.

2 FAM 961.4 Definitions

(TL:GEN-302; 02-23-2001)

For the purposes of these regulations, the following definitions shall apply:

- (1) “Gift” means anything with an ascertainable market value for which the recipient does not pay market value, including donations of cash, goods, services, and real property.
- (2) “Employee” means an appointed officer or employee of the Department, including a Foreign Service National, a special government employee, or an expert or consultant.
- (3) “Representational Use” means use for the establishment and maintenance of relationships beneficial to the United States.
- (4) “Invitational Travel” means payment by a non-Federal source of travel expenses for official travel.
- (5) “Non-Federal Source” includes any individual, private, or commercial entity other than the U.S. Government, including but not limited to corporations, nonprofit organizations or associations, international or multinational organizations, and foreign, state, or local governments.

2 FAM 962 SOLICITATION AND ACCEPTANCE OF GIFTS

(TL:GEN-302; 02-23-2001)

- a. The Under Secretary for Management is the Department official responsible for the general direction and overall supervision of the Department’s gift acceptance program. He or she is responsible for the acceptance of all gifts to the Department of State for official purposes, unless a specific delegation to another official has been made in these regulations or subsequently, in writing, from the Under Secretary or from a person delegated authority to accept gifts under these regulations. Any employee to whom gift acceptance authority has not been delegated shall obtain the approval of the Under Secretary or his or her designee before

accepting any gift for official purposes or initiating any project to be funded in whole or in part with such donations.

- b. Any official authorized to accept gifts on behalf of the Department shall, before accepting any gift, make a judgment that acceptance does not create a conflict of interest between the donor's interests and the Department's responsibilities. Such official must also make a judgment that acceptance of the gift would not create the appearance of a conflict of interest that would cause reasonable persons to believe that the official had lost objectivity in the performance of his or her official duties by virtue of accepting the gift. Generally, a post abroad shall be the relevant organizational unit for evaluating the propriety of a gift accepted for use abroad.
- c. In deciding whether or not to accept a gift, an official authorized to accept gifts shall consider carefully the following:
 - (1) Whether the donor has made contributions to the Department on such a frequent basis as to create an appearance of impropriety;
 - (2) Whether the gift would be useful for an appropriate public purpose and fulfill a justifiable need of the Department;
 - (3) Whether the donor has or is seeking to obtain any business, benefit or assistance from the Department or its posts;
 - (4) Whether the donor conducts operations or activities that are regulated by the Department or its posts;
 - (5) Whether the donor has interests that may be substantially affected by the performance or nonperformance of an employee's official duties;
 - (6) Whether the donor appears to be offering the gift with the expectation of obtaining advantage or preferment in dealing with the Department or its posts; and
 - (7) Any other factors relevant to the question of whether the acceptance of the donor's gift gives rise to an actual or perceived conflict of interest.
- d. To aid in evaluating the factors listed in 2 FAM 962 c, the accepting official should generally require that the donor provide, in writing, a list and description of the donor's business affiliations and the business affiliations of the donor's immediate family members. Corporate donors should provide a list and description of their subsidiaries. Donors should additionally provide a description of any non-routine matters affecting the

donor, the donor's immediate family members or the donor's business affiliates (or subsidiaries of corporate donors) that have required, or are expected to require, the Department's or post's attention. Section 2 FAM 962 Exhibit 962.3 provides sample donor letters for individual and corporate donors.

- e. No Department employee may engage in solicitation or other fundraising activities, for U.S. Government use or for the use of an outside organization, without prior authorization, in writing, from the Under Secretary for Management, except as specifically authorized in 2 FAM 962.1-1 through 2 FAM 962.1-11 or 3 FAM 4123.4.
- f. In order to obtain approval from the Under Secretary for Management for a solicitation or other fundraising request, the requesting office shall prepare an action memorandum and obtain clearances from L/Ethics and FMP, as well as any other relevant offices. The memorandum must include the following:
 - (1) As much information as possible on the project for which funds will be raised,
 - (2) The amount of money to be raised;
 - (3) The potential donors to be approached;
 - (4) The method of raising money, including the proposed texts for any communications to be used in the solicitation;
 - (5) The availability of appropriated funds or alternative sources of funding; and
 - (6) The importance to the U.S. Government of the proposed project.

In addition, FMP will incorporate into the memorandum information concerning any prior Departmental solicitations of the targeted donors.

