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## **Ethical Issue: Deciding if Something is a Gift or a Bribe**

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# **Ethical Issue: Deciding if Something is a Gift or a Bribe**

by

Mark P. Rossow, PE, PhD

**A bribe:** *Something of value given with the intent of influencing the judgment or conduct of a person in a position of trust.*

**Introduction.** One of the most difficult aspects of ethical decision-making sometimes lies in deciding where to draw the line between what is acceptable behavior and what is not. Distinguishing between a gift and a bribe is a case in point.

It is easy to think of many situations where the gift/bribe question arises. For example, how large can a gift be before it becomes a bribe? What if a gift is small but is repeated weekly? Must limits be set for the cumulative value over some time period, such as a year? How is a value assigned to a gift? “Market value” seems like a reasonable answer, but the market value of some gifts is difficult to ascertain. What is the market value of “free attendance” for two to a private skybox at a ballpark to watch a major league baseball game? Are food and free parking included? Can the gift of free attendance at an important technical event be accepted, if it includes transportation in a limousine to the event? If a proposed gift is too large to accept, may the intended recipient suggest that the gift be given to a charity that the intended recipient names? If employees enter and win drawings at a free attendance conference, may they keep the prizes? What if the conference was by invitation only and was sponsored by a company in a position to profit by the employees’ decisions? Can an employee accept a free invitation to accompany her husband to attend his company’s conference in Hawaii, if the husband’s company would profit from his wife’s decisions in her job?

**Purpose of course.** As these questions make clear, drawing the line can be difficult. It is not surprising that while codes of ethics of professional engineering societies almost always condemn bribery, they provide little or no help in sorting out when a gift constitutes a bribe. Many large corporations publish guidance for employees about gift giving, but the guidance typically covers only a few cases and is couched in generalities. In contrast, the federal government has formulated detailed rules covering gifts given to executive-branch employees in many situations. The rules are published in the *Code of Federal Regulations* (CFR) and are illustrated through many examples. Even though the examples are intended for government employees (many of whom are engineers), they also apply to private-sector engineers in similar situations. The purpose of this course is to present selected CFR examples that furnish guidance on the ethics of gift giving. The examples are taken from the CFR section entitled, “Gifts from Outside Sources,” that lays out rules for accepting or declining gifts to employees in the executive branch of

government, when the giver is not a fellow executive branch employee. (The CFR also contains a section entitled “Gifts Between Employees.”)

**Some things to know about the CFR.**

The CFR (and the [Office of Government Ethics](#)) use the term “prohibited source” to refer to anyone seeking business with or official action by an employee's agency and anyone substantially affected by the performance of the employee's duties. For example, a company bidding for an agency contract or a person seeking an agency grant would be a prohibited source of gifts to employees of that agency.

The CFR states that, with some limitations, employees may accept unsolicited gifts with a market value of \$20 or less per occasion, aggregating to no more than \$50 in a calendar year from any single source.

Because government employees work for an organization funded by taxpayers and representing U.S. citizens, the CFR rules put great stress on not only avoiding bribery but also avoiding the *appearance* of bribery. For this reason, some of the rules about gift giving may strike many private-sector engineers as extreme. Nevertheless reading about extreme rules should make private-sector employees aware of potential problems in gift-giving that they had never even thought of before and may help them avoid awkward and legally precarious situations that can arise when gift-giving without thought leads to the appearance of bribery. Engineers who happen to work for a private engineering company that puts great stake in its reputation (or in its fear of being charged for bribery) may find the study of the CFR rules a useful supplement to their own company's policy on gift giving.

One aspect of the CFR rules that does not have an analogue in private industry is that some government employees have the power to regulate the behavior of private firms. Even though engineers working for a private company do not exercise such authority, they can benefit from understanding the need to be circumspect in giving a gift to a government employee.

The CFR, like many collections of rules and laws, tends to be hard to read because it is organized *for ease of citation*, rather than for ease of reading. Many headings are used so that individual paragraphs and sentences can be cited. The text is a bit easier to follow if the reader understands the hierarchy of the headings. The hierarchy is shown through the type of character and the indentation used in the lines below, but in the CFR no indentation is used:

- § – section symbol
  - (a) – lower case letter
    - (1) – Arabic numeral
      - (i) – Roman numeral
        - (A) – upper case letter

Examples:

“Paragraph (e)” refers to all text starting at the heading “(e)” and ending at the heading “(f)”. If there is no heading “(f)”, then the cited text ends at the next heading higher than “(e)”.

