

Board of Ethics and Government Accountability

IT'S NOT A BRIBE, IT'S A GIFT...OR IS IT?



Presented by:

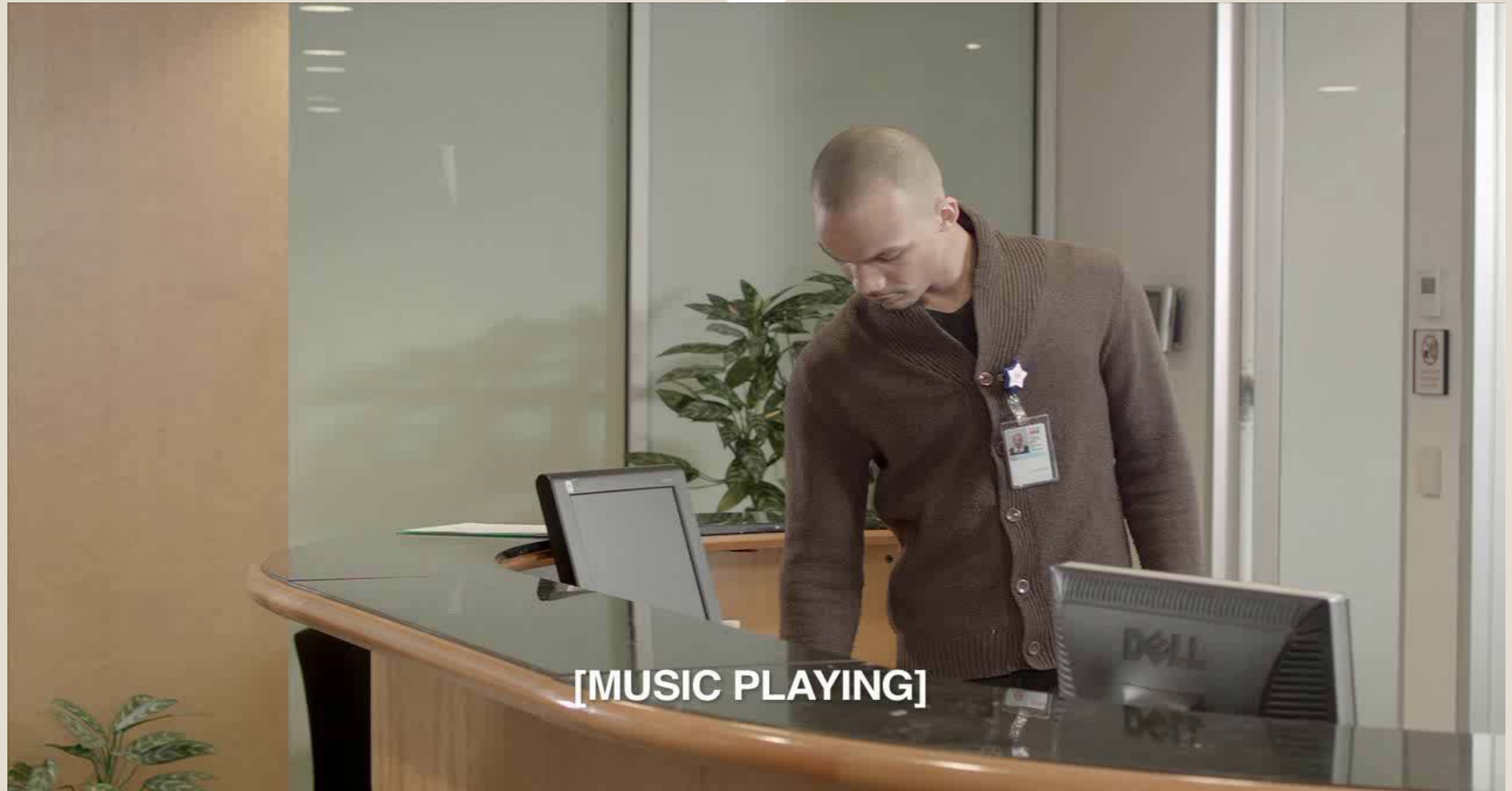
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Attorney Advisor – Board of Ethics & Government Accountability

Gifts



Gifts



Applicable Regulations



1. District Personnel Manual

- Chapter 18 DCMR 1803 and 1804
 - ✦ Definition of “Gift”
 - ✦ Gifts from Outside Sources
 - ✦ Gifts Between Employees

2. Ethics Act

- D.C. Official Code § 1-1162.31
 - ✦ Definition of Gift
 - ✦ Gifts from lobbyists

3. Council Code of Conduct

- Rules III(e), V
 - ✦ Gifts from Outside Sources
 - ✦ Gifts between Employees

Gifts - Defined



- **District Personnel Manual
(6B DCMR §1803.4) &
Council Code of Conduct
(Rule III(f)(1))**

The Ethics Act (1-1161.01(23))

- Gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.
- Services and gifts of training, transportation, local travel, lodgings, meals.
- This includes gifts provided:
 - In-kind;
 - By purchase of a ticket;
 - Payment in advance; or
 - Reimbursement after the expense has been incurred.

- Payment, subscription, advance, forbearance, rendering, or deposit of money services, or anything of value, unless consideration of equal or greater value is received.

What is **not** a gift?



- **Modest items of food and refreshments offered other than as part of a meal;**



Unsolicited advertising or promotional items of nominal value;



- **Items with little intrinsic value;**

- **Admission to and the cost of food and beverages, of nominal value, consumed at civic, charitable, government, hosted reception, or community organizations;**
- **Discounts available to ALL District government employees;**
 - **Rewards or contest prizes open to the public;**
- **Anything for which market value is paid by the employee.**



What is **not** a gift?



The Ethics Act (1-1161.01(23))

Applies to everyone, including Government employees and lobbyists

- A contribution otherwise reported as required by law;
- A commercially reasonable loan made in the ordinary course of business; or
- A gift received from a member of the person's ***immediate family***.

