

# ETHICS GUIDING PRINCIPLES FOR SUPPORTING ORGANIZATIONS

(COMDT (CG-LGL) 31 July 2019)

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*Generally, no CG employees may solicit or accept a gift from a prohibited source or given to them because of their official status unless some gift exclusion or exception applies. Gifts include those given with the employee's knowledge and acquiescence to a relative because of that person's relationship to the employee, or given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee.*

*CG employees are permitted to accept opportunities and benefits available to a large group (such as all military members or all government employees) or to a group that is not defined in a manner that specifically discriminates on the basis of official responsibility or in a manner that favors those of higher rank or rate of pay, and the source is not a prohibited source.*

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*CPOA, CGEA, or other members of an affiliated private organization may organize an in-kind donation center onboard a CG facility with the approval of the Commanding Officer on a basis that does not interfere with CG operations. Active component members may manage a distribution center that does not interfere with CG responsibilities and use a de minimus amount of federal time, or authorized absence to manage collection and distribution. Members of affiliated private organizations such as the CPOA or CGEA are permitted to fundraise in their personal, off-duty capacity. CG employees, whether acting in an official or unofficial capacity, may never solicit a gift from prohibited source or a subordinate.*

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*To expedite gift distribution, the personal gift rules will be applied whenever applicable. Some gifts, however, are not to individuals but to the CG. These gifts may, in turn, benefit CG employees and/or their families. In some instances, a gift could be accepted by the CG or it may be distributed to individuals. MWR related gifts like donation of a catered meal for displaced employees and families or other activities may also be accepted from the CGF.*

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# ETHICS GUIDING PRINCIPLES FOR SUPPORTING ORGANIZATIONS

(COMDT (CG-LGL) 31 July 2019)

## Introduction

Following large-scale disasters, the Coast Guard (CG) typically receives numerous gift offers and offers of gratuitous services both for the benefit of the service as a whole and individually to CG personnel and their dependents. As with any gift offer, the risk of unethical or improper acceptance is always present, but these post-disaster gift offers also create unique logistical and processing challenges that require quick resolution at a time when legal resources are otherwise devoted to disaster response.

This guidance provides consistent ethics principles that are preapproved for uniform application in most disaster relief scenarios and align expectations when CGMA, CGF, and the CPOA wish to provide support to affected Coast Guard personnel. Portions of this guidance also apply to the CGEA that may assist other organizations or beneficiaries. While the guidance is specifically tailored to the CGMA, CGF, and CPOA, the guiding principles discussed also apply more broadly to other similar supporting organizations and are intended to clarify how CG members may accept assistance from supporting non-federal organizations and donors following a disaster. The regulations referenced in this document are the same Standards of Conduct that apply to all employees of the Executive Branch at all times and in virtually every other gift scenario involving all non-federal entities.

## Legal Summary

The Office of Government Ethics (OGE) Standards of Conduct for Employees of the Executive Branch and the CG Standards of Ethical Conduct in COMDTINST M5370.8B regulate how and when CG employees (and all federal executive branch employees) may accept gifts in their personal capacity. These rules that apply to individuals are not the same set of authorities that allow gifts to be accepted by the CG.

As a general rule, no federal employees, including CG employees, may directly or indirectly, solicit or accept a *gift* from a *prohibited source* or given to them because of their official status unless some gift exclusion or exception applies. 5 C.F.R. § 2635.202.

Per 5 C.F.R. § 2635.203(b), a *gift* is any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services, as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

Per 5 C.F.R. § 2635.203(d), a *prohibited source* means any person who: (1) is seeking official action by the CG; (2) does business or seeks to do business with the CG; (3) conducts activities regulated by the CG; (4) has interests that may be substantially affected by performance or nonperformance of the CG member's official duties; or (5) is an organization a majority of whose members are described in (1) through (4) of this section. Currently, CGMA, CGF, and CPOA are not viewed by the CG as prohibited sources. The CG reviews the status of the CGMA, CGF, and CPOA regularly and is required to do so on an annual basis. Any entity wishing to donate to the CG or CG people must undergo a prohibited source review.