“Paragraph (b)(2)” refers to all text starting at the heading “(2)” contained within paragraph “(b)”, and ending at the heading “(3)”. If there is no “(3)”, then the cited text ends at the next heading higher than “(2)”.

“Paragraph (d)(4)(iv)” refers to all text starting at the heading “(iv)” contained within paragraph “(4)”, which in turn is contained within paragraph (d), and ending at the heading “(v)”. If there is no “(v)”, then the cited text ends at the next heading higher than “(iv)”. Note the use of Roman numerals, “iv” for 4 and “v” for 5.

**Format of the excerpts used in this paper.** Thirty-four examples have been chosen from among the examples in the “Gifts from Outside Sources” section of the CFR on the basis of which ones would be most likely applicable to engineers. Each example is shaded in blue and is preceded by the relevant legal statements governing it.

A few of the excerpts contain “outside” references to CFR sections—references that are not included in the “Gifts from Outside Sources” section. Most readers will be able to understand the passages in the excerpts without needing to look up the outside references. For the benefit of readers who might like to read the references, they are provided in the Appendix at the end of the paper.

**Caveat.** This course is not a substitute for legal advice from an attorney well-versed in bribery law. If the course has alerted readers to the potential dangers of a gift-giving situation that they otherwise would have missed and now realize they must consult with someone more knowledgeable, then the course will have served its purpose.

## Excerpts From Subpart B— Gifts From Outside Sources

The complete Subpart B may be accessed from the [Code of Federal Regulations website](#).

SOURCE: 81 FR 81648, Nov. 18, 2016, unless otherwise noted.

### §2635.203 Definitions.

(b) *Gift* includes 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. The term excludes the following:

(2) Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended primarily for presentation;

*Example 1 to paragraph (b)(2):* After giving a speech at the facility of a pharmaceutical company, a Government employee is presented with a glass paperweight in the shape of a pill capsule with the name of the company's latest drug and the date of the speech imprinted on the side. The employee may accept the paperweight because it is an item with little intrinsic value which is intended primarily for presentation.

*Example 2 to paragraph (b)(2):* After participating in a panel discussion hosted by an international media company, a Government employee is presented with an inexpensive portable music player emblazoned with the media company's logo. The portable music player has a market value of \$25. The employee may not accept the portable music player as it has a significant independent use as a music player rather than being intended primarily for presentation.

*Example 3 to paragraph (b)(2):* After giving a speech at a conference held by a national association of miners, a Department of Commerce employee is presented with a block of granite that is engraved with the association's logo, a picture of the Appalachian Mountains, the date of the speech, and the employee's name. The employee may accept this item because it is similar to a plaque, is designed primarily for presentation, and has little intrinsic value.

[Repeated from above:

(b) *Gift* includes 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. The term excludes the following: ]

(5) Rewards and prizes given to competitors in contests or events, including random drawings, open to the public unless the employee's entry into the contest or event is required as part of the employee's official duties;

*Example 1 to paragraph (b)(5):* A Government employee is attending a free trade show on official time. The trade show is held in a public shopping area adjacent to the employee's office building. The employee voluntarily enters a drawing at an individual vendor's booth which is open to the public. She fills in an entry form on the vendor's display table and drops it into the contest box. The employee may accept the resulting prize because entry into the contest was not required by or related to her official duties.

*Example 2 to paragraph (b)(5):* Attendees at a conference, which is not open to the public, are entered in a drawing for a weekend getaway to Bermuda as a result of being registered for the conference. A Government employee who attends the conference in his official capacity could not accept the prize under paragraph (b)(5) of this section, as the event is not open to the public.

[Repeated from above:

(b) *Gift* includes 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. The term excludes the following: ]

(8) Free attendance to an event provided by the sponsor of the event to:

(i) An employee who is assigned to present information on behalf of the agency at the event on any day when the employee is presenting;

(ii) An employee whose presence on any day of the event is deemed to be essential by the agency to the presenting employee's participation in the event, provided that the employee is accompanying the presenting employee; and

(iii) The spouse or one other guest of the presenting employee on any day when the employee is presenting, provided that others in attendance will generally be accompanied by a spouse or other guest, the offer of free attendance for the spouse or other guest is unsolicited, and the agency designee, orally or in writing, has authorized the presenting employee to accept;

*Example 1 to paragraph (b)(8):* An employee of the Department of the Treasury who is assigned to participate in a panel discussion of economic issues as part of a one-day conference may accept the sponsor's waiver of the conference fee. Under the separate authority of §2635.204(a) [See Appendix to this paper.], the employee may accept a token of appreciation that has a market value of \$20 or less.