Gifts From Outside Sources



District employees shall not, directly or indirectly, solicit or accept a gift from a **Prohibited Source**

A **Prohibited Source** is **any** person or entity who:

1. Is **seeking official action** by the employee's agency;
2. **Does business or seeks to do business** with the employee's agency;
3. Conducts **activities regulated by** the employee's agency;
4. Has **interests that may be substantially affected by performance or nonperformance** of the employee's official duties; or
5. Is an organization in which the majority of its members are described in the items above.

■ 6B DCMR §§ 1803.2 and 1803.4(b) ■

Gifts From Outside Sources



Employees shall not, directly or indirectly, solicit or accept a gift from anyone (prohibited source or otherwise) given because of the employee's official position or duties.

- *A gift is accepted or solicited because of the employee's position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee held the status, authority or duties associated with his position.*



So who wants to pickup the tab for this networking lunch?

Gifts From Outside Sources



- **Gifts given because of the Employee's Official Title or Position**
- This includes gifts accepted or ***solicited indirectly***:
 - With the employee's knowledge or acquiescence to a family member because of that person's relationship to the employee
 - To another person or entity, such as a charity, on the basis of designation, recommendation, or other specification by the employee.

■ 6B DCMR §§ 1803.2 and 1803.4(c) and (d) ■

Gifts - Exceptions to Prohibited Source Rule



- **Employees may accept (even from a prohibited source):**
 - Unsolicited gifts, \$10 or less (\$20 aggregate in calendar year) except when the offer of a gift would appear to a **reasonable person** to be intended to influence the employee in his or her official duties.
 - Gifts ***clearly motivated*** by family or personal relationships.
 - Meals, lodgings, & transportation (*when clearly not because of the employee's official position*):
 - ✦ Spouse - Resulting from the business or employment activities of a spouse or domestic partner (i.e., annual conference or business related, not special leisure trip just for employee).
 - ✦ Outside Business - Resulting from the employee's authorized outside business or employment activities.

Gifts From Outside Sources



- **18 U.S.C. § 209 (Salary Supplementation)**
 - It is a federal crime to accept any compensation from a source other than the District government for performing your job/providing services as a District government employee
 - ✦ You, therefore, are prohibited from accepting money, a gift (i.e. tickets to a sporting event, jewelry, perfume, etc.), stocks or bonds, promise of a future job, or anything else of value (whether or not a prohibited source).



Gifts From Outside Sources

Events Exceptions

Speaking at events



■ 6B DCMR §§ 1803.5(d) ■

An employee may accept **free** attendance to an event
(no matter the cost of the ticket)

If the employee is a **speaker** at event

Participation at the event is customary and necessary part
of the employee's performance of the assignment

Assignment is made in writing by agency head or designee

Agency must keep record of the assignment for 2 years.

Gifts From Outside Sources

Events Exceptions



An employee may accept the gift of **free** attendance, no matter the price, to an event from the **sponsor** of the event, if:



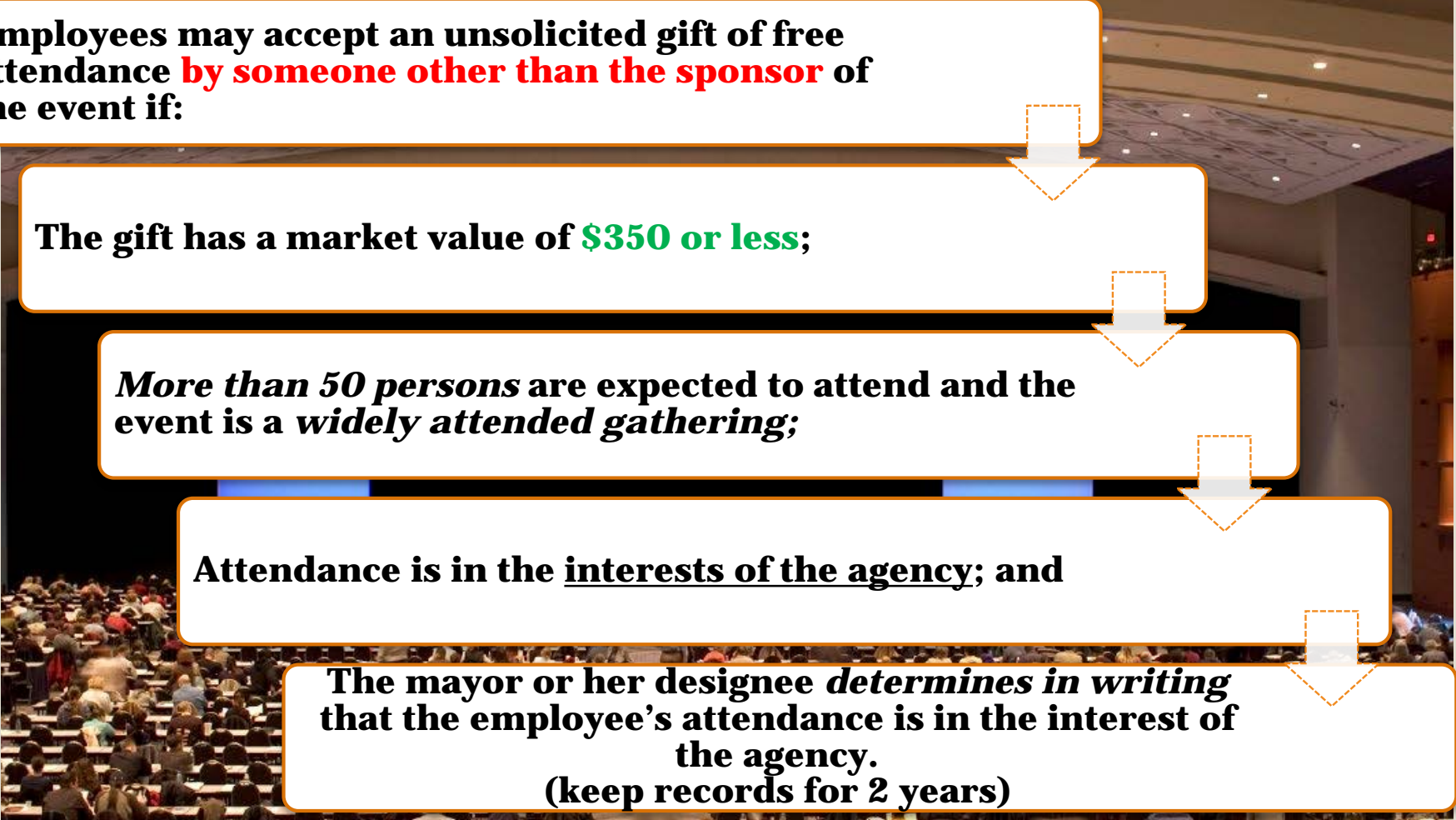
Attendance *is in the **interest of the agency***
The event is a *widely attended gathering* (open to members from throughout the interested industry or profession)