Per 5 C.F.R. § 2635.203(f), a gift which is solicited, or accepted directly or indirectly, includes a gift (1) given with the employee's knowledge and acquiescence to a parent, sibling, spouse, child or dependent relative because of that person's relationship to the employee, or (2) given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee.

In past crises, CG employees have been permitted to accept opportunities and benefits available to a large group (such as all military members or all government employees) or to a group that is not defined in a manner that specifically discriminates on the basis of type of official responsibility or in a manner that favors those of higher rank or rate of pay. See 5 C.F.R. § 2635.204(c)(2)(iii) (hereinafter, (c)(2)(iii)). This(c)(2)(iii) ethics exception in the Standards of Conduct may only be considered where the source of the gift is not a prohibited source.

Frequently, these opportunities and benefits offered by non-prohibited source supporting organizations are offered in the form of gift cards. The OGE differentiates between different types of gift cards. General-use prepaid cards (cash cards), commonly distributed in the form of a Visa or other credit card company gift card, may be used to purchase anything that a credit card can purchase and are considered cash equivalents. In some instances, cash cards may be used to make withdrawals at ATMs. Store gift cards (store cards) may only be redeemed at one merchant or an affiliated group of merchants for goods or services. Store cards may not be used to withdraw funds from an ATM and the scope of their use is fundamentally limited. OGE Legal Advisory LA-15-04.

## Assistance from Non-Federal Entities

Following a disaster, certain non-federal non-prohibited-source supporting organizations, including CGMA, CGF, and CPOA may wish to make donations directly to impacted CG employees and their families. This recognizes that CG employees in impacted areas are not only first responders but often are also victims themselves. Donors often communicate these gift offers to the CG, not the individual members. While the CG may have gift acceptance authority on behalf of the organization, the CG has only limited authority to accept in-kind donations (non-cash items like food or clothing) intended as personal gifts for the benefit of its employees and their families. Further, the CG lacks the authority or logistical capabilities to accept and redistribute cash donations (frequently made in the form of pre-paid cash cards).

## Coast Guard Mutual Assistance (CGMA)

BLUF: All CG family members (Active, Reserve, Retired, Auxiliary, Public Health Service, Dependents) may accept loans or grants disseminated by CGMA through CG / CGMA authorized representatives in accordance with CGMA policy. CGMA loans or grants do not require legal review. All non-federal donors offering gifts to the CG or CG people may be made aware of CGMA as the CG's authorized military aid society.

CGMA is the only non-federal entity statutorily recognized as the CG's Military Aid Society. See 10 U.S.C. § 1033. Additionally, CGMA may orchestrate support through other Military Aid Societies (e.g. Air Force Aid Society, Army Emergency Relief, Navy-Marine Corps Relief Society) have reciprocal agreements with each other, as well as with the American Red Cross. Under the CGMA by-laws, those eligible for CGMA assistance broadly includes, Active, Reserve, Retired, Civilian, PHS Officer and Navy Chaplains assigned

to CG duty, Auxiliary, immediate family members of the aforementioned categories as well as surviving family members of the aforementioned categories with certain restrictions.

In the time of a major disaster, such as a hurricane, CGMA's initial objective is to rapidly provide emergency assistance for evacuation and cash needed to meet basic living expenses such as food, shelter, and clothing. CGMA uses modified procedures to provide rapid emergency assistance, including reducing normal paperwork and approval procedures to a minimum. Additionally, every CG unit has collateral duty CGMA "representatives" who can assist disaster victims complete an application for a loan or grant. To assist in CGMA disaster relief efforts, the CG can, upon CGMA request, assign collateral duty CGMA representatives from outside of the affected area to assist those in need with the application process. These CGMA representatives will ordinarily be assigned to Personnel Support Teams in the affected area. Further, CGMA has the ability to send personnel to disaster areas to directly triage victims and process claims for support. Additionally, eligible recipients may also contact one of the other Military Aid Societies or the American Red Cross for emergency assistance when they are unable to apply through CGMA under the CGMA reciprocal agreements. CGMA funds the grants and loans it distributes through fundraising and interest from investments. CG employees are permitted to solicit funds for CGMA in their official capacity. See 5 C.F.R. 2635.808(b).