*Example 2 to paragraph (b)(8):* An employee of the Securities and Exchange Commission is assigned to present the agency's views at a roundtable discussion of an ongoing working group. The employee may accept free attendance to the meeting under paragraph (b)(8) of this section because the employee has been assigned to present information at the meeting on behalf of the agency. If it is determined by the agency that it is essential that another employee accompany the presenting employee to the roundtable discussion, the accompanying employee may also accept free attendance to the meeting under paragraph (b)(8)(ii) of this section.

*Example 3 to paragraph (b)(8):* An employee of the United States Trade and Development Agency is invited to attend a cocktail party hosted by a prohibited source. The employee believes that he will have an opportunity to discuss official matters with other attendees while at the event. Although the employee may voluntarily discuss official matters with other attendees, the employee has not been assigned to present information on behalf of the agency. The employee may not accept free attendance to the event under paragraph (b)(8) of this section.

(c) *Market value* means the cost that a member of the general public would reasonably expect to incur to purchase the gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. The market value of a gift of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit is deemed to be the face value of the ticket.

*Example 1 to paragraph (c):* An employee who has been given a watch inscribed with the corporate logo of a prohibited source may determine its market value based on her observation that a comparable watch, not inscribed with a logo, generally sells for about \$50.

*Example 2 to paragraph (c):* During an official visit to a factory operated by a well-known athletic footwear manufacturer, an employee of the Department of Labor is offered a commemorative pair of athletic shoes manufactured at the factory. Although the cost incurred by the donor to manufacture the shoes was \$17, the market value of the shoes would be the \$100 that the employee would have to pay for the shoes on the open market.

*Example 3 to paragraph (c):* A prohibited source has offered a Government employee a ticket to a charitable event consisting of a cocktail reception to be followed by an evening of chamber music. Even though the food, refreshments, and entertainment provided at the event may be worth only \$20, the market value of the ticket is its \$250 face value.

*Example 4 to paragraph (c):* A company offers an employee of the Federal Communication Commission (FCC) free attendance for two to a private skybox at a ballpark to watch a major league baseball game. The skybox is leased annually by the company, which has business pending before the FCC. The skybox tickets provided to the employee do not have a face value. To determine the market value of the tickets, the employee must add the face value of two of the most expensive publicly available tickets to the game and the market value of any food, parking or other tangible benefits provided in connection with the gift of attendance that are not already included in the cost of the most expensive publicly available tickets.

*Example 5 to paragraph (c):* An employee of the Department of Agriculture is invited to a reception held by a prohibited source. There is no entrance fee to the reception event or to the venue. To determine the market value of the gift, the employee must add the market value of any entertainment, food, beverages, or other tangible benefit provided to attendees in connection with the reception, but need not consider the cost incurred by the sponsor to rent or maintain the venue where the event is held. The employee may rely on a per-person cost estimate provided by the sponsor of the event, unless the employee or an agency designee has determined that a reasonable person would find that the estimate is clearly implausible.

(f) *Indirectly solicited or accepted.* A gift which is solicited or accepted indirectly includes a gift:

(2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee, except the employee has not indirectly solicited or accepted a gift by the raising of funds or other support for a charitable organization if done in accordance with §2635.808 [See Appendix to this paper].

*Example 1 to paragraph (f)(2):* An employee who must decline a gift of a personal computer pursuant to this subpart may not suggest that the gift be given instead to one of five charitable organizations whose names are provided by the employee.

#### **§2635.204 Exceptions to the prohibition for acceptance of certain gifts.**

(a) *Gifts of \$20 or less.* An employee may accept unsolicited gifts having an aggregate market value of \$20 or less per source per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph (a) does not exceed \$50 in a calendar year. This exception does not apply to gifts of cash or of investment interests such as stock, bonds, or certificates of deposit. Where the market value of a gift or the aggregate market value of gifts offered on any single occasion exceeds \$20, the employee may not pay the excess value over \$20 in order to accept that portion of the gift or those gifts worth \$20. Where the aggregate value of tangible items offered on a single occasion exceeds \$20, the employee may decline any distinct and separate item in order to accept those items aggregating \$20 or less.