- g. Approval of solicitation or other fundraising proposals requires balancing the U.S. Governmental policy interests in favor of fundraising against the potential risks of Department involvement in raising money from the private sector. This process inherently requires making judgment calls about issues such as the importance of the project and the risks that the Department will be subjected to criticism for its activities. In deciding whether to approve a solicitation, the Under Secretary for Management should consider:
 - (1) The amount of money to be raised;

- (2) The degree to which the Department will be directly involved in the fundraising;
 - (3) Whether the money is being raised for unusual or exceptional expenses (such as capital improvements), which have more frequently been approved, or for ordinary operating expenses of the Department; or
 - (4) Whether the involvement of the private sector adds value to the project apart from financial assistance. (For example, the financial participation of a nongovernmental group in a public-private partnership may help to establish private sector linkages with the local country.)
- h. The Under Secretary for Management will generally not approve solicitation or other fundraising proposals that target persons who:
- (1) Are seeking to obtain any business, benefit or assistance from the soliciting official or other officials in the same organizational unit;
 - (2) Conduct operations or activities that are regulated by the soliciting official's organizational unit;
 - (3) Have interests that may be substantially affected by the performance or nonperformance of the soliciting official's duties;
 - (4) Appear to be offering a gift with the expectation of obtaining advantage or preferment in dealing with the soliciting official or other officials in the same organizational unit;
 - (5) Have major non-routine business with an organizational unit other than the soliciting official's organizational unit.
- i. In addition, the Under Secretary for Management will not approve solicitation or fundraising proposals that involve:
- (1) Soliciting gifts of travel, subsistence, and related expenses, as described in 2 FAM 962.1-8; OR
 - (2) A significant use of appropriated funds in order to conduct the solicitation.
- j. The requesting office shall be responsible for providing the necessary information to M, FMP, and L/Ethics to allow a determination about whether any of these factors exist with respect to a particular proposal.

2 FAM 962.1 Gift Solicitation and/or Acceptance Procedure

(TL:GEN-302; 02-23-2001)

Sections 2 FAM 962.1-1 through 962.1-11 below detail the acceptance and/or solicitation procedures for various types of gifts to the Department. These procedures supplement the standards set forth in 2 FAM 962 above. Please note that while the regulations governing solicitation apply to the solicitation of gifts to both the Department and outside organizations by Department employees, the regulations pertaining to gift acceptance only apply to gifts that are accepted on behalf of the Department itself. Questions regarding the proper acceptance procedure for gifts that do not fall into any of the gift categories below should be directed to L/Ethics.

2 FAM 962.1-1 Gifts from Foreign Governments

(TL:GEN-302; 02-23-2001)

Acceptance of official gifts from foreign governments, other than gifts of invitational travel, must be approved by the Chief of Protocol, who will obtain clearance from L and the relevant regional bureaus, as appropriate. For acceptance of gifts of travel expenses from a foreign government, see 2 FAM 962.1-8.

NOTE: Personal gifts of “minimal value” (currently \$260) from foreign governments to an employee in his or her personal capacity are governed by the Foreign Gifts and Decorations Act, as amended (5 U.S.C. Sec. 7342). Because the General Services Administration (GSA) periodically redefines “minimal value,” employees should direct questions concerning the acceptance of such gifts to L/Ethics.

2 FAM 962.1-2 Gifts of Cash, Goods and Services

(TL:GEN-307; 08-14-2003)

- a. Except as provided in this section, acceptance of gifts of cash, goods, and services for official purposes from sources other than foreign governments, including personal property used in embassy residences and chanceries, must be approved on a case-by-case basis by the Under Secretary for Management, following clearance from FMP, L, and the relevant bureau(s), as appropriate.
- b. In certain cases, the Under Secretary for Management may authorize management officers at post to accept on behalf of the Department gifts

that are offered to individual Department employees but may not be accepted by the employees themselves under the gift acceptance rules in the Standards of Ethical Conduct for the Executive Branch (5 C.F.R. Part 2635). For example, one such authorization may be found at 3 FAM 4122.1 paragraph a. If feasible, donors of such gifts should submit donor letters pursuant to 2 FAM 962 paragraph d.

2 FAM 962.1-3 Gifts of Real Property

(TL:GEN-302; 02-23-2001)

Acceptance of gifts of real property must be approved on a case-by-case basis by the Under Secretary for Management, following clearance from A, FMP, L, and the relevant regional bureau(s), as appropriate. The procedure for acceptance of gifts of real property is set forth in 2 FAM 962 Exhibit 962.1-3.