The mayor or her designee **determines in writing** that the employee's attendance is in the interest of the agency

Agency shall maintain records of this determination for *two years*

Gifts From Outside Sources



Employees may accept an unsolicited gift of free attendance **by someone other than the sponsor** of the event if:

The gift has a market value of **\$350 or less**;

More than 50 persons are expected to attend and the event is a *widely attended gathering*;

Attendance is in the interests of the agency; and

The mayor or her designee *determines in writing* that the employee's attendance is in the interest of the agency.
(keep records for 2 years)

Gifts From Outside Sources



- What to do if you are offered or receive a gift that cannot be accepted:
 - Inform the person offering the gift; and
 - Return the gift, donate the gift to a non profit charity, **donate it to the District [OPGS]**; or reimburse the donor the market value of the gift;

Gifts From Outside Sources



What to do if you are offered or receive a gift that cannot be accepted:

- If the gift is perishable and returning it would be impractical:

Share it with office staff;



Donate to charity;

DONATION RECEIPT

Date: _____ Receipt No. _____

Donated By: _____

Street Address: _____

City: _____ State: _____ ZIP: _____

Eligible amount of gift for tax purposes: _____

Appraised by: _____

Address of appraiser: _____

Description of property received by charity: _____

Authorized signature: _____

Thank you for your generosity. We appreciate your support!

Destroy it.



Note: Sharing with office staff or donating to a charity, is a **one time only option** with respect to any donor.

Gifts From Outside Sources



Bribery – Federal Criminal Statute

- Prohibits the giving or accepting of anything of value to or by a public official, if the thing is given "with intent to influence" an official act, or if it is received by the official "in return for being influenced."
- 18 U.S.C. § 201(b)(1): offering a bribe to a public official
- 18 U.S.C. § 201(b)(2): acceptance of a bribe by a public official

DCRA employee accepted a total of \$700 in cash from a person who was actually participating in an undercover FBI investigation. In exchange for this money, the employee issued two air conditioning permits and one construction permit. In processing these permits, she did not require the person to take a number and wait in line at DCRA. The employee pled guilty to receipt of a bribe by a public official. The charge carries a statutory maximum of 15 years in prison and potential financial penalties.

DISCLOSING GIFTS



- Public Financial Disclosure Statement:
- “Did you receive any gift(s) from any person that has or is seeking to do business with the District, conducts operations or activities that are regulated by the District, or has an interest that may be favorably affected by the performance or nonperformance of your duties in the total amount or with a total value of **\$100** or more?”
- D.C. Official Code § 1-1162.24(a)(1)(E)

Happy Birthday and Retirement and
Congratulations on the Wedding and...



ETHICS
GIFT ACCEPTANCE

Gifts



Gifts Between Employees



GENERAL RULES

Supervisor/Employee

An employee may NOT:

- Give a gift or make a donation toward a gift for an official superior;
- Solicit a contribution from another employee for a gift to their official superior.



An official superior shall not:

- coerce a subordinate to make or contribute to a gift.



Gifts Between Employees



GENERAL RULES

Higher/lower salary

An employee may NOT, directly or indirectly, accept a gift from an employee receiving less pay than themselves unless:

1. Not in a subordinate-official superior relationship;
2. Personal relationship between the two employees that would justify the gift; and
3. Not given or solicited to gain or induce any professional advantage.

Gifts Between Employees

Exceptions

On an occasional basis, including *any occasion on which gifts are traditionally given or exchanged [birthdays, holidays, housewarming]*:

- Items, other than cash, with an aggregate market value of **\$10 or less** per occasion;
- Items such as **food and refreshments** to be shared in the office among several employees;
- **Personal hospitality** provided at a residence which is of a type and value customarily provided by the employee to personal friends; and
- Items **given in connection with the receipt of personal hospitality** if of a type and value customarily given on such occasions.



Gifts Between Employees



Exceptions cont'd – Very Infrequent Occasions

- Direct Gift - A gift **appropriate to the occasion** in recognition of infrequently occurring occasions of personal significance such as:

Marriage

Illness

Birth or adoption

And upon occasions that *terminate a subordinate-official superior relationship*, such as:

Retirement

Resignation

Transfer

Soliciting - up to \$10.00 from fellow employees for an appropriate gift to an official superior:

- On a special, very infrequent occasion (see above); or
- On an occasional basis, for items such as food or refreshments to be shared in the office among several employees.

EXAMPLES OF ETHICAL FAILURES



- From the U.S. Department of Defense Standards of Conduct Office, Encyclopedia of Ethical Failure
- The Merit Systems Protection Board upheld the firing of one of the VA's regional healthcare system directors. The firing was upheld based on the director's acceptance of a number of "inappropriate gifts" including a trip to Disneyland for her family costing \$11,000 and \$729 for Beyoncé concert tickets. These gifts were offered by a consultant in the Phoenix area whose job was to land government contracts.

EXAMPLES OF ETHICAL FAILURES



- A former General commanding U.S. forces in South Korea improperly accepted over \$5,000 in gifts and cash, including gold-plated pens, from a South Korean benefactor. The General claimed that the gifts were accepted because the South Korean was a longtime and personal friend, despite the fact that the South Korean did not speak English and they were forced to communicate through hand signals and gestures. The General repaid the South Korean in full and was allowed to retire at a lower grade.