*Example 1 to paragraph (a):* An employee of the Securities and Exchange Commission and his spouse have been invited by a representative of a regulated entity to a community theater production, tickets to which have a face value of \$30 each. The aggregate market value of the gifts offered on this single occasion is \$60, \$40 more than the \$20 amount that may be accepted for a single event or presentation. The employee may not accept the gift of the evening of entertainment. He and his spouse may attend the play only if he pays the full \$60 value of the two tickets.

*Example 2 to paragraph (a):* An employee of the National Geospatial-Intelligence Agency has been invited by an association of cartographers to speak about her agency's role in the evolution of missile technology. At the conclusion of her speech, the association presents the employee a framed map with a market value of \$18 and a ceramic mug that has a market value of \$15. The employee may accept the map or the mug, but not both, because the aggregate value of these two tangible items exceeds \$20.

*Example 3 to paragraph (a):* On four occasions during the calendar year, an employee of the Defense Logistics Agency (DLA) was given gifts worth \$10 each by four employees of a corporation that is a DLA contractor. For purposes of applying the yearly \$50 limitation on gifts of \$20 or less from any one person, the four gifts must be aggregated because a person is defined at §2635.102(k) [See Appendix to this paper.] to mean not only the corporate entity, but its officers and employees as well. However, for purposes of applying the \$50 aggregate limitation, the employee would not have to include the value of a birthday present received from his cousin, who is employed by the same corporation, if he can accept the birthday present under the exception at paragraph (b) of this section for gifts based on a personal relationship.



(b) *Gifts based on a personal relationship.* An employee may accept a gift given by an individual under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history and nature of the relationship and whether the family member or friend personally pays for the gift.

*Example 1 to paragraph (b):* An employee of the Federal Deposit Insurance Corporation (FDIC) has been dating an accountant employed by a member bank. As part of its “Work-Life Balance” program, the bank has given each employee in the accountant’s division two tickets to a professional basketball game and has urged each to invite a family member or friend to share the evening of entertainment. Under the circumstances, the FDIC employee may accept the invitation to attend the game. Even though the tickets were initially purchased by the member bank, they were given without reservation to the accountant to use as she wished, and her invitation to the employee was motivated by their personal friendship.

*Example 2 to paragraph (b):* Three partners in a law firm that handles corporate mergers have invited an employee of the Federal Trade Commission (FTC) to join them in a golf tournament at a private club at the firm’s expense. The entry fee is \$500 per foursome. The employee cannot accept the gift of one-quarter of the entry fee even though he and the three partners have developed an amicable relationship as a result of the firm’s dealings with the FTC. As evidenced in part by the fact that the fees are to be paid by the firm, it is not a personal friendship but a business relationship that is the motivation behind the partners’ gift.

(e) *Gifts based on outside business or employment relationships.* An employee may accept meals, lodgings, transportation and other benefits:

(1) Resulting from the business or employment activities of an employee’s spouse when it is clear that such benefits have not been offered or enhanced because of the employee’s official position;

*Example 1 to paragraph (e)(1):* A Department of Agriculture employee whose spouse is a computer programmer employed by a Department of Agriculture contractor may attend the company’s annual retreat for all of its employees and their families held at a resort facility. However, under §2635.502 [See Appendix to this paper], the employee may be disqualified from performing official duties affecting her spouse’s employer.

*Example 2 to paragraph (e)(1):* Where the spouses of other clerical personnel have not been invited, an employee of the Defense Contract Audit Agency whose spouse is a clerical worker at a defense contractor may not attend the contractor’s annual retreat in Hawaii for corporate officers and members of the board of directors, even though his spouse received a special invitation for herself and the employee.

[Repeated from above:

(e) *Gifts based on outside business or employment relationships.* An employee may accept meals, lodgings, transportation and other benefits:]

(2) Resulting from the employee's outside business or employment activities when it is clear that such benefits are based on the outside business or employment activities and have not been offered or enhanced because of the employee's official status;

*Example 1 to paragraph (e)(2):* The members of an Army Corps of Engineers environmental advisory committee that meets six times per year are special Government employees. A member who has a consulting business may accept an invitation to a \$50 dinner from her corporate client, an Army construction contractor, unless, for example, the invitation was extended in order to discuss the activities of the advisory committee.