2 FAM 962.1-4 Gifts for Embassy Refurbishment

(TL:GEN-302; 02-23-2001)

- a. The Under Secretary for Management may accept gifts for embassy refurbishment, in consultation with FMP. The procedure for acceptance of gifts for embassy refurbishment projects and related projects such as the Art-in-Embassies Program is set forth in 2 FAM 962 Exhibit 962.1-4. The Department Gift Funds Coordinator in FMP keeps all official records and maintains an automated data base relating to such projects. Donations for such projects should be made directly to the Department. Foundations should generally not serve as an intermediary for gifts.
- b. Ambassadors and other principal officers should be aware that, in cases involving personal donations to the Department for the purpose of activities at post, including embassy refurbishment in their host countries, whether cash or in-kind, the Department is generally unable to provide a statement to the donor confirming that it has provided no goods or services in consideration for the contribution. As a result, the Internal Revenue Service (IRS) may treat such donations as unreimbursed business expenses rather than charitable gifts for tax purposes. For questions regarding the tax treatment of donations for such purposes, employees should directly contact the Office of the Internal Revenue Service (IRS), Assistant Chief Counsel for Income Tax and Accounting, 1111 Constitution Avenue, NW, Washington, DC 20224; tel. (202) 622-4800, fax: (202) 622-6316.

2 FAM 962.1-5 Gifts for Representational Purposes Abroad

(TL:GEN-307; 08-14-2003)

- a. Management officers at post may accept gifts to be used for representational purposes in their countries of assignment only in accordance with the following principles:
 - (1) As a general rule, a gift may not be accepted for representational purposes abroad, unless the gift:
 - (a) Is donated for a trade promotion or Fourth of July event that meets the criteria set forth in 2 FAM 962.1-5 b(1) or 2 FAM 962.1-6, as appropriate; OR
 - (b) Is donated by a U.S. cultural, scientific or educational non-profit group for an event that meets the criteria set forth in 2 FAM 962.1-5 b(2) OR
 - (c) Does not exceed in value \$500 per year from any one donor; OR
 - (d) Is authorized in a specific case by the Under Secretary for Management.
 - (2) For the purpose of 2 FAM 962.1-5 a(1)(c) above, "one donor" means:
 - (a) A person and his or her immediate family;
 - (b) A corporation, members of its board of directors, and its majority shareholders; or
 - (c) A partnership, joint venture or other association and its partners or members.
- b. Trade promotion and non-profit events include:
 - (1) Permissible trade promotion events may include, in appropriate circumstances, events held abroad to introduce a new-to-market U.S. firm or product line, to publicize a trade mission, to open an industry exhibition or otherwise to promote U.S. exports, assist U.S. exports, or assist U.S. businesses abroad.
 - (2) Permissible events sponsored by non-profit groups may include, in appropriate circumstances, events held abroad on behalf of U.S.-based cultural, educational, or scientific organizations or associations, whether or not such groups are formally incorporated.

Some examples are functions to introduce visiting scholars or artists, receptions to open a cultural event (e.g., dance festival, photography exhibit), and events held for the purpose of promoting an educational conference.

- c. An official authorized to accept gifts may allocate donated funds, goods, and services to defray the costs of a trade promotion event or non-profit event described in 2 FAM 962.1-5 b(1) and (2) above if:
 - (1) The event clearly advances U.S. interests;
 - (2) The post is willing to perform similar services for competing U.S. groups who ask and are similarly qualified;
 - (3) The official authorized to accept gifts concludes that an objective person would not have reasonable grounds to believe that the donor has obtained an unfair advantage or an improper influence over post by funding this representational activity, or that personal, financial, partisan political, or other such considerations were involved in the provision of such representational event; and
 - (4) The event complies with all regulations that apply to representational activities paid for with appropriated funds (e.g. Standardized Regulations, Chapter 300 on representational activities abroad).

2 FAM 962.1-6 Gifts for July Fourth Events Abroad

(TL:GEN-307; 08-14-2003)

- a. Management officers at post may accept cash and in-kind donations for official embassy-sponsored July Fourth events in their host countries. In addition, ambassadors and other principal officers at post may solicit, or authorize the solicitation of, such donations without prior authorization by the Under Secretary for Management, consistent with the following guidelines:
 - (1) Donations may be received from U.S. firms (or their foreign subsidiaries, franchisees, or distributors) or organizations only when the firms and/or organizations neither are seeking substantial assistance from post (e.g., non-routine commercial or consular assistance) nor would be substantially affected by a pending post decision;
 - (2) The post must show no preference among U.S. firms and/or organizations in receiving donations, as, for example, by accepting

donations from one U.S. firm and refusing donations from a competing firm, unless such a distinction is justified based on the criteria listed in 2 FAM 962.1-6 a(1) and (3);

- (3) The official authorized to accept gifts must conclude that a reasonable person would not conclude that the donor has obtained an unfair advantage or an improper influence over the ambassador or the post through its donation, or that personal, financial, partisan political, or other such considerations were involved in the provision of such a donation; and
 - (4) The July Fourth event must comply with all regulations and conditions that apply to representational activities paid for with appropriated funds (e.g., Standardized Regulations, Chapter 300 on representational activities abroad).
- b. A solicitation under this section must also follow the guidelines set forth in 2 FAM 962 paragraphs g and h as if the ambassador or other principal officer were the Under Secretary for Management.

2 FAM 962.1-7 Gifts for Public Diplomacy Programs Abroad

(TL:GEN-302; 02-23-2001)

- a. Public affairs officers and their subordinates at post are authorized to solicit and accept gifts for public diplomacy purposes abroad subject to the following conditions:
 - (1) The guidelines for solicitation set forth in 2 FAM 962 (g) and (h) shall be followed as if the public affairs officer were the Under Secretary for Management;
 - (2) Any solicitation should be targeted at a broad array of individuals and entities. No preference shall be shown among similarly situated individuals or entities in soliciting and accepting donations. No solicitation shall promise any U.S. Government benefit in exchange for donations;
 - (3) In order to avoid multiple requests from posts worldwide being received by corporate headquarters in the United States, posts should solicit local representatives of U.S. companies in their country of assignment rather than the corporate headquarters;
 - (4) Solicitation campaigns for any specific public diplomacy program shall be conducted during a finite period of time and for a specific

targeted amount not to exceed a total of \$75,000 per program rather than throughout the year for an indefinite period of time and an unspecified targeted amount;

- (5) Chief of mission or deputy chief of mission approval must be obtained before a solicitation is undertaken or donations are accepted. Donations from any one donor may not exceed \$35,000 per program;
 - (6) All applicable Department accounting and reporting requirements must be followed; and
 - (7) If a post has questions about the appropriateness of a draft solicitation letter, talking points to be used in telephone calls, or other issues, advice should be sought from the appropriate regional bureau and L/Ethics.
- b. When personally engaged in fundraising for public diplomacy programs, chiefs of mission may, without the need to receive prior authorization from the Under Secretary for Management, sign letters and make short remarks to a broad group of otherwise permissible U.S. companies or nationals to solicit them for a public diplomacy program for a specific targeted amount not to exceed a total of \$75,000 per program. Chiefs of mission may similarly thank donors for their contributions in an appropriate manner.

2 FAM 962.1-8 Gifts of Invitational Travel

(TL:GEN-302; 02-23-2001)

- a. Under certain circumstances as defined in this section, the Department may accept unsolicited donations to defray the cost of travel for official purposes (invitational travel), including travel, subsistence, and related expenses.
- b. The administrative officer at post is authorized to approve gifts of invitational travel within the country of assignment and the executive director of the relevant bureau is authorized to approve gifts of invitational travel outside of a country of assignment and travel of all persons stationed in Washington, D.C. In addition, the Office of Public Liaison (PA/PL) must clear all U.S. speaking engagements.
- c. When a Department authorizing official approves a gift of invitational travel under this section, the traveling employee must be issued official travel orders in advance of travel.

- d. In certain limited cases, the Department may accept a gift of invitational travel for an employee's spouse. All such invitational travel must be authorized by L/Ethics, in addition to the executive director or administrative officer, as applicable.
- e. The following are types of invitational travel:
 - (1) Travel to a "meeting or similar function."
 - (a) In cases where the travel is offered in conjunction with a "meeting or similar function," the travel may only be accepted as a gift to the Department under the U.S. Government-wide regulations promulgated by the General Services Administration and located in 41 C.F.R. Sec. 304-1. "Meeting or similar function" refers to a conference, seminar, speaking engagement, symposium, training course, or similar event that takes place away from the employee's official station and is sponsored or cosponsored by a non-Federal source. In appropriate cases, the authorizing official may qualify acceptance of the offered travel by limiting the type or character of benefits that may be accepted.
 - (b) For travel in conjunction with a "meeting or similar function," the appropriate Department authorizing official must conclude that the donation is for travel relating to the employee's official duties under an official travel authorization issued to the employee; for attendance at a "meeting or similar function" relating to the official duties of the employee that represents a priority use of the traveling employee's time; for the minimum time necessary to carry out U.S. Government business; and from a non-Federal source that is not disqualified on conflict of interest grounds.
 - (c) A non-Federal source is disqualified on conflict of interest grounds for the purpose of 2 FAM 962.1-8 e(1)(b) if a Department authorizing official determines that acceptance of the donation under the circumstances would cause a reasonable person with knowledge of all the relevant facts to question the integrity of Department programs or operations. The following factors should guide such a determination:
 - (i) The identity of the non-Federal source;
 - (ii) The purpose of the meeting or similar function;
 - (iii) The identity of other expected participants;

(iv) The nature and sensitivity of any matter pending at the Department or embassy affecting the interests of the non-Federal source;

(v) The significance of the employee's role in any such matter; and

(vi) The monetary value and character of the travel benefits offered by the non-Federal source.