EXAMPLES OF ETHICAL FAILURES



- A Lieutenant Colonel committed dereliction of duty when, in violation of the JER, he received a bottle of Ballantines 30 year-old Scotch valued at \$400 and failed to report it and properly dispose of it. In lieu of a court martial, the colonel resigned from the military service for the good of the service under other than honorable conditions.
- A Supervisory Contract Specialist at Andrews Air Force Base was terminated after it was discovered that she had accepted a total of \$2820 from a subordinate (a subordinate that the specialist had, in fact, personally hired) on two occasions. Despite the specialist's claims that she did not know that accepting the gifts was wrong, an Administrative Judge affirmed the termination of a 20-year federal career.



DONATION MANAGEMENT TRAINING FOR DC AGENCIES

October 19, 2017

Location: Building 441 4th Street NW, Room 1117
4:00pm-5:00pm
opgs.dc.gov/services Contact: 202 727 7977



Training Objectives

YOU WILL...

- Understand How the **Donation Process** Works, its **Benefits**, and **OPGS' Assistance** to Your Agency;
- Become familiar with the **District's Rules of Conduct Governing Donations Made to the Government** ;
- Learn about **Donation Ethical Requirements and its Non-Compliance Consequences**.

Agenda

- 1- **Background**, Donation key definitions and Statistics
- 2- Donation **Policies**
- 3- **Donation Process:**
 - A- Online application-**Quickbase**
 - B- **Legal Review** process - **MOLC**
 - C- Donation **Agreement**
- 4- **Financial & Foreign** Donations
- 7- **Summary & Next Steps**





DONATIONS BACKGROUND

The District of Columbia offers a unique state of the art donation's process via **QuickBase**, which allows District Agencies and Schools, to solicit and accept donations from non District sources (Mayor's Memorandum 2015-001)

Furthermore, the process ensures that these donations are accounted for and adhere to the ethics laws of the City.





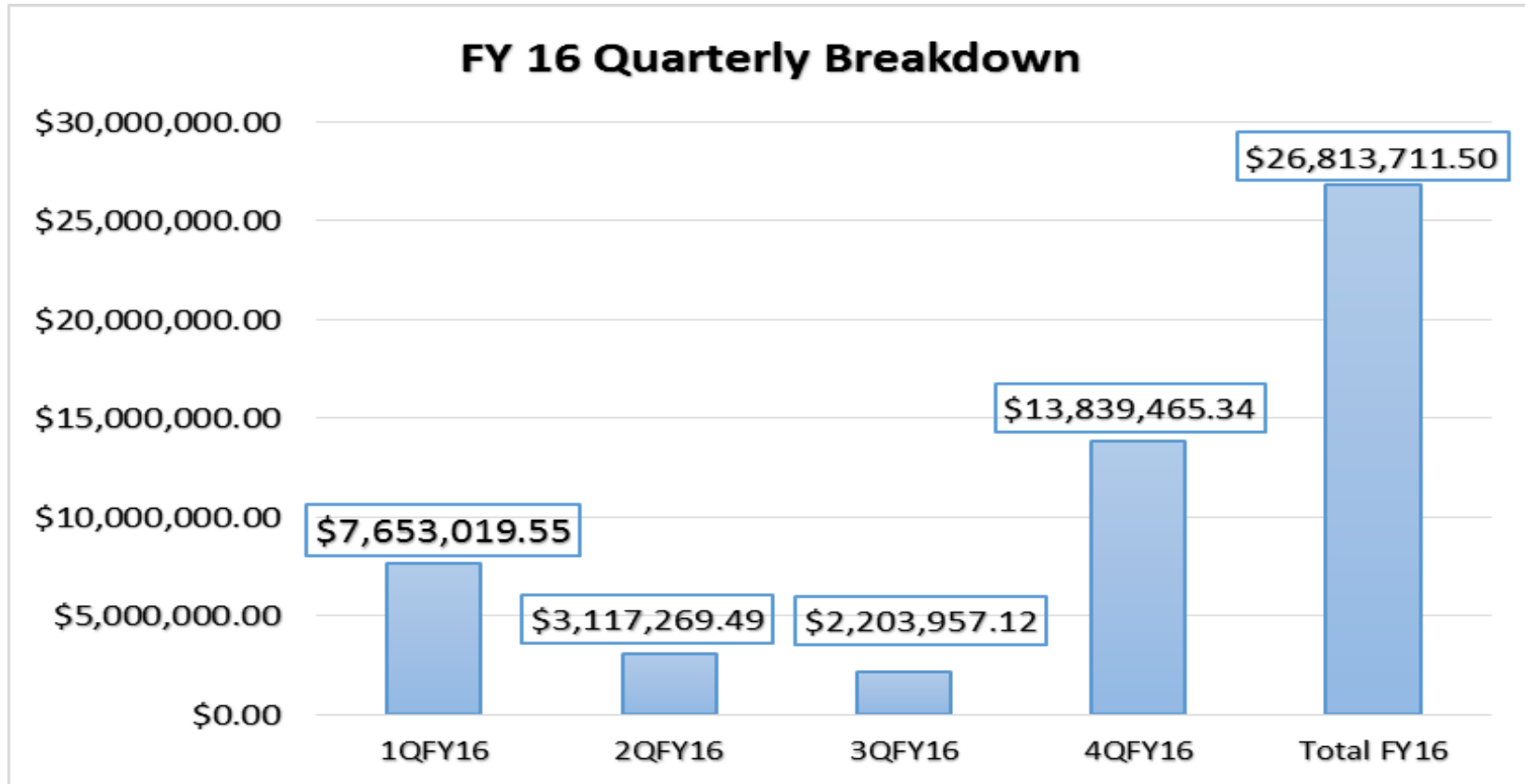
Definition:

DONATIONS VS. GRANTS

Donations and grants are NOT the same.
This training is exclusively about donations.

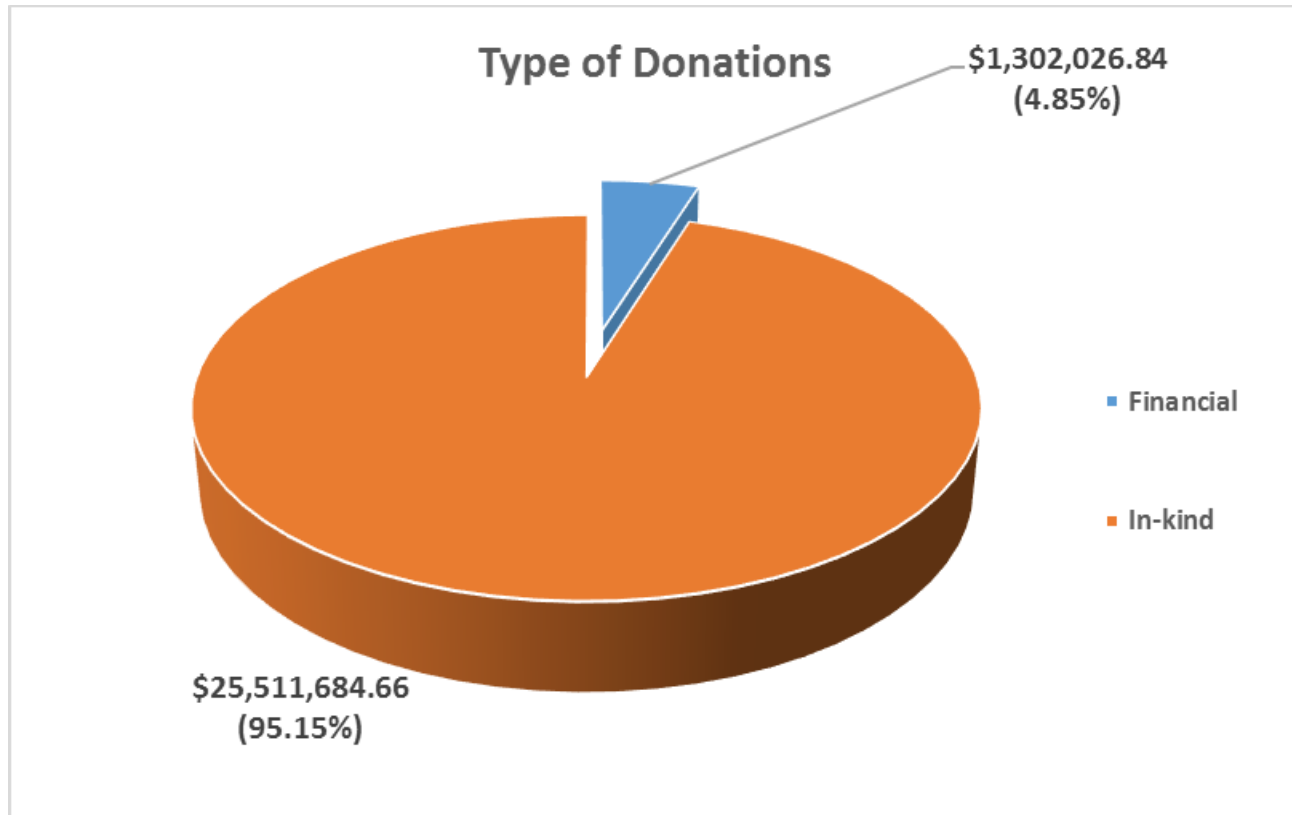
Grants	Donations
An award of funds or other resources from a public or private entity, such as the federal government or a non-profit foundation.	Voluntary contribution of funds, services and property
Should submit a proposal	Bona fide contributions
Specific objective and outcomes	No strings attached
Competitive process	No quid pro quo

Donation statistics FY 2016

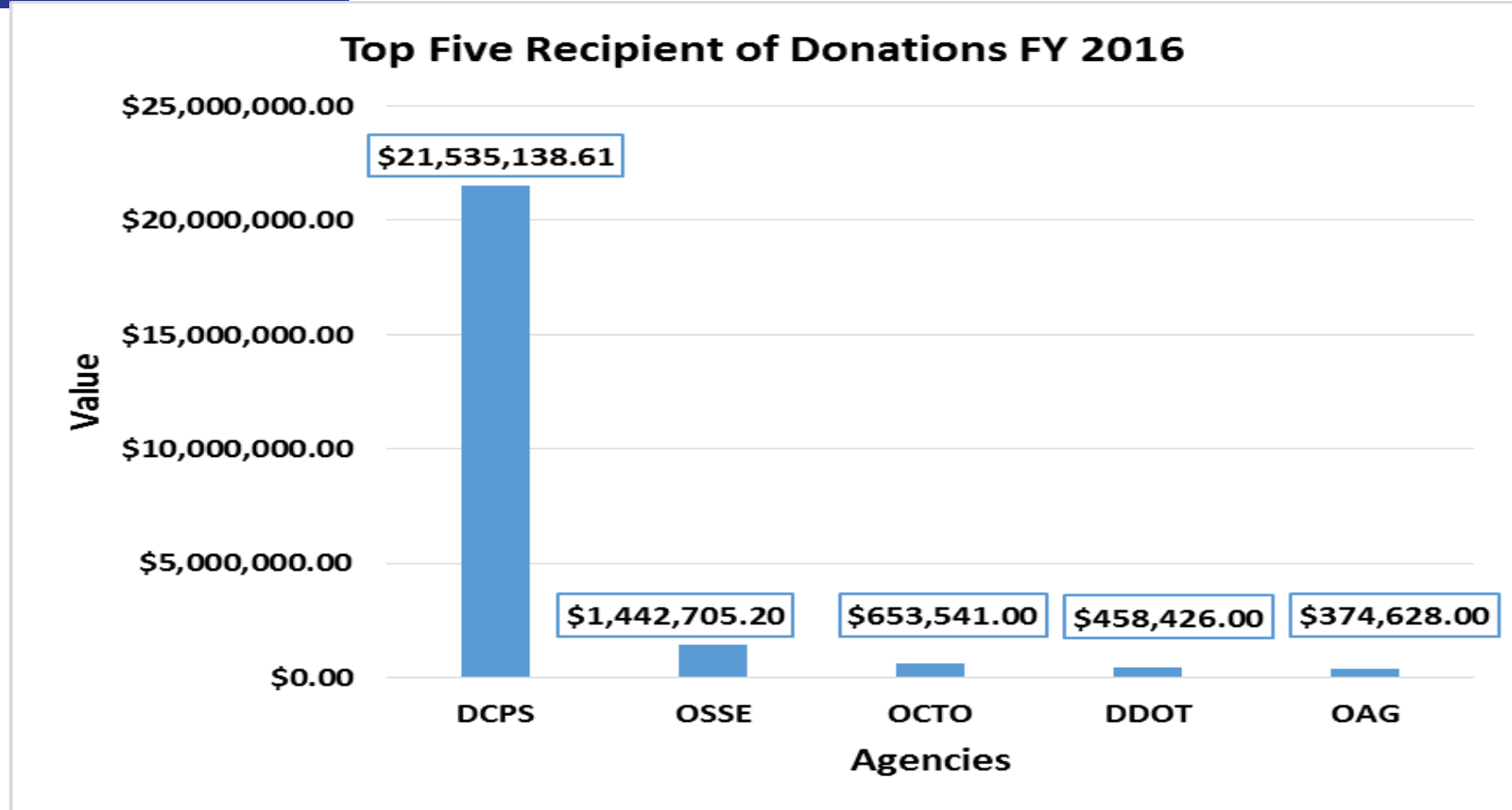


OPGS approved \$26,813,711,50 in donations during the FY 2016 of which \$1,302,026.84 represented financial contributions and \$25,511,684.66 were in-kind.

Donation Type FY 2016

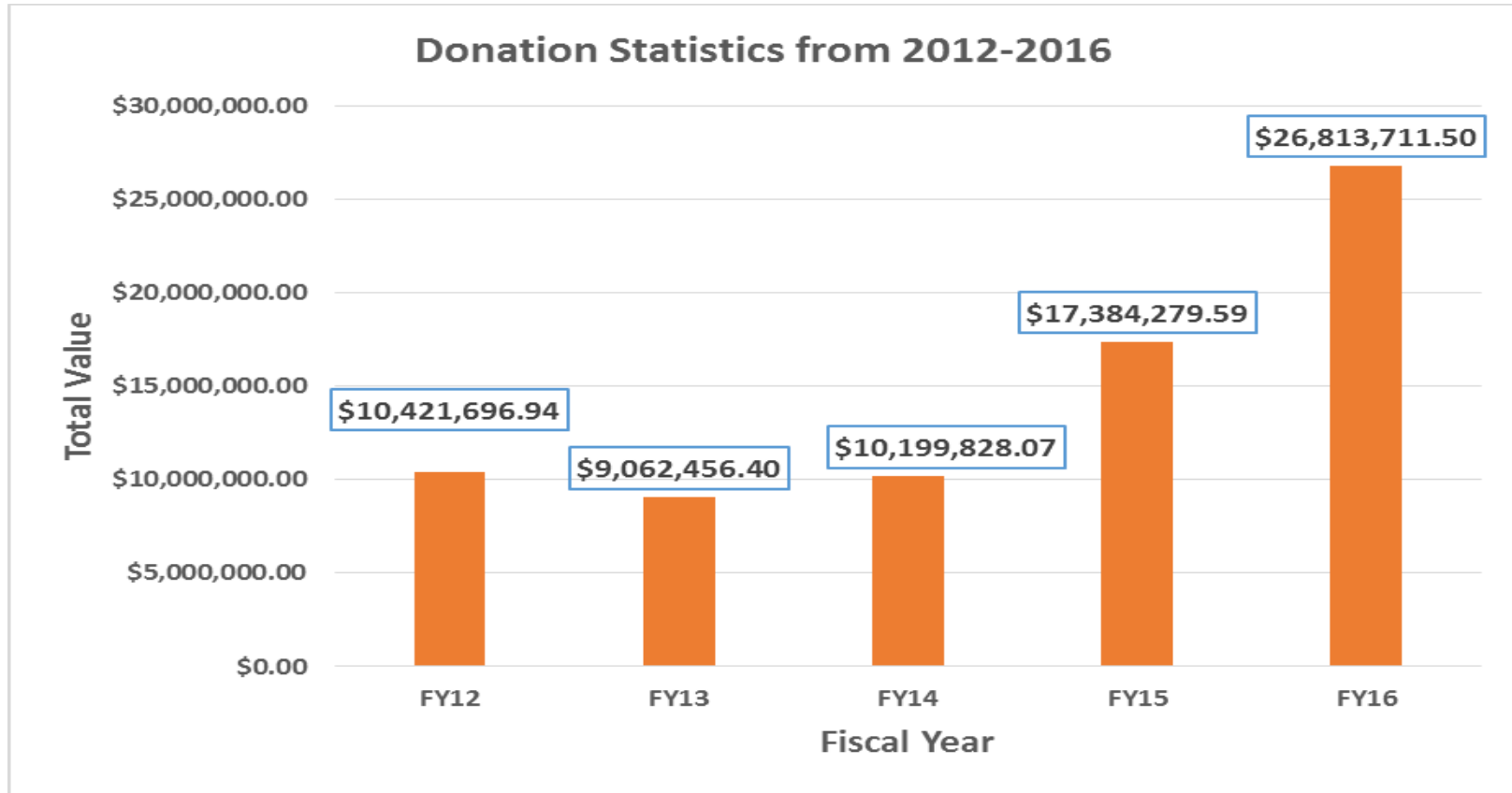


Top Five Recipient FY 2016



DCPS continues to be the largest recipient among DC Agencies that receive donations approved by OPGS (\$21, 535,138.61), representing approximately 80% of all the donations received FY 2016. OSSE is still in the top 5. OCTO, DDOT and OAG entered the top five in 2016.

Donations Statistics from 2012-2016



From FY 2012 to FY 2014, the Government received on average \$10 million donations each year. However, in FY 2015 OPGS authorized a \$7.3 million increase in the Mayor Bowser Administration, and \$9.4 millions increase in FY2016.

HIGHLIGHT DONATION FY 2016



Turnaround For Children donated **\$1.4 Millions** for teacher practice and student support services to Hendley ES, Patterson ES, Wheatley EC, Orr ES and Walker-Jones EC to create a highly effective learning environment.



Highlight Donations FY 2016



D.C. Public Education Fund (DCPEF) continues to support the Brainology program at D.C middle schools to help improve students' motivation and ability to learn. In addition, DCPEF supports a select set of school's high impact programs: Excellent Teachers and Leaders, Engaged Students and Families, and Innovative Classrooms and Schools. **Total estimated donation for FY16: \$6.2 million.**

HIGHLIGHT DONATION FY 2016



Rozita Green, Chief Strategy Officer at the Bainum Family Foundation (center), joined supporters of quality early learning at a Oct. 16, 2016 event in DC. The Bainum Family Foundation provided policy support to **OSSE** in planning and research to conduct an implementation evaluation of the Early Learning Quality Improvement Network (QIN). **Estimated value of donation for FY2016: \$835,000.00.**

HIGHLIGHT DONATION FY 2016



BioRidge Pharma donated EpiPen 2-Pak Epinephrine Injection 0.3 mg and Epinephrine Injection 0.15 mg to help prepare for allergy emergency at DC Public Schools (for 24h service) . **Estimated value of donation for FY2016: \$55,000.00.**

HIGHLIGHT DONATION FY 2016



Willam Mcknew donated one 17.2 hand registered Clydesdale Gelding horse to the **MPD Mounting Unit** on June 6, 2016. **Estimated value: \$20,000.00**

Leslie McLaughlin donated a horse to **MPD** on February 29, 2016, replacing a recently retired horse. **Estimated value: \$2,500.00**

HIGHLIGHT DONATION FY 2016



Harris Teeter donated body worn crime cameras to **MPD** on October 21, 2015 to facilitate investigations and information gathering. **Estimated value: \$18,000.00**

DONATIONS POLICIES

- 1. Agencies may not solicit, accept, or use donated funds, services or property without prior approval by OPGS or OGC**
2. Donations must be used for an authorized purpose of the Agency
3. Financial donations must be deposited in the Private Donation Funds 8450 (ACFO approves Budget Authority-Funds carry over)
4. No quid pro quo can exist
5. Donations = bona fide contributions
6. Donations of cash is prohibited

Link to the Mayor's Memorandum 2015-001 (8/21/15) governing Donations in the District: <http://opgs.dc.gov/node/243802>.



DONATION APPROVAL PROCESS:

Only three steps:



Step 1: Online Application:

Agency prepares and submits an Application to Approve Donation (AAD) on Quickbase

Step 2: Legal Review

MOLC reviews your application for the legal sufficiency

Step 3: Donation Agreement

Agency fill out and sign the donation agreement form. Then have it signed by the donor and OPGS

DONATION APPROVAL PROCESS:

Step 1: Submit an application on Quickbase



- Text in red = documents/tools to which you'll need access in order to process donations; links are at end of the presentation.

Step		Action
Agency prepares and submits an Application to Approve Donation(AAD)		
1	Agency & donor	<ul style="list-style-type: none"> Agency has the donor read and approved the <u>Mayor's Memorandum</u>
2	Online application	<ul style="list-style-type: none"> Agency submits an application to approve donation via <u>QuickBase Application</u>. Go to octo.quickbase.com. <i>Note-there is a separate 15 min training video on YouTube on how to submit an application on Quickbase- opgs.dc.gov/YouTube.</i>

DONATION APPROVAL PROCESS:

Step 2: Legal review process



	Step	Action
	The Mayor's Office of the Legal Counsel Performs the legal review	
4	OPGS and MOLC will receive your online application	<ul style="list-style-type: none"> OPGS and MOLC review your application and contact you if additional information is needed.
5	Legal Review	<ul style="list-style-type: none"> MOLC will determine if your donation is legally sufficient. Common problems are: conflicts of interest and apparent advertising—quid pro quo—and endorsement concerns. MOLC will verify if the proposed donation is consistent with the agency's authorized purpose or duty. At the end of the review, agency receives an email confirming that the application has been approved for the legal sufficiency or denied.

DONATION APPROVAL PROCESS



Step 3: Donation Agreement Form:

- Agency fill out the Donation Agreement form and have it signed by the donor
- Agency sends form and photocopy of the check to marcel.guy@dc.gov
- Once the agreement is signed by OPGS, Agency can then accept and use the donation

The whole process takes up to 7 business days

AAD#

DONATION AGREEMENT BETWEEN THE DISTRICT OF COLUMBIA GOVERNMENT AND _____

1. _____ ("Donor") agrees to make a donation to _____ (name of D.C. Government agency) of _____ (insert amount if funds, description of in-kind donation, property or other) to be used for the following purpose. The donation is being given freely without any expectation of special treatment by the government.

2. The donation will be used to augment its (identify what part of the agency budget will be augmented by the donation) _____. The donation is for an authorized purpose because it is consistent with the functions and purposes of the agency.

3. The donation is being made on the condition that the agency agrees to use the donation for the particular purpose stated in this agreement. If the agency does not use the full balance of the financial donation, I, the donor, give my express consent and authorization to the agency to use the remaining balance in the same or subsequent fiscal years for the same or similar authorized purpose, as reviewed and approved by the D.C. Ethics Officer. Otherwise, the Government of the District of Columbia will mail a refund check to the donor in the amount of any remaining balance. (State any other conditions that may apply).

☐
☐
☐

Yes, with my consent all remaining funds may be applied toward another D.C. Government program with a similar purpose in this fiscal year or subsequent years.

No, please refund all remaining funds to the donor.

Not Applicable

Please check the appropriate box.

4. The donor has read and agrees to be bound by the Rules of Conduct regarding Donations set forth in Mayor's Memorandum 2010-2, dated October 15, 2010.

5. To the best of the Donor's knowledge, the donor is not aware of any transactions pending before any agency or the District government involving the Donor, nor any litigation pending against the government involving the Donor.

6. The District of Columbia government acknowledges that systems are in place for the donation to be accepted by the government and the use of the donation may be properly tracked as required by the Section 115 of the District of Columbia Appropriations Act, 2003, Pub. L. 108-7.

Signature of the Parties:

Name: _____ Date: _____

Title: _____
Authorized official representing the Donor

Agency Representative _____ Date _____

Agency name

Office of Partnerships and Grant Services _____ Date: _____

on behalf of the District of Columbia Government

FINANCIAL DONATIONS

- All financial donations must be deposited in the 8450 Private Donations Fund.
- All checks **must be made out to the DC Treasury**,
- Finance team (OFRM, OCFO) sets up attributes in GRAMS pointing to fund 8450.
- Donation appears in SOAR (System of Accounting and Reporting).
- Agency must provide the donation agreement with the check to the Fiscal officer using the newly created attributes to process the check in INOVA.



PROCESSING OF CHECKS

- ❑ Send photocopy of check and Donation Agreement to Donations Manager at marcel.guy@dc.gov
- ❑ Once the agreement is signed by OPGS, Your AFO can set up the attribute with OFRM and have them processed the check.



WIRE TRANSFERS

- ❑ The recipient agency may accept a financial donation via a wire transfer between the donor and the D.C. Treasury

Bank Name: Wells Fargo

ABA Number: 054001220

Account Name: DC Government

Account Number: 2000043154623 – BANK ID 23W

Reference: "Contribution for ----"

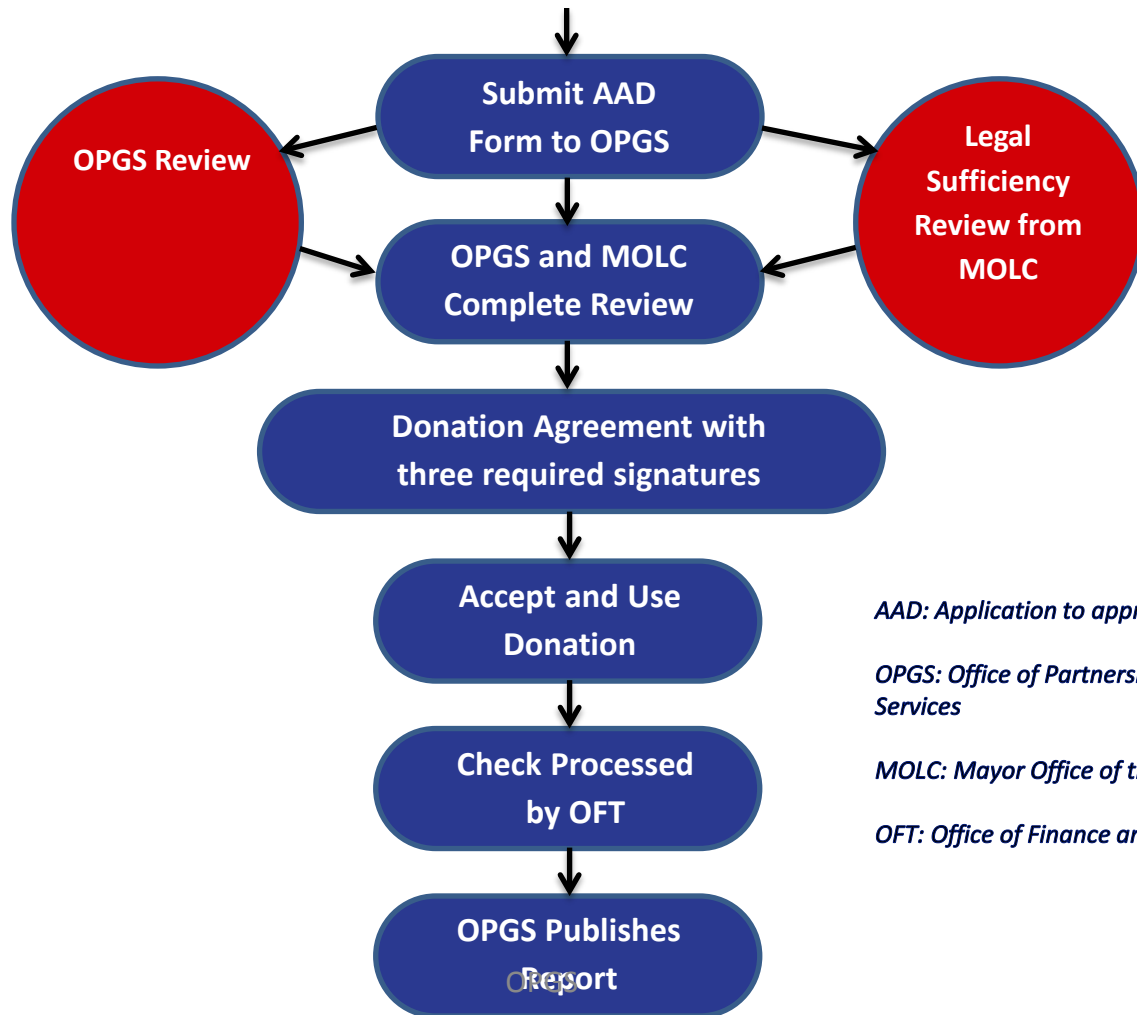


FOREIGN DONATIONS

- ☐ Foreign donations are donations coming from a foreign source or donation covering the international travel expenses.
- ☐ Agency must get the Mayor's Chief of Staff approval before going through OPGS' approval process.



Summary



AAD: Application to approve donation

OPGS: Office of Partnerships and Grant Services

MOLC: Mayor Office of the Legal Counsel

OFT: Office of Finance and Treasury

Questions





Key Contacts for the Donations Process



<u>Name</u>	<u>Title</u>	<u>Agency</u>	<u>Phone Number</u>
Betsy Cavendish	Mayor's General Counsel	OGC	724-7681
Lafayette Barnes	Director	OPGS	727-8901
Marcel Guy	Donations Manager	OPGS	727-7977
Gregory Evans	Associate Director	MOLC	727-8038
Michael Bolden	Division Director	OFRM	727-6534

Please visit OPGS' website at www.opgs.dc.gov or email marcel.guy@dc.gov for more details.