Separate information is provided during the Annual Campaign by CGMA. COs/OINCs/supervisors and individuals may all use their official title, position and authority to speak, write and encourage other members of the Coast Guard to encourage them to donate to CGMA. Donations always are the members' choice.

## The Coast Guard Foundation, Chief Petty Officers Association, and Other Non-Federal Supporting Organizations

BLUF: Because neither the CGF nor the CPOA is considered a prohibited source, direct assistance provided *in accordance with this guidance* to individual CG members by the CGF and the CPOA is considered ethically permissible and does not require ethics clearance *before* distribution can begin. Neither the CG nor any individual CG member will solicit a gift from any non-federal entity following a disaster. If the CGF, the CPOA, or other non-federal supporting organizations desire to provide assistance they should contact the District Commander's Office for the affected area directly to facilitate efforts.

The principles discussed below might also apply to other non-federal supporting organizations that are also not prohibited sources. Whether and how other non-federal organizations are authorized to assist the CG or CG employees is within the discretion of CG Commanders, Commanding Officers, and Officers in Charge following consultation with their servicing legal office. Frequently, it is prudent to make potential donors aware of their ability to assist CG employees through CGMA, CGF, and the CPOA rather than undergo the time consuming legal vetting of an unfamiliar organization.

If contacted by the CGF or CPOA with an offer of support, the District Commander should assign a liaison officer to work with the CGF or CPOA to identify needs of affected CG people. Ordinarily, the CGF and CPOA will coordinate efforts with a single liaison officer to increase efficiency.

The following outlines the general process by which the CGF and CPOA will notify the CG of their intentions. The CG's relationship with the CGF is governed by COMDTINST M5760.12A. The CGF will notify the District Commander of the intention to provide assistance. The District Commander will

assign a Liaison Officer in an impacted area who may work directly with the CGF and CPOA to identify needs, facilitate connection between the CGF and beneficiaries, and provide information to employees to allay concerns about their ability to accept help. The CGF will notify the Office of the Vice Commandant (VCG), who serves as the official CG liaison to the CGF, to provide awareness about the general kinds of support CGF intends to provide directly to impacted employees and families. Although gifts from the CGF and CPOA to individuals that comply with this guidance are considered routine, ethically permissible, and require no further ethics clearance by attorneys, communication with Staff Judge Advocates and the Judge Advocate General's Office of General Law (CG-LGL) is helpful to anticipate unforeseen legal issues.

The composition of both the CGF and CPOA is regularly monitored by CGHQ and if the status of those organizations changes, guidance will be issued to Field Commands through their Staff Judge Advocates. Other than the CGF and CPOA, in assessing whether a supporting non-federal organization is a prohibited source, field commands will work with their servicing legal office to ascertain the non-federal entities status in accordance with COMDTINST M5760.14 (Acceptance and Accounting for Special Projects and Other Gifts to the CG from Non-Federal Sources) and the definition of a prohibited source in 5 C.F.R. § 2635.203(d).

## Direct Distribution of Gifts to Individuals from the CGF and CPOA

The CGF is a major relief provider to CG members and families affected by disasters. Most disaster related gifts will be processed under the OGE and CG Standards of Ethical Conduct personal gift rules. CG affiliated private organizations, such as the CPOA, have also been used as CGF distribution points in the past, leveraging knowledge of CPOA members about local conditions and families who are in the greatest need. CPOA has offered to work directly with the CGF by using its extensive network of 4,800 Retired, 2,800 active component, and 500 reserve component members.

The CGF has two funds from which they routinely provide assistance to CG people affected by disaster. The "Fallen Heroes Fund" is the fund used by the CGF to assist CG members and families who have experienced a death or debilitating injury or illness in the family. The CGF "Disaster Relief Fund" provides assistance to CG families affected by natural or man-made disasters, including the recent lapse in appropriations. Both the Fallen Heroes Fund and the Disaster Relief Fund are available to a class of CG employees that is not defined in a manner that specifically discriminates among CG employees on the basis of type of official responsibility or on a basis that favors those of a higher rank or rate of pay. Gifts distributed by the CGF through either the Fallen Heroes Fund or the Disaster Relief Fund are generally authorized pursuant to (c)(2)(iii) and may be provided "in kind" (e.g. CGF paying for airfare, lodging, meals etc.) or may be made through the distribution of cash cards or store cards as circumstances require.

Because the CGF is not a prohibited source, the CGF may make direct distribution of gifts to CG employees through its Fallen Heroes Fund and Disaster Relief Funds, including gifts in kind, cash cards, and store cards, pursuant to 5 C.F.R. 2635.204(c)(2)(iii) as a benefit available to the class defined by the CGF as long as the class does not discriminate on the basis of rank or official responsibility. The CGF may make those distributions directly using CGF employees, or may act through the CPOA.

To avoid confusion regarding the gift source or the appearance of a Standards of Ethical Conduct violation, any agent employed by the CGF should not be a prohibited source. Additionally, the CG may

appoint designated individuals at the unit to serve as a point of distribution of the CGF benefit. The member appointed should be the Command Senior Enlisted Leader (CSEL) if available.

Generally, wherever possible, except for the CSEL who is acting in an official CG capacity, active Component members of the CPOA should not be used as distribution channels for CGF or CPOA gifts to CG employees unless absolutely necessary (e.g. remote units OCONUS). This is because of appearance and preferential treatment concerns under the Standards of Conduct in 5 C.F.R. § 2635, Subpart C relating to gifts between CG employees.

Whichever entity serves as the point of distribution for the CGF, they should keep an accounting of the distribution and ensure that the benefit is not distributed in a manner that specifically discriminates among CG employees on the basis of type of official responsibility or on a basis that favors those of a higher rank or rate of pay. Proper distribution is critical to complying with the ethics rules set forth in 5 C.F.R. § 2635.204(c)(2)(iii). Doing so will establish a clear audit trail of gift distributions if the CG or CG members are accused of an ethics violation.

## Additional Guidance Regarding the CPOA and the CGEA

The CPOA is a non-profit military and veterans affairs association that was formed to advance the interests of CG Chief Petty Officers. The CGEA operates under the auspices of the CPOA and both organizations have expanded their mission set and are dedicated to supporting CG employees and their families. With a total retired, active component, and reserve component membership of over 10,000 members, about one-half of whom are retired, the CPOA and CGEA provide both an extensive network of members who are available to assist in the field following a disaster as well as a group of members who may be used to independently verify the needs of CG members who are receiving assistance from either the CGF or the CPOA.

To the extent authorized by the CGF or other non-federal entity wishing to support CG employees, members of the CPOA or CGEA when acting in their personal, off-duty, non-CG capacity, may routinely perform the following activities:

1. Assist eligible CG members of a defined class to complete a disaster relief application;
2. Serve as a verifying official for the CGF or other non-federal entity of damages incurred by an eligible member of the defined class;
3. Serve as point of distribution for benefits to eligible members of a defined class, including the distribution of cash or store cards;
4. Engage in fundraising, including soliciting gifts, to support the CPOA and the CGEA in accordance with the OGE and CG Standards of Ethical Conduct. However, no active component or reserve member may solicit a gift from a prohibited source or a subordinate.
5. Accept gifts on behalf of the CPOA and CGEA, including unsolicited gifts from prohibited sources. However, please see "Appearance Concerns" below before accepting a gift from a prohibited source.

Generally, while the CPOA can perform the first three points above, these activities may also be conducted by assigned CG active duty members (preferably senior enlisted members) in their official capacity where they are only providing factual information back to the CPOA or CGF in order to allow the CPOA or CGF to make an assessment regarding a beneficiary. To the extent these activities can be carried out by retired CPOA or CGEA members, thereby freeing active component members to engage in their official responsibilities, this is preferable.

## Appearance Concerns

When active duty members are acting on behalf of a non-federal entity for which they are a member, there are numerous opportunities for role confusion and appearance concerns, especially in the aftermath of a disaster when affected members need immediate assistance. For example, if an active duty member of the CPOA is acting as a point of distribution for CGF disaster relief, that member may be placed in a position of deciding whether and how much relief to provide to a supervisor who is responsible for that CPOA members marks, recommendation for advancement, and work assignments. Further, if an active component member of the CPOA receives an unsolicited gift from a prohibited source, receipt of that gift may look either like a federal felony bribe or receipt of payment for carrying out official responsibilities, also a felony.

