

## U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

### ICE Directive 1010.1: Accepting and Soliciting Gifts to the Agency

**Issue Date:** March 5, 2021

**Superseded:** None.

**Federal Enterprise Architecture Number:** 306-112-002d

1. **Purpose/Background.** This Directive establishes U.S. Immigration and Customs Enforcement (ICE) policy and procedures regarding how the agency will consider whether to accept or decline a gift to ICE, as well as related reporting and record-keeping requirements. By delegation of authority from the Secretary of Homeland Security and Department of Homeland Security (DHS) policy, the Director of ICE is authorized to accept gifts to the agency, provided the acceptance of such gifts is consistent with law, DHS policy, and ethical standards. This Directive ensures that the decision of whether to accept or decline any potential gift to the agency is carefully analyzed.<sup>1</sup>
2. **Policy.** ICE, through the Director, may accept gifts to the agency, so long as the acceptance of such gift does not violate the law or DHS or ICE policy. The acceptance of a gift must not compromise the integrity of ICE or DHS, its programs, operations, or employees. Gifts that will aid and facilitate the work of ICE may be accepted upon approval of the Director. Gifts offered subject to conditions may be accepted if, in the judgment of the Director, the conditions do not unduly restrict or interfere with the work of DHS or ICE and do not attach conditions inconsistent with applicable laws and policies. The acceptance of a gift may not in any way be deemed to be or used as an endorsement of the donor, or the donor's products, services, activities, or policies. Even where the acceptance of a gift would be consistent with law and policy, ICE may decline any gift in its discretion for any reason.
  - 2.1. **Offer of a Gift to the Agency.** The offer of a gift to the agency must be received from the donor in writing via the relevant DHS Gift Form (DHS Form 112-02).
  - 2.2. **Prohibited Gifts to the Agency.** A gift may not be accepted by ICE that:
    - 1) Is a gift of currency (i.e., cash);<sup>2</sup>
    - 2) Requires the expenditure of appropriated funds that are not available to ICE;

<sup>1</sup> In addition to complying with the procedures set out in this Directive, where the gift at issue is one of capability, technology, or equipment assets (whether from a government or a private donor), ICE Directorates and Program Offices must coordinate with the ICE Office of Investment and Program Accountability before the gift is accepted to ensure compliance with DHS policy. See DHS Instruction No. 102-01-009, Donated, Seized & Forfeited, and Re-Use of Interagency Capability/Technology/Equipment Instruction (Feb. 5, 2017).

<sup>2</sup> ICE may only accept monetary gifts in the form of a check or money order.

- 3) Requires ICE to adhere to particular requirements as to deposit, investment, or management of funds donated;
- 4) Requires ICE to undertake or engage in activities that are not related to ICE's mission, programs, or statutory authorities;
- 5) Reflect unfavorably on the ability of ICE, DHS, and/or their employees, to carry out their responsibilities or official duties in a fair and objective manner, or would compromise or appear to compromise the integrity of ICE or DHS programs or any employee involved in those programs; and
- 6) Are from current ICE or DHS employees, employees of ICE or DHS contractors, or consultants to ICE or DHS, absent a compelling reason.

**2.3. Solicitation of Gifts.** With a limited exception, no employee of ICE may solicit or encourage the solicitation of a gift to ICE unless the Director, as well as the Secretary or Deputy Secretary of DHS, approves the solicitation in advance.<sup>3</sup>

**2.4. Exceptions.** The ICE Director's approval is not required for the acceptance of certain gifts, including<sup>4</sup>:

- 1) To employees in their personal, individual capacities;<sup>5</sup>
- 2) From foreign governments or foreign organizations or representatives thereof;<sup>6</sup>
- 3) To pay for the expenses of official travel;<sup>7</sup>
- 4) For volunteer services;<sup>8</sup>
- 5) To contributions, awards, or other expenses for training;<sup>9</sup>
- 6) To a gift made by a political organization that may be accepted by an agency employee who, in accordance with the terms of the Hatch Act Reform Amendments of 1993,<sup>10</sup> may take an active part in political management or in political campaigns;

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<sup>3</sup> The Director has been delegated authority to solicit gifts for specific unaccompanied children and family units without the prior approval of the Secretary or Deputy Secretary of DHS. DHS Delegation No. 7107, Delegation to Accept and Utilize Gifts Related to Unaccompanied Alien Children and Family Units (July 24, 2014).

<sup>4</sup> See DHS Directive No. 112-02, Gifts to the Department of Homeland Security pt. II.B (Feb. 11, 2008).

<sup>5</sup> See 5 C.F.R. part 2635, subparts B and C.

<sup>6</sup> See 5 U.S.C. § 7342.

<sup>7</sup> See 31 U.S.C. § 1353.

<sup>8</sup> See 5 U.S.C. § 3111.

<sup>9</sup> See 5 U.S.C. § 4111.

<sup>10</sup> See 5 U.S.C. § 7323.

- 7) To voluntary personal services;<sup>11</sup> and
- 8) To a gift which may be accepted under distinct gift acceptance authority vested in ICE.

**3. Definitions.** The following definitions apply for purposes of this Directive only.

- 3.1. Fair Market Value.** A value that an item would sell for on the open market. It is the price agreed upon by a willing buyer and a willing seller, with both having reasonable knowledge of the relevant facts and neither being required to act.
- 3.2. Field Responsible Official (FRO).** The highest-ranking official in any ICE field location. This includes Special Agents in Charge, Field Office Directors, ICE Attachés, Chief Counsels, and any other officials who have been designated, in writing by the Director.
- 3.3. Gift.** Any goods, services, gratuity, favor, discount, entertainment, hospitality, loan, forbearance, intangible, real property, or other item having monetary value.
- 3.4. Gift Recommendation Memorandum.** A memorandum prepared by the Directorate or Program Office recommending to the Director that a gift to ICE be accepted.<sup>12</sup>
- 3.5. Headquarters Responsible Officials (HROs).** Executive Associate Directors of Enforcement and Removal Operations, Homeland Security Investigations, and Management and Administration; the Principal Legal Advisor; the Associate Director of the Office of Professional Responsibility; the ICE Chief Financial Officer (CFO) and the Assistant Directors, Officers, or equivalent positions who report directly to the Director, Deputy Director, or Chief of Staff.
- 3.6. Prohibited Source.** Persons or organizations made up of such persons who are seeking official action by, are doing business or seeking to do business with, or are regulated by the employee's agency, or those that have interests that may be substantially affected by performance or nonperformance of the employee's official duties.

**4. Responsibilities.**

**4.1. HROs are responsible for:**

- 1) Ensuring compliance with this Directive and related DHS Directives within their Directorate or Program Office;

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<sup>11</sup> See 31 U.S.C. § 1342.

<sup>12</sup> See Gift Recommendation Memorandum Template (attached).

- 2) Approving and submitting a complete package of materials for gift acceptance to the ICE Director, including ensuring that DHS Form 112-02 is completed by the donor for any gift to their Directorate or Program Office;
- 3) Advising the Office of Congressional Relations (OCR) and Office of Public Affairs (OPA) that a gift will be accepted, if such acceptance could potentially garner congressional or press attention;
- 4) Ensuring that their Directorate or Program Office retains all records regarding any gift to and any gift accepted by ICE on behalf of their Directorate or Program Office;
- 5) On a semi-annual basis, reporting any gift received by the agency to the ICE CFO; and
- 6) In conjunction with ICE CFO, ensuring that any gift to the agency is appropriately received by, inventoried, used by, and disposed of by the agency.

**4.2. FROs** are responsible for ensuring that all offers of a gift to ICE made to a field office are made on a DHS Form 112-02 and are raised to the attention of their respective HRO.