(2) **Travel from a foreign government entirely outside of the United States.** Pursuant to the Foreign Gifts and Decorations Act, 5 U.S.C. Sec. 7342, an employee may accept a gift of travel taking place entirely outside the United States from a foreign government when the travel is appropriate and consistent with the interests of the United States. The administrative counselor at post is authorized to approve gifts of such travel within the country of assignment and the executive director of the relevant bureau is authorized to approve gifts of invitational travel outside of the country of assignment.

(3) **All Other Travel.** To accept travel that is not offered in conjunction with a "meeting or similar function" (e.g., an employee's fly-over air flight to obtain a first-hand view of an industry site), the authorizing official must conclude that

(a) The travel would serve official purposes and would constitute a priority use of the travelling official's time;

(b) A reasonable person would not believe that the traveling official or the Department would lose objectivity as a result of accepting the travel donation;

(c) The proposed travel is for the minimum time necessary to carry out official purposes; and

(d) The traveling official's attendance at or participation in the event outweighs any concern that acceptance of the donation may or may reasonably appear to improperly influence the official in the performance of his or her official duties.

f. In general, full-time Executive Branch presidential appointees, including ambassadors, may not travel on aircraft or use overnight accommodations owned, chartered, or maintained by a company primarily for its use if the company is regulated by or doing business with the Department. While exceptions to this rule do exist for certain types of travel, the White House Counsel generally must authorize such

exceptions. Individuals seeking such authorization must first contact L/Ethics with answers to the following questions:

- (1) Is the aircraft owned, chartered, or maintained by a company for its own use or has it been chartered or leased by the company from a charter company for a specific occasion;
- (2) Are other travel arrangements or accommodations practically available;
- (3) Does the offer of travel or accommodations result from the business activities or employment of the presidential appointee's spouse and, if so, is it clear that such benefits have not been offered or enhanced by the appointee's official position;
- (4) Is the company regulated by, doing business with, or seeking to do business with a relevant post or bureau(s) of the Department, and, if so, what is the nature of that regulation or business;
- (5) Could the presidential appointee affect the interests of the company by the performance or nonperformance of his or her official duties and, if so, how;
- (6) Does an official purpose exist for the travel and, if so, what is that official purpose;
- (7) Does the travel constitute a priority use of the presidential appointee's time;
- (8) Is the travel for the minimum time necessary to carry out official purposes; and
- (9) What is the nature and approximate monetary value of the travel benefits offered by the company?

2 FAM 962.1-9 Gifts of Club Memberships

(TL:GEN-302; 02-23-2001)

In some unusual cases, the Department may approve the acceptance of a gift of a free club membership to a U.S. official abroad as a gift to the Department. The Department will generally only do so when it appears that access to the club would substantially advantage the official in the conduct of foreign affairs to a degree that overcomes any appearance of improper advantage. Such a situation is most likely to exist in a remote country with a small and clearly defined elite who congregate in one or very few places.

Requests for approval to accept such memberships should be directed to the relevant Department executive office, which will consult with L/Ethics.

2 FAM 962.1-10 Gifts to FSN Emergency Relief Fund

(TL:GEN-302; 02-23-2001)

FMP may accept gifts to the Department for the FSN Emergency Relief Fund, a fund that was created to respond to crises and humanitarian requests on behalf of Foreign Service National Employees working for the U.S. Government. The Fund assists locally employed staff of all agencies in a host country. Contributions should be made by check payable to the Department of State and earmarked for the Foreign Service National Emergency Fund. Checks should be sent to: FSN Emergency Relief Fund, C/O Gift Fund Administrator, FMP, Room 7427, Department of State, Washington, D.C. 20520. Foreign national employees wishing to contribute should contact their administrative office for currency exchange assistance. FMP has authorized reverse accommodation exchange for emergency fund contributions.

2 FAM 962.1-11 Fundraising for Local Charities Abroad

(TL:GEN-302; 02-23-2001)

- a. Chiefs of mission may authorize employees, spouses, and family members at post to solicit cash or in-kind donations on behalf of local charities (e.g., by writing letters, making telephone calls) without prior authorization by the Under Secretary for Management in cases where the activity is in the clear foreign policy interest of the United States and there is very little or no appearance of preference or use of public office for private gain. Neither post employees nor the Department should accept or receive such contributions directly. The COM and his or her spouse may participate personally in the solicitation only with the concurrence of L/Ethics and the Deputy Assistant Secretary of the relevant regional bureau. See also 3 FAM 4123.4.
- b. When a chief of mission solicits or authorizes a solicitation pursuant to 2 FAM 962.1-11, the solicitation or other fundraising activities must follow the guidelines set forth in 2 FAM 962 (g) and (h) as if the ambassador or principal officer were the Under Secretary for Management.

2 FAM 962.2 Relationship to Donors

(TL:GEN-302; 02-23-2001)

- a. No employee may make any commitment to an actual or prospective donor that implies that the donor will receive any advantage or preferment from the U.S. Government as a result of the donation, including a promise to intervene on behalf of the donor with the host government, a commitment to invite the donor to official functions, or an assurance that the donor would have preferential access to official facilities. In the course of his or her official duties, no U.S. Government employee may afford any donor preferential treatment as a result of a donation. However, an U.S. Government employee, in the course of his or her official duties, should not place a donor at a disadvantage because of his or her donation. In this regard, an ambassador remains free to invite any individual, including a donor, to stay at his or her official residence for reasons unrelated to the donation of the gift, including a friendship between the ambassador and that individual.
- b. A donor may be given appropriate recognition (such as by a plaque) once a donation has been properly accepted. Any expense associated with such recognition should be charged to gift funds allocated to the project, if possible, or to another appropriate account.

2 FAM 962.3 Unconditionality of Gifts

(TL:GEN-302; 02-23-2001)

- a. Under the guidance of the Under Secretary for Management, officials authorized to accept gifts on behalf of the Department shall allocate gifts in a manner that furthers public purposes and fulfills the needs of the Department.
- b. The Department of State Basic Authorities Act Section 25 authorizes the Department to accept unconditional gifts and, with the approval of the Under Secretary for Management, conditional gifts. For both accounting and allocation purposes, the Department strongly prefers that gifts to the Department be offered without conditions (**NOTE:** The terms “conditional” and “unconditional” are derived from Section 25 and approximate the meaning of the accounting terms “restricted” and “unrestricted”).
 - (1) Conditional gifts—A conditional gift is a gift offered to the Department on the condition that the Department agrees to use the gift in the manner specified by the donor. When it accepts a conditional gift, the Department is legally bound to honor the donor’s terms. However, Section 25 of the Basic Authorities Act bars the Department from accepting any gift conditioned on an expenditure of funds that will not be met by the gift or income from

the gift “unless such expenditure has been approved by Act of Congress.” An example of this is if an individual offers the Department \$6,000 to be used only for the purchase of brass doors for the Diplomatic Reception Rooms. The brass doors cost \$10,000. Under the statute, the gift may be accepted only if Congress has appropriated to the Department at least \$4,000 that can be spent on refurbishment activities such as the purchase of brass doors.

- (2) Unconditional gifts—An unconditional gift may be used by the Department for any lawful purpose. However, in making unconditional gifts donors may express non-binding preferences on how they wish their gifts to be used by the Department.
 - (a) One example of this is if an individual offers \$5,000 to the Department and states her wish that it be used to help refurbish Embassy Paris facilities. The Department may accept the donation as an unconditional gift and may state its intent to put it to the donor’s preferred use, if possible. By so doing, the Department undertakes no legal obligation to use the gift as the donor prefers.
 - (b) Another example is if a company offers the Department a telephone switchboard system that will aid the Department in hosting an international conference. The Department may accept the donation as an unconditional gift and may state its intent to use the switchboard system at the conference if possible. By so doing, the Department undertakes no legal obligation to use the gift as the donor prefers.
- c. Because Department policy strongly favors unconditional gifts, the donor should be asked to submit to the Department, either prior to or upon making the gift, a letter such as that provided in 2 FAM 962 Exhibit 962.3. Such a letter, while allowing the donor to express a preference for the use of a gift that he and/or she has donated, makes clear that the gift is unconditional. If the donor declines to submit such a letter and states that the offer is conditioned on the Department’s use of the gift for the specified purpose, the gift may be accepted only by the Under Secretary for Management after consideration of the limitation on conditional gifts in the Basic Authorities Act.
- d. When a non-binding preference has been expressed, officials authorized to accept gifts on behalf of the Department should, in the first instance, consider utilizing gifts for the purpose suggested by the donor. A different use may be made, however, where a higher priority exists. Officials should inform the prospective donor prior to acceptance of the donor’s gift if there is a reason to believe that the donor’s expressed

preference will not be met.

2 FAM 963 ACCOUNTING

(TL:GEN-302; 02-23-2001)

- a. Unless the Under Secretary for Management approves otherwise, gifts allocated for a specific purpose must be used in accordance with the accounting procedures that apply to appropriated funds allocated for the same purpose. Since gifts are “no year” funds, they may be obligated, deobligated, and reobligated without fiscal year limitation.
- b. Posts receiving representational gifts of cash should deposit such gifts in a Suspense Deposits Abroad (SDA) Account numbered 19X6809 in the form of either U.S. dollars or local currency. Posts must exercise proper internal controls over all transactions, provide a complete audit trail, and, otherwise, follow accounting procedures governing appropriated funds.

2 FAM 964 REPORTING REQUIREMENTS

(TL:GEN-307; 08-14-2001)

- a. All Department officials authorized to accept gifts shall inform the Under Secretary for Management semi-annually, in writing, of all gifts accepted as follows.
 - (1) For gifts of invitational travel that exceed \$250 in value and involve participation in a conference, seminar, speaking engagement, symposium, training course, or similar event, officials should use Form SF-326, Semiannual Report of Payments Accepted from a Non-Federal Source, which is available on the Directives Management web site, the Department’s official site for all forms. Reports should be sent to FMP (Gift Funds Coordinator) and should include the following information:
 - (a) The name and position of the traveling official;
 - (b) The name of the donor;
 - (c) The nature of the event to which the employee is traveling;
 - (d) The time and place of the travel;
 - (e) The amount and method of payment (including an itemization of the benefits funded by the donor);

- (f) The nature of the expenses; and
 - (g) The name of the accompanying spouse, if applicable.
 - (h) Where payment has made in-kind, the report must provide the amount paid by the non-Federal source or a reasonable approximation of the market value of the benefit. In the case of benefits with no commercial value, posts should, in the case of private air transportation, report the cost of first class airfare or, if necessary, chartering an aircraft commercially in similar circumstances, and, in the case of lodging, report the maximum applicable per diem rate for lodging.
- (2) All other gifts should be reported by cable or memo, as appropriate, to the Gift Funds Coordinator in FMP. For such gifts, officials should provide the name of the donor, the donor's business affiliations, the amount of the gift (if cash) or the value (if in-kind), and the specific purpose for which the gift has been allocated.
- b. In addition to the reporting requirements described in 2 FAM 964 a above, officials authorized to accept gifts from foreign governments shall report all such gifts within 30 days of acceptance to the Protocol Office.

2 FAM 265 THROUGH 269 UNASSIGNED

2 FAM 962 EXHIBIT 962.1-3 GIFTS OF REAL PROPERTY

(TL:GEN-302; 02-23-2001)

APPROVAL PROCESS

- a. The chief of mission (COM) or other Department official shall forward all offers of gifts involving real property at an overseas post to A/FBO, along with the post's recommendation regarding acceptance. The donor(s) must submit a letter fully describing the gift and all associated structures/land and appurtenances, and further specifying that the gift is made pursuant to the provisions of 22 U.S.C. 300 and 22 U.S.C. 2697.
- b. A/FBO provides the Office of the Legal Adviser (L/Ethics) and FMP with information pertaining to the donor's relationship, if any, to the U.S. Government or representatives thereof, and all pending or expected future business with the U.S. Government. L/Ethics and FMP review the gift to ensure that it is free from actual or apparent conflicts of interest and to determine whether it is appropriate to accept the gift. A/FBO will also determine whether the property has any encumbrances.
- c. The Deputy Assistant Secretary for Foreign Buildings recommends to the Assistance Secretary for Administration acceptance or declination of all real property gifts. Recommendations will take into account any appearance of a conflict of interest, the desirability of the gift in terms of appropriateness, need, usefulness to the U.S. Government, and associated life cycle maintenance costs.
- d. The Assistant Secretary seeks approval by Decision Memorandum from the Under Secretary for Management to accept or decline the gift. A/FBO notifies the post or relevant Department official of the Under Secretary's decision. Upon approval, the COM assigned to the post or the relevant Department official issues a formal letter of acceptance on behalf of the U.S. Government. A/FBO will supply a draft text.

GIFT ACCEPTANCE PROCESSING

- a. After an offer of gift of real property has been approved, A/FBO/OPS/RE makes recommendations to the Deputy Assistant Secretary for Foreign Buildings regarding disposition of the gift (use, sale, rental, renovation, etc.).
- b. A/FBO/OPS/RE notifies the Financial Management Division

(A/FBO/RMO/F) of all accepted real property gifts. A/FBO/RMO/F, in turn, ensures all pertinent data concerning gifts involving real property are reflected in the A/FBO annual budget estimates to FMP which will be reported to Congress with the budget estimates of the Department of State.

- c. A/FBO/OPS/RE prepares and coordinates all necessary correspondence between the Department and donors. This includes, but is not limited to:
 - (1) Sending letters to all donors who have formally offered real property gifts, acknowledging receipt of their offers and providing further instructions pertaining to the acceptance of their offers; and
 - (2) Preparing the draft of a final letter of gift acceptance for signature by the COM.

- d. A/FBO/OPS/RE will advise and assist the post in the:
 - (1) Assignment of a building inventory number;
 - (2) Entry into REMS of the ownership data;
 - (3) Registration via a local attorney of the title in the name of the U.S. Government; and
 - (4) Transfer to A/FBO of the final title documents for record-keeping.

2 FAM 962 EXHIBIT 962.1-4 EMBASSY REFURBISHMENT PROJECTS

(TL:GEN-269; 03-16-1991)

Project Approval Process

- a. The Chief of Mission (COM) or other Department Official submits a written proposal to M to raise funds for a specific project, e.g., refurbishment of the representational rooms in the COM residence.
- b. A/FBO must determine the scope of desired project:
 1. Surveys property;
 2. Decides to what extent proposal is consistent with long-term plan for property;
 3. Develops cost estimates;
 4. Submits project approval memorandum to FMP.
- c. COM or Department official proposes method of fund raising, (e.g. personal gift or solicitation of friends and/or business acquaintances) and whether it would be conducted personally or by private individuals on his/her behalf.
- d. All solicitation proposals should adhere to the following:
 1. L/Ethics, in coordination with FMP, should clear solicitation letter;
 2. All checks should be made payable directly to the Department of State and sent under cover of a donor letter to M;
 3. M should approve any thank-you functions or token gratuities in advance;
 4. The solicitation letter should set the conditions requested by the donor such as access to the property.
- e. FMP incorporates this information into an action memorandum to M which describes project, defines the guidelines for solicitation of gifts, and includes a telegram or memorandum approving the gift fund project.

Gift Fund Processing Procedures

After M approves gift fund proposal:

1. FMP receives donation (e.g. check, stock certificates, materials, and/or services) and enters it into tracking log for review, acceptance and allotment processing;
2. FMP staff follows up with donor, telephonically or in writing, to ensure all pertinent information is included for review;
3. FMP staff determines from each donor, EB and other bureaus as appropriate, whether donor has business before Department and/or post;
4. After receiving clearances from L/Ethics and the regional bureau, FMP staff makes recommendation to CFO whether gift should be formally accepted;
5. FMP cables post with conditional acceptance, pending post's telegraphic confirmation of no business with donor;
6. Upon receipt of post's advice, FMP drafts acceptance letter to donor on M's behalf. In addition, COM may choose to send a personal letter of thanks;
7. FMP deposits donation with FMP/FO, in accordance with approved procedures, and ensures that FMP/BP allots funds to appropriate bureau or post.

2 FAM 962 EXHIBIT 962.3 SAMPLE DONOR LETTER (INDIVIDUAL DONOR)

(TL:GEN-302; 02-23-2001)

(Date)

Gift Funds Coordinator
Bureau of Financial Management and Policy
Room 7427
U.S. Department of State
Washington, D.C. 20520-7427

Dear Mr. or Ms. _____:

(Name of individual(s)) has (have) made the following unconditional gift to the Department of State: (Please list and describe the gift, including approximate value). I (We) would prefer that this gift be used for the following purpose: _____

The following is a list of my affiliations and the affiliations maintained by members of my immediate family: (Please list and describe the nature of your corporate or organizational affiliations and the affiliations maintained by members of your immediate family (e.g., board membership, directorship).)

I/We have the following business pending before the Department of State and/or the following matters are likely to arise that might involve the Department of State or the Embassy: (Please list and describe any matters that you or members of your immediate family, or organizations with which you are affiliated, have pending before the Department of State. Please also list and describe matters likely to arise before the Department that would substantially affect you or members of your immediate family.)

(Signature)

Name: _____
Address _____

CORPORATE OR ORGANIZATIONAL DONOR

(Date)

Gift Funds Coordinator
Bureau of Financial Management and Policy
Room 7427
U.S. Department of State
Washington, D.C. 20520-7427

Dear Mr. or Ms. _____:

(Name) has made the following unconditional gift to the Department of State:

(Please list and describe gift, including approximate value)

We would prefer that this gift be used for the following purpose:

The following is a list of the subsidiaries/affiliates of (Company or Organization):

(Company/Organization) has the following business pending before the Department of State and/or the following matters are likely to arise that might involve the Department of State or the embassy:

(Please list and describe any matters that you or your subsidiaries and/or affiliates have pending before the Department of State. Please also list and describe matters likely to arise before the Department that would substantially affect you or your subsidiaries and/or affiliates.)

Signature

Name_____

Address_____