Where members of an affiliated private organization are carrying on organizational activities instead of CG operations, the entire chain of command may be placed in the difficult situation of having to redirect their subordinate's activities to CG missions. Unless a member is in a liberty or leave status, their primary duty is to the CG. While Commands may be judicious in authorizing an absence for activities that benefit the CG in accordance with COMDTINST M1000.8A paragraph 2.A.10.a, carrying out CG operations is paramount.

## Best Practices

The CG does not endorse or encourage supporting organizations, especially those comprised of federal employees, to accept gifts from prohibited sources. Moreover, while the CG does not regulate the behavior of non-federal entities or retired members, the CG has concerns relating to the receipt of gifts from prohibited sources by organizations comprised largely of federal employees; especially when the individual receiving the gift on behalf of that non-federal organization is an active duty or civilian CG employee. The Combined CPOA and CGEA have as many retired as active members. To the maximum extent practicable, retired, not active component members, should be used to receive gifts from prohibited sources. Doing so avoids appearance concerns for active members and civilian employees under the bribery statute and other federal felony statutes.

To the maximum extent practicable, retired members of the CPOA should be used as points for distributions made to CG members and families. This avoids actual or appearance concerns under 5 C.F.R. § 2635, Subpart C relating to gifts between employees.

Retired members of the CPOA may be assigned as unit liaisons by the CGF to provide information to the CGF or other non-federal entities regarding unit or personnel impacts. Doing so avoids solicitation concerns for active component personnel under the standards of conduct.

Active, reserve, or retired members of the CPOA or CGEA, when carrying out representational activities on behalf of the CPOA or CGEA, may not be in uniform or use their rank, title, or position. It is



preferable that CPOA, CGEA, or other non-federal entity or affiliated private organizations members acting on behalf of their organization wear their organizational clothing or identification clearly indicating that they are acting in an unofficial, non-CG, capacity.

CPOA, CGEA, or other members of an affiliated private organization may organize an in-kind donation center onboard a CG facility with the approval of the Commander, Commanding Officer, or Officer in Charge on a basis that does not interfere with CG operations. Active component members may manage such a distribution center in a manner that does not interfere with their CG responsibilities and may use a de minimus amount of federal time and resources, or authorized absence granted at Command discretion, to manage collection and distribution of in-kind donations. Active duty members should not accept donations from prohibited sources. CPOA retirees are not prohibited from accepting donations from prohibited sources. All donations received from prohibited sources by CPOA members must occur off base.

Members of affiliated private organizations such as the CPOA or CGEA are permitted to fundraise in their personal, off-duty capacity in accordance with the fundraising rules set forth in COMDTINST M5370.8B, The CG Standards of Ethical Conduct. Disasters do not alter the fundamental rules relating to fundraising.

CG employees, whether acting in an official or unofficial capacity, may never solicit a gift from prohibited source. Further, when fundraising in a personal capacity, superiors must not solicit donations from subordinates. Fundraising in an unofficial capacity, as authorized in the CG Standards of Ethical Conduct, should not occur during personal time and may not be conducted while in uniform. Donations to the CPOA or CGEA from a non-federal source should not be accepted while the member is in a CG uniform or onboard a CG facility because it lends itself to the appearance either that the gift is being accepted by the CG or that the member is being offered the gift personally because of their official status.

## Gifts to the Coast Guard

BLUF: Where applicable, (c)(2)(iii) and the personal gift rules will be applied to ensure benefits may be distributed to CG employees or their families as quickly and efficiently as possible. Gifts that are intended to be gifts to the CG as described below will follow the standard CG gift process as described in COMDTINST M5760.14 or, if from the CGF, as described in COMDTINST M5760.12A. Loans and/or grants provided to individuals via CGMA are not considered gifts per federal ethics rules.

Ordinarily, to expedite gift distribution, the personal gift rules set forth in the OGE and CG Standards of Ethical Conduct will be applied whenever applicable. Some gifts, however, are not to individuals but to the CG. These gifts may, in turn, benefit CG employees and/or their families. In some instances, a gift could be accepted by the CG or it may be distributed to individuals in accordance with the OGE and CG Standards of Ethical Conduct.