**4.3. The ICE CFO** is responsible for maintaining records of any gift accepted by ICE and is responsible for providing semi-annual reports of all gifts received by ICE to the DHS Under Secretary for Management (USM) through the DHS Chief Administrative Officer (CAO).<sup>13</sup>

**4.4. The ICE Ethics Office** reviews any DHS Form 112-02 and Gift Recommendation Memorandum for any gift and advises of potential legal and ethical concerns.

## **5. Procedures/Requirements.**

### **5.1. Consideration of Whether to Accept a Gift to the Agency.**

- 1) An offer of a gift to ICE must be made to a Directorate or Program Office via DHS Form 112-02. DHS Form 112-02 must be completed by the donor.<sup>14</sup>
- 2) The Directorate or Program Office must draft a Gift Recommendation Memorandum (see the attached Gift Recommendation Memorandum Template) that analyzes all relevant facts and circumstances regarding the Gift in recommending to the Director that the gift be accepted (if appropriate). The Gift Recommendation Memorandum must include, at a minimum, the following information:

- a) A description of the gift, including:

<sup>13</sup> The applicable DHS Instruction requires that this reporting be accomplished via the submission of DHS Form 112-02 for any gift received. DHS Instruction No. 112-02-001, Instruction Guide on Gifts to the Department of Homeland Security pt. V.A. (Feb. 12, 2008).

<sup>14</sup> DHS Form 112-02, Department of Homeland Security Gift Donation Form (Feb. 2013).

- i) The nature of the gift (i.e., money, goods, or services), including whether the gift would be recurring in nature (i.e., more than a single transaction);<sup>15</sup>
  - ii) The current condition of the gift;
  - iii) Any restrictions placed on its use by the donor;
  - iv) Any conditions placed on the acceptance of the gift by the donor;
  - v) The Fair Market Value of the gift or the cost of the gift to the donor;
  - vi) The identity of any other expected recipients of the gift on the same occasion, if any; and
  - vii) Whether the gift was solicited.
- b) The identity of the donor, including:
- i) Whether the donor is a current DHS or ICE employee, the employee of a DHS or ICE contractor, or a consultant of DHS or ICE;
  - ii) Whether the donor has done business with DHS or ICE in the past and, if so, the details of the past business;
  - iii) Whether the donor is likely to do business with DHS or ICE in the future;
  - iv) Whether the donor conducts activities or operations regulated by DHS or ICE; and
  - v) The nature and sensitivity of any matter pending before DHS or ICE affecting the interest(s) of the donor, or the significance of any individual DHS or ICE employee's role in any matter affecting the donor, if benefits of the Gift will accrue to the employee.
- c) The purpose of the gift, as described by the donor in any written or oral statements.
- d) If accepted, when the gift would be received by ICE.
- e) Explain how ICE would utilize or operationalize the gift, including how the gift will aid or facilitate the DHS and/or ICE mission and work.

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<sup>15</sup> Where a gift will be recurring in nature, the Directorate or Program Office must work with the Office of the Principal Legal Advisor (OPLA) to ensure that a Memorandum of Understanding and/or Gratuitous Services Agreement is prepared and executed, should the Director elect to accept the gift on behalf of ICE.