(g) *Gifts of free attendance at widely attended gatherings—(1) Authorization.* When authorized in writing by the agency designee pursuant to paragraph (g)(3) of this section, an employee may accept an unsolicited gift of free attendance at all or appropriate parts of a widely attended gathering. For an employee who is subject to a leave system, attendance at the event will be on the employee's own time or, if authorized by the employee's agency, on excused absence pursuant to applicable guidelines for granting such absence, or otherwise without charge to the employee's leave account.

(2) *Widely attended gatherings.* A gathering is widely attended if it is expected that a large number of persons will attend, that persons with a diversity of views or interests will be present, for example, if it is open to members from throughout the interested industry or profession or if those in attendance represent a range of persons interested in a given matter, and that there will be an opportunity to exchange ideas and views among invited persons.

(3) *Written authorization by the agency designee.* The agency designee may authorize an employee or employees to accept a gift of free attendance at all or appropriate parts of a widely attended gathering only if the agency designee issues a written determination after finding that:

(i) The event is a widely attended gathering, as set forth in paragraph (g)(2) of this section;

(ii) The employee's attendance at the event is in the agency's interest because it will further agency programs or operations;

(iii) The agency's interest in the employee's attendance outweighs the concern that the employee may be, or may appear to be, improperly influenced in the performance of official duties; and

(iv) If a person other than the sponsor of the event invites or designates the employee as the recipient of the gift of free attendance and bears the cost of that gift, the event is expected to be attended by more than 100 persons and the value of the gift of free attendance does not exceed \$390.

(4) *Determination of agency interest.* In determining whether the agency's interest in the employee's attendance outweighs the concern that the employee may be, or may appear to be,

improperly influenced in the performance of official duties, the agency designee may consider relevant factors including:

- (i) The importance of the event to the agency;
- (ii) The nature and sensitivity of any pending matter affecting the interests of the person who extended the invitation and the significance of the employee's role in any such matter;
- (iii) The purpose of the event;
- (iv) The identity of other expected participants;
- (v) Whether acceptance would reasonably create the appearance that the donor is receiving preferential treatment;
- (vi) Whether the Government is also providing persons with views or interests that differ from those of the donor with access to the Government; and
- (vii) The market value of the gift of free attendance.

(5) *Cost provided by person other than the sponsor of the event.* The cost of the employee's attendance will be considered to be provided by a person other than the sponsor of the event where such person designates the employee to be invited and bears the cost of the employee's attendance through a contribution or other payment intended to facilitate the employee's attendance. Payment of dues or a similar assessment to a sponsoring organization does not constitute a payment intended to facilitate a particular employee's attendance.

(6) *Accompanying spouse or other guest.* When others in attendance will generally be accompanied by a spouse or other guest, and where the invitation is from the same person who has invited the employee, the agency designee may authorize an employee to accept an unsolicited invitation of free attendance to an accompanying spouse or one other accompanying guest to participate in all or a portion of the event at which the employee's free attendance is permitted under paragraph (g)(1) this section. The authorization required by this paragraph (g)(6) must be provided in writing.

*Example 1 to paragraph (g):* An aerospace industry association that is a prohibited source sponsors an industry-wide, two-day seminar for which it charges a fee of \$800 and anticipates attendance of approximately 400. An Air Force contractor pays \$4,000 to the association so that the association can extend free invitations to five Air Force officials designated by the contractor. The Air Force officials may not accept the gifts of free attendance because (a) the contractor, rather than the association, provided the cost of their attendance; (b) the contractor designated the specific employees to receive the gift of free attendance; and (c) the value of the gift exceeds \$390 per employee.

*Example 2 to paragraph (g):* An aerospace industry association that is a prohibited source sponsors an industry-wide, two-day seminar for which it charges a fee of \$25 and anticipates

attendance of approximately 50. An Air Force contractor pays \$125 to the association so that the association can extend free invitations to five Air Force officials designated by the contractor. The Air Force officials may not accept the gifts of free attendance because (a) the contractor, rather than the association, provided the cost of their attendance; (b) the contractor designated the specific employees to receive the gift of free attendance; and (c) the event was not expected to be attended by more than 100 persons.

*Example 3 to paragraph (g):* An aerospace industry association that is a prohibited source sponsors an industry-wide, two-day seminar for which it charges a fee of \$800 and anticipates attendance of approximately 400. An Air Force contractor pays \$4,000 in order that the association might invite any five Federal employees. An Air Force official to whom the sponsoring association, rather than the contractor, extended one of the five invitations could attend if the employee's participation were determined to be in the interest of the agency and he received a written authorization.

*Example 4 to paragraph (g):* An employee of the Department of Transportation is invited by a news organization to an annual press dinner sponsored by an association of press organizations. Tickets for the event cost \$390 per person and attendance is limited to 400 representatives of press organizations and their guests. If the employee's attendance is determined to be in the interest of the agency and she receives a written authorization from the agency designee, she may accept the invitation from the news organization because more than 100 persons will attend and the cost of the ticket does not exceed \$390. However, if the invitation were extended to the employee and an accompanying guest, the employee's guest could not be authorized to attend for free because the market value of the gift of free attendance would exceed \$390.

(m) *Gifts of informational materials.* (1) An employee may accept unsolicited gifts of informational materials, provided that:

(i) The aggregate market value of all informational materials received from any one person does not exceed \$100 in a calendar year; or

(ii) If the aggregate market value of all informational materials from the same person exceeds \$100 in a calendar year, an agency designee has made a written determination after finding that acceptance by the employee would not be inconsistent with the standard set forth in §2635.201(b) [See Appendix to this paper].

(2) *Informational materials* are writings, recordings, documents, records, or other items that:

(i) Are educational or instructive in nature;

(ii) Are not primarily created for entertainment, display, or decoration; and

(iii) Contain information that relates in whole or in part to the following categories:

(A) The employee's official duties or position, profession, or field of study;

(B) A general subject matter area, industry, or economic sector affected by or involved in the programs or operations of the agency; or

(C) Another topic of interest to the agency or its mission.

*Example 1 to paragraph (m):* An analyst at the Agricultural Research Service receives an edition of an agricultural research journal in the mail from a consortium of private farming operations concerned with soil toxicity. The journal edition has a market value of \$75. The analyst may accept the gift.

*Example 2 to paragraph (m):* An inspector at the Mine Safety and Health Administration receives a popular novel with a market value of \$25 from a mine operator. Because the novel is primarily for entertainment purposes, the inspector may not accept the gift.

*Example 3 to paragraph (m):* An employee at the Department of the Army is offered an encyclopedia on cyberwarfare from a prohibited source. The cost of the encyclopedia is far in excess of \$100. The agency designee determines that acceptance of the gift would be inconsistent with the standard set out in §2635.201(b) [See Appendix to this paper]. The employee may not accept the gift under paragraph (m) of this section.

#### **§2635.205 Limitations on use of exceptions.**

Notwithstanding any exception provided in this subpart, other than §2635.204(j) [See Appendix to this paper], an employee may not:

(c) Accept gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using the employee's public office for private gain;

*Example 1 to paragraph (c):* A purchasing agent for a Department of Veterans Affairs medical center routinely deals with representatives of pharmaceutical manufacturers who provide information about new company products. Because of his crowded calendar, the purchasing agent has offered to meet with manufacturer representatives during his lunch hours Tuesdays through Thursdays, and the representatives routinely arrive at the employee's office bringing a sandwich and a soft drink for the employee. Even though the market value of each of the lunches is less than \$6 and the aggregate value from any one manufacturer does not exceed the \$50 aggregate limitation in §2635.204(a) [See Appendix to this paper.] on gifts of \$20 or less, the practice of accepting even these modest gifts on a recurring basis is improper.

#### **§2635.206 Proper disposition of prohibited gifts.**

(a) Unless a gift is accepted by an agency acting under specific statutory authority, an employee who has received a gift that cannot be accepted under this subpart must dispose of the gift in accordance with the procedures set forth in this section. The employee must promptly complete the authorized disposition of the gift. The obligation to dispose of a gift that cannot be accepted under this subpart is independent of an agency's decision regarding corrective or disciplinary action under §2635.106 [See Appendix to this paper].

(1) *Gifts of tangible items.* The employee must promptly return any tangible item to the donor or pay the donor its market value; or, in the case of a tangible item with a market value of \$100 or less, the employee may destroy the item. An employee who cannot ascertain the actual market value of an item may estimate its market value by reference to the retail cost of similar items of like quality.

*Example 1 to paragraph (a)(1):* A Department of Commerce employee received a \$25 T-shirt from a prohibited source after providing training at a conference. Because the gift would not be permissible under an exception to this subpart, the employee must either return or destroy the T-shirt or promptly reimburse the donor \$25. Destruction may be carried out by physical destruction or by permanently discarding the T-shirt by placing it in the trash.

*Example 2 to paragraph (a)(1):* To avoid public embarrassment to the seminar sponsor, an employee of the National Park Service did not decline a barometer worth \$200 given at the conclusion of his speech on Federal lands policy. To comply with this section, the employee must either promptly return the barometer or pay the donor the market value of the gift. Alternatively, the National Park Service may choose to accept the gift if permitted under specific statutory gift acceptance authority. The employee may not destroy this gift, as the market value is in excess of \$100.

[Repeated from above:

(a) Unless a gift is accepted by an agency acting under specific statutory authority, an employee who has received a gift that cannot be accepted under this subpart must dispose of the gift in accordance with the procedures set forth in this section. The employee must promptly complete the authorized disposition of the gift. The obligation to dispose of a gift that cannot be accepted under this subpart is independent of an agency's decision regarding corrective or disciplinary action under §2635.106. {See Appendix to this paper.} ]

(2) *Gifts of perishable items.* When it is not practical to return a tangible item in accordance with paragraph (a)(1) of this section because the item is perishable, the employee may, at the discretion of the employee's supervisor or the agency designee, give the item to an appropriate charity, share the item within the recipient's office, or destroy the item.

*Example 1 to paragraph (a)(2):* With approval by the recipient's supervisor, a floral arrangement sent by a disability claimant to a helpful employee of the Social Security Administration may be placed in the office's reception area.

## **Appendix.**

The principal rules and regulations issued by U.S. federal agencies applicable to administrative personnel are given in the United States Code of Federal Regulations (CFR). The CFR is comprised of fifty titles.

Title 5 of the CFR is “Administrative Personnel.”

Chapter XVI of Title 5 is “Office of Government Ethics.”

Subchapter B of Chapter XVI is “Government Ethics”.

Part 2635 of Subchapter B is “STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

The subparts of Part 2635 are

Subpart A—General Provisions

Subpart B—Gifts From Outside Sources

Subpart C—Gifts Between Employees

Subpart D—Conflicting Financial Interests

Subpart E—Impartiality in Performing Official Duties

Subpart F—Seeking Other Employment

Subpart G—Misuse of Position

Subpart H—Outside Activities

Subpart I—Related Statutory Authorities

Part 2635 may be accessed from the [Electronic Code of Federal Regulations website](#).

## **Excerpts from Part 2635 referenced in the above examples**

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### **§2635.102 Definitions.**

(k) *Person* means an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity. For purposes of this part, a corporation will be deemed to control a subsidiary if it owns 50 percent or more of the subsidiary's voting securities. The term is all-inclusive and applies to commercial ventures and nonprofit organizations as well as to foreign, State, and local governments, including the Government of the District of Columbia. It does not include any agency or other entity of the Federal Government or any officer or employee thereof when acting in his official capacity on behalf of that agency or entity.

### **§2635.106 Disciplinary and corrective action.**

(a) Except as provided in §2635.107, a violation of this part or of supplemental agency regulations may be cause for appropriate corrective or disciplinary action to be taken under applicable Government wide regulations or agency procedures. Such action may be in addition to any action or penalty prescribed by law.

(b) It is the responsibility of the employing agency to initiate appropriate disciplinary or corrective action in individual cases. However, corrective action may be ordered or disciplinary action recommended by the Director of the Office of Government Ethics under the procedures at part 2638 of this chapter.

(c) A violation of this part or of supplemental agency regulations, as such, does not create any right or benefit, substantive or procedural, enforceable at law by any person against the United States, its agencies, its officers or employees, or any other person. Thus, for example, an individual who alleges that an employee has failed to adhere to laws and regulations that provide equal opportunity regardless of race, color, religion, sex, national origin, age, or handicap is required to follow applicable statutory and regulatory procedures, including those of the Equal Employment Opportunity Commission.

### **§2635.201 Overview and considerations for declining otherwise permissible gifