



Guide to Ex Gratia Payments and Honorariums

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Guide to Ex Gratia Payments and Honorariums

1. Date of publication

This guide was published on November 22, 2019, and incorporates changes effective as of April 1, 2022.

This guide replaces the provisions on ex gratia payments in the *Guideline on Claims and Ex Gratia Payments* dated October 1, 2009.

2. Application, purpose and scope

This guide applies to the organizations listed in section 6 of the *Policy on Financial Management*.

The purpose of this guide is to support departments in managing ex gratia payments and honorariums.

This guide supports the requirements set out in Appendix A to the Treasury Board *Directive on Payments* and it does not present new mandatory requirements. Examples are provided for illustrative purposes only and may not apply to all departments or situations.

Section 3 sets out the considerations for issuing ex gratia payments.

Section 4 sets out the considerations for issuing honorariums.

3. Overview of ex gratia payments

3.1 Definition

The *Directive on Payments* defines an "ex gratia payment" as follows:

A benevolent payment made by the Crown and used only when there is no other statutory, regulatory or policy vehicle to make such a payment. The payment is made in the public interest for loss or expenditure incurred where the Crown has no obligation of any kind or has no legal liability, or where the claimant has no right of payment or is not entitled to relief in any form.

3.2 Considerations for issuing an ex gratia payment

Ex gratia payments should be managed with prudence given that they closely resemble gifts. The following are key considerations for the use of ex gratia payments:

- ex gratia payments should be used only in exceptional or urgent circumstances
- ex gratia payments are not intended to be used as a mechanism to deliver a program and are not appropriate for making recurring payments
- the purpose for which the ex gratia payment is intended must fall within the mandate of the department
- an ex gratia payment cannot be used if there are any legal restrictions to doing so (for example, a department may be prevented from issuing payments for certain expenses, such as interest payments, in their enabling legislation)
- ex gratia payments should not be used to address claims or situations where a liability exists (refer to the *Guide to Claims* for more information)

3.3 Authorities for issuing an ex gratia payment

Table 1 details the various authorities available for issuing an ex gratia payment. When considering the use of an ex gratia payment, departmental chief financial officers (CFOs) should engage their legal services and can consult with the appropriate program sector at the Treasury Board of Canada Secretariat and the Office of the Comptroller General to determine the appropriate authority.

Table 1: authorities for issuing ex gratia payments

	Authorities under which the issuance of an ex gratia payment may be considered		
	<i>Directive on Payments</i>	Ministerial authority	Treasury Board or Governor in Council

Authorities under which the issuance of an ex gratia payment may be considered			
	<i>Directive on Payments</i>	Ministerial authority	Treasury Board or Governor in Council
Guidance on appropriate usage	<ul style="list-style-type: none"> • Payment meets the definition of an ex gratia payment set out in the <u><i>Directive on Payments</i></u> • Ex gratia payment cannot be issued under this authority if a governing instrument already exists (see subsection 3.4 of this guide) • Ex gratia payment cannot be issued to fill perceived gaps or limitations in an act, order, regulation, policy, agreement or other governing instrument (see subsection 3.4 of this guide) 	<ul style="list-style-type: none"> • Generally considered for payments that do not meet the requirements of the <u><i>Directive on Payments</i></u> • Payment must however continue to be applied only in exceptional circumstances 	<ul style="list-style-type: none"> • Generally considered for payments that have some or all of the following characteristics: <ul style="list-style-type: none"> ◦ the payment does not meet the requirements of the <u><i>Directive on Payments</i></u> ◦ the payment falls outside the minister's authority ◦ there are significant risks associated with the payment (for example, the payment is controversial, merits political approval, has a public profile, sets a precedent, requires a degree of transparency, or is a significant amount)

	Authorities under which the issuance of an ex gratia payment may be considered		
	<i>Directive on Payments</i>	Ministerial authority	Treasury Board or Governor in Council
Approval level required	<ul style="list-style-type: none"> • Managers with delegated authority may approve payments of \$2,000 or less <i>(Directive on Payments, subsection A.2.2.3.1 of Appendix A)</i> • Deputy head approval is required for payments over \$2,000 <i>(Directive on Payments, subsection A.2.2.1.2 of Appendix A)</i> 	<ul style="list-style-type: none"> • Minister's approval required 	<ul style="list-style-type: none"> • One of the following is required: <ul style="list-style-type: none"> ◦ Treasury Board approval ◦ Governor in Council approval

3.4 Consideration for issuing an ex gratia payment under the Directive on Payments

Proposed payment is not covered by another governing instrument

Under subsection A.2.2.3.1.1 of Appendix A to the *Directive on Payments*, managers must ensure that ex gratia payments are issued only when the proposed payments are not covered by other authorities, governing instruments, Treasury Board policies or other mechanisms for compensation. Examples of other authorities are program funding, transfer payments, statutory or regulatory schemes, insurance and contracts.

Before issuing an ex gratia payment, the delegated departmental manager must determine whether there are any other possible authorities for making the payment. If the proposed payment is covered by another governing instrument, the payment must be made pursuant to that instrument and not by means of an ex gratia payment.

For example, a consultant came to the departmental office for a meeting, and an employee accidentally placed several file folders on the consultant's eyeglasses and damaged them. The consultant asked the departmental manager for compensation to replace the damaged eyeglasses. The manager investigated the matter and determined that the damage was the result of an accident that occurred during the performance of the consultant's duties, and that the consultant's request for compensation should be treated as a claim (refer to section 4 the *Guide to Claims* for more information).

Proposed payment is not being used to fill a gap in another instrument

As part of the process to validate whether another governing instrument applies, managers must also ensure that ex gratia payments are issued only when they are not filling perceived gaps or compensating for the apparent limitations in another governing instrument, as required under subsection A.2.2.3.1.1 of Appendix A to the *Directive on Payments*.

In other words, if a particular situation is governed by another instrument and that instrument does not provide for the proposed payment, no ex gratia payment under the directive can be issued.

For example, a former employee was asked to attend a ceremonial event organized by a department. A canon was shot at the event, and the former employee's hearing was damaged. There was an insurance policy in place that offered compensation for hearing damage above a certain threshold. The damage to the former employee's hearing did not meet the policy's threshold for compensation. Issuing an ex gratia payment in this instance would be perceived as filling a gap in an insurance policy, and therefore would not be compliant under the *Directive on Payments*.

3.5 Considerations for issuing an ex gratia payment under ministerial authority

As agents of the Crown, ministers may be able to exercise the Crown's authority to authorize ex gratia payments in relation to matters falling within their mandates.

When issuing an ex gratia payment under ministerial authority, the department's CFO should confirm that:

- departmental legal services have determined that the proposed ex gratia payment falls within the department's mandate
- the Office of the Comptroller General has been consulted and has provided comments on applicable financial management policies and procedures

The minister should notify the President of the Treasury Board in writing when the ex gratia payment has been made. In this letter to the President, the minister should explain why the ex gratia payment was made, to whom it was made, and the amount and nature of the payment.

3.6 Considerations for issuing an ex gratia payment under the authority of the Treasury Board or Governor in Council

The use of the following mechanisms should be assessed on a case-by-case basis:

- **Treasury Board authority:** the department may ask the Treasury Board to authorize the payment pursuant to the Ex gratia Payments Order, 1991, [(P.C. 1991-8/1695) September 1991] (see the Appendix to this guide) by means of a Treasury Board submission
- **Governor in Council order:** the department may seek authority for the payment through a specific Governor in Council order by means of a Governor in Council submission

The appropriate program sector at the Treasury Board of Canada Secretariat should be consulted before and during the development of the Treasury Board submission or the Governor in Council submission for an ex gratia payment.

3.7 Determining the amount of an ex gratia payment

In determining an appropriate amount for an ex gratia payment, managers should consider the following:

- the underlying costs of amounts paid under comparable situations
- what is fair under the circumstances
- any contributing factors, including any actions or omissions by the potential recipient

The delegated departmental manager should also consider whether funds are available to the recipient from other reasonable means of compensation, such as:

- federal or provincial statutes
- private or public programs
- contract provisions
- commercial insurance or recovery from third parties

3.8 Reporting

All ex gratia payments are reported in the Public Accounts of Canada in the fiscal year when they were issued to the recipient, in accordance with the *Receiver General Manual*, "Public Accounts Instructions." Under subsection 3(1) of the *Privacy Act*, ex gratia payments are discretionary benefits and are not considered personal information.

4. Honorariums

4.1 Definition

An honorarium is a voluntary payment for services to an individual who is not a government employee, and to whom payments are not legally or traditionally required. Honorariums are not meant to be used frequently or as a mechanism to deliver a program, particularly on an ongoing basis. Examples of honorariums are tokens of appreciation for volunteer speakers or when engaging in consultations with Indigenous groups.

Honorariums are not an appropriate mechanism to procure services. In general, honorarium payments are issued by departments to show appreciation. They have low individual value and can be issued in a monetary form or as goods. Special authorities must be sought in advance whether the honorarium is issued in a monetary form or as goods. When they are issued in a monetary form, they may be issued under a transfer payment program.

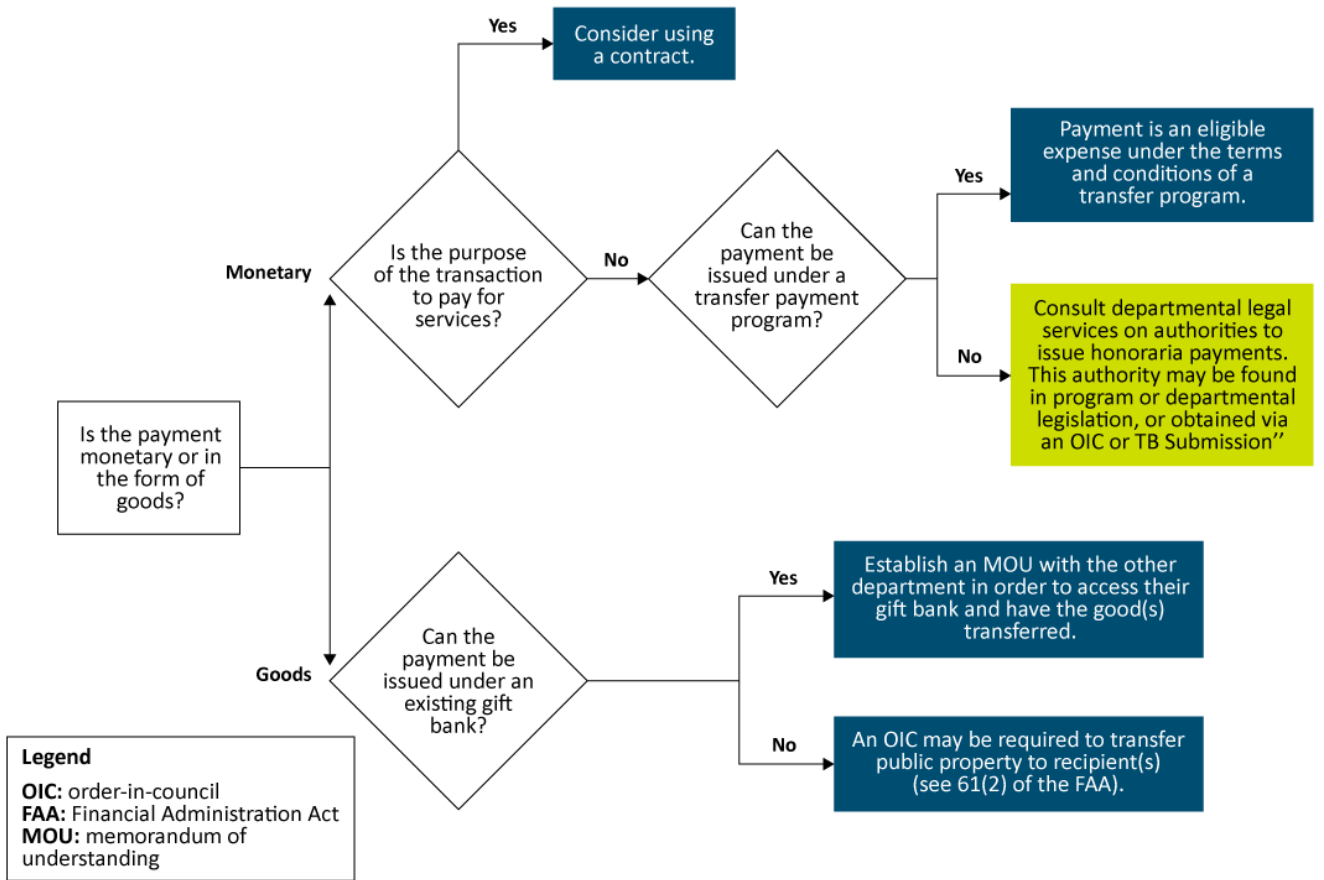
In summary, honorariums:

- do **not** represent a service contract
- are **not** an entitlement, as there is no expectation of payment in exchange for the service rendered
- are **not** recurring payments to the same individual

4.2 Choosing the right mechanism

Figure 1 is a decision tree to help departments decide on the most appropriate payment mechanism to use for the payments in question. Information on determining the appropriate payment mechanism to use is detailed in the following subsections.

Figure 1: decision tree to determine the appropriate payment mechanism



► Figure 1 - Text version

4.3 Honorarium in the form of goods

Departments providing payments in the form of goods (for example, gifts) are subject to section 61 of the *Financial Administration Act* relating to transfers of public property. As a result, departments must obtain approval for the transfer through:

- an order-in-council to transfer public property
- an existing gift bank (a memorandum of understanding is required if another department has the relevant gift bank)

4.4 Monetary honorariums

Monetary honorariums should be considered only after examining the appropriateness of proceeding with a service contract. A service contract should be established where there is an expectation that compensation will be provided for a service rendered even where the payment may be nominal. Service contracts should also be considered where there is an ongoing or recurring nature to the payment (for example, the same individual is receiving repeated payments). Departmental managers should consult the *Contracting Policy* and their procurement functions to determine the appropriate form of contract (verbal or written).

Honorarium payments should always be gratuitous. The decision to provide an honorarium should have no influence on the decision of the individual to participate or volunteer their time. There is no legal obligation to make the payment, and the recipient has no legal right to the payment.

The authority to issue honorarium payments can be found in program legislation or departmental legislation, or some other special approval such as Order-in-Council. Departmental managers may want to consult with their legal services to ascertain the authority to issue honorarium payments.

Honorarium payments may also be issued under a transfer payment program where such an expenditure is listed as an eligible expense under the terms and conditions (refer to the *Policy on Transfer Payments*).

5. References

Legislation

- *Financial Administration Act*
- *Income Tax Act*
- *Income Tax Regulations*
- *Privacy Act*

Related policy instruments

- *Policy on Financial Management*
- *Directive on Payments*
- *Guide to Claims*
- *Contracting Policy*
- *Policy on Transfer Payments*

Other

- *Employers' Guide: Payroll Deductions and Remittances*
- Ex gratia Payments Order, 1991 [(P.C. 1991-8/1695) September 1991]
- *Form R105, Regulation 105 Waiver Application*
- *Receiver General Manual*

6. Enquiries

Members of the public may contact Treasury Board of Canada Secretariat Public Enquiries if they have questions about this guide.

Individuals from departments should contact their departmental financial policy group if they have questions about this guide.

Individuals from the departmental financial policy group may contact Financial Management Enquiries for interpretation of this guide.

Appendix: Ex gratia Payments Order, 1991 [(P.C. 1991-8/1695) September 1991]

P.C. 1991-8/1695

September 5, 1991

HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL, on the recommendation of the Treasury Board, is pleased hereby to revoke the Ex gratia Payments Order, 1974, made by Order in Council P.C. 1974-4/1946 of September 3, 1974, and to make the annexed Order⁽¹⁾ respecting ex gratia payments, 1991, in substitution therefor.

⁽¹⁾ ORDER RESPECTING EX GRATIA PAYMENTS, 1991

Short Title

1. This Order may be cited as the Ex gratia Payments Order, 1991.

Authorization

2. The Treasury Board may authorize any ex gratia payment.

3. The Treasury Board may designate the deputy head of any department or departmental corporation named in Schedule I or II to the *Financial Administration Act* or of any other division or branch of the public service of Canada, including a commission appointed under the *Inquiries Act*, that is designated by the Governor in Council as a department for the purposes of the Act, and the Judge Advocate General, to authorize ex gratia payments.

4. The Treasury Board may authorize any deputy head designated pursuant to section 3 to designate an employee of the deputy head's department, division or branch to authorize ex gratia payments on the deputy head's behalf.

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