For those gifts which are clearly intended to be a gift to the CG, (i.e., gifts to the CG in support of unit MWR Programs or MWR type activities) units should follow the regular gift process outlined in COMDTINST M5760.14 or, in the case of the CGF, COMDTINT M5760.12A. For example, if a local sporting goods store offered \$3K worth of athletic equipment to a local Sector, that gift offer would be forwarded to the District Commander for acceptance under COMDTINST M5760.14. To the contrary, if

the CGF desired to donate \$1K to the same Sector to replace athletic equipment damaged in a hurricane, that gift offer would be communicated by the CGF directly to CG-8 because all gifts to the CG from the CGF are communicated directly to CG-8 by the CGF in accordance with COMDTINST M5760.12A.

Other MWR related gifts that could be accepted either as a gift to the CG or directly by CG individuals under the personal gift rules. For example, the donation of a catered meal for displaced CG employees and their families or other activities designed for the recreational or entertainment benefit of CG members and / or their families, such as the distribution of event tickets, may also be accepted from the CGF pursuant to (c)(2)(iii).

In the post-disaster context, where applicable, the personal gift rules will ordinarily be applied unless the CG is specifically asked to process the gift as a gift to the CG. Except as specified in COMDTINST M5760.12A, the CGF should not inform CG members of the source of any gift received by the CGF from a CGF donor.

## Access to Coast Guard Units by Non-Federal Entities

BLUF: Observers from non-federal entities who wish to donate to the CG or its members may be granted access to impacted CG units for needs assessment in the wake of a disaster.

In addition to gifts to individuals, supporting organizations (including the CGF) might wish to offer a gift (either in-kind or of cash) in order to specifically benefit the impacted CG unit. These organizations typically request access to CG units in order to develop an independent needs assessment in order to build confidence that their donation will be put the best use.

In general, permitting representatives from supporting organizations that are not prohibited sources access to CG units presents little legal risk. Their presence, in and of itself, is not a gift. However, care must be exercised to avoid the appearance of solicitation. Thus, if asked by a supporting organization, CG officials may authorize unit visits but they should not initiate unit visits to avoid the appearance of solicitation. Ordinarily unit visits can be orchestrated by the liaison officer assigned by the District Commander in the affected area. Additionally, the CGF and other non-federal entities may work with members of the CPOA to gather information about impacted units and personnel as described above.

## In-Kind Donations Distribution/Disposal

BLUF: The CG has limited authority to actually distribute donated goods. However, in kind gifts donated by a non-federal entity that is not a prohibited source that may be authorized under (c)(2)(iii) may be distributed to CG personnel.

After disasters, members of the public, non-federal entities who are supporting organizations, and other CG members seek to provide in-kind donations for CG members impacted by the disaster. These goods are personal items such as clothing, food, and diapers, which come in large part from other CG employees, without being solicited or procured by CG personnel. Usually, these items are for individual use though the donors provide no intended recipient. These donation sources often reach out the CG for guidance on how to give.

However, the CG is ill-equipped to handles such donations. For example, after Hurricane Harvey, well-meaning donors donated over 30 pallets of goods designating Base New Orleans as the drop off point. This created logistical hurdles by taking up space and presenting serious questions surrounding our authority to move, dispose of and distribute the goods.

A best practice is to proactively communicate with the CPOA or other non-federal entity ahead of a disaster to establish clear expectations for gift collection and distribution. Potential donors of in-kind materials may be informed of the CG Spouses Club or the CPOA (or other supporting organizations) willingness to collect and distribute relief supplies. Space onboard CG facilities may be used to collect and disseminate these goods to CG personnel and their family members in a manner that does not interfere with CG operations.

Tangible items stowed onboard a CG facility following a disaster remain the property of the non-federal entity that collected and disseminated them. A de minimus use of federal time and equipment may be used to assist the non-federal entity to remove the items from onboard the CG facility, such as donating the items to a charity. Commands have the discretion to authorize a non-federal entity a de minimus use of space to retain items onboard a CG facility if requested by the supporting organization. Space must be available and the presence of the items must not interfere with CG operations.