- f) Set out whether the gift will require additional funds to be utilized and/or disposed of, as well as if ongoing funding will be required to continue to utilize the gift. If so, the Gift Recommendation Memorandum must reasonably estimate such ongoing funding requirements (timing and amount(s)).
  - g) In consultation with OPLA and the CFO, identify whether acceptance of the gift will have any appropriations impacts and, if so, what those impacts are.
  - h) In consultation with OCR and OPA, identify any potential congressional or press attention that is likely to be garnered by acceptance of the gift.
  - i) Any other facts or circumstances relevant to whether the Director should accept the gift on behalf of ICE.
- 3) HROs submit the DHS Form 112-02 and Gift Recommendation Memorandum to the ICE Ethics Office for review and concurrently notifies the Deputy Director of their interest in receiving the gift.
- 4) The ICE Ethics Office and OPLA will prepare an addendum to the Gift Recommendation Memorandum that provides, at a minimum, an analysis of the following:
  - a) Whether acceptance of the gift would create or appear to create a conflict of interest or ethical concerns, including:
    - i) Whether acceptance of the gift would reflect unfavorably upon the ability of DHS or ICE, or any employee of DHS or ICE, to carry out their responsibilities or official duties in a fair and objective manner;
    - ii) Whether acceptance of the gift would compromise the integrity or the appearance of integrity of DHS' or ICE's programs or operations, or any official involved in these programs or operations; and
    - iii) Whether the donor is a Prohibited Source.
- 5) If legal or ethical issues are identified, the Directorate or Program Office should work with the ICE Ethics Office or other appropriate OPLA component to attempt to mitigate or rectify the concerns.
- 6) Following review by the ICE Ethics Office, if the HRO still desires to accept the gift, he or she must submit the DHS Form 112-02, Gift Recommendation Memorandum, and addendum from the ICE Ethics Office to the Office of the Deputy Director for review and, if appropriate, approval by the Director.

## **5.2. Procedures Following a Decision to Accept or Decline a Gift by the Director.**

- 1) Where the Director accepts a gift to ICE, the Directorate or Program Office receiving the gift is responsible for ensuring that the gift is appropriately inventoried, utilized, and disposed of.
  - 2) The HRO of the Directorate or Program Office receiving the gift must report the acceptance of the gift to the ICE CFO, who will report receipt of the gift to the DHS USM through the DHS CAO.
  - 3) Where the Director declines to accept a gift to ICE, the gift will be declined by the applicable Directorate or Program Office.
  - 4) The Directorate or Program Office is responsible for keeping all records associated with any decision by the Director regarding whether to accept or decline a gift to the agency.
6. **Recordkeeping.** HROs are responsible for ensuring that their Directorate or Program Office keeps records of any gift, any documents prepared for or relied on by the Director in considering whether to accept a gift to ICE (i.e., DHS Form 112-02, Gift Recommendation Memorandum, and any addendum prepared by the ICE Ethics Office and OPLA), and any documents memorializing the Director's decision regarding whether to accept or decline a gift to ICE. Additionally, where a gift to ICE is accepted by the agency, the HRO of the receiving Directorate or Program Office shall ensure that all records regarding the receipt, use, and or disposal of the gift are retained. Such records must be maintained in accordance with a National Archives and Records Administration approved records schedule. Any records not covered under an approved schedule are considered unscheduled and must be maintained permanently until a schedule has been approved.
7. **Authorities/References.**
- 7.1. 6 U.S.C. § 453.
  - 7.2. DHS Appropriations Act of 2004, Pub. L. No. 108-90, § 507, 117 Stat. 1137 (2003).
  - 7.3. DHS Delegation No. 00002, Delegation to the Under Secretary for Management (May 29, 2012).
  - 7.4. DHS Delegation No. 00006, Delegation to Accept and Utilize Gifts to the Department (July 2, 2012).
  - 7.5. DHS Delegation No. 7107, Delegation to Accept and Utilize Gifts Related to Unaccompanied Alien Children and Family Units (July 24, 2014).
  - 7.6. DHS Directive No. 112-02, Gifts to the Department of Homeland Security (Feb. 11, 2008).

- 7.7. DHS Instruction No. 102-01-009, Donated, Seized & Forfeited, and Re-Use of Interagency Capability/Technology/Equipment Instruction (Feb. 5, 2017).
- 7.8. DHS Instruction No. 112-02-001, Instruction Guide on Gifts to the Department of Homeland Security (Feb. 12, 2008).
- 7.9. DHS Mgmt. Directive No. 0480.1, Ethics/Standards of Conduct (Mar. 1, 2008).
- 8. **Attachments.**
  - 8.1. DHS Form 112-02, Department of Homeland Security Gift Donation Form (Feb. 2013).
  - 8.2. ICE Gift Recommendation Memorandum Template (Jan. 2021).
- 9. **No Private Right.** This document provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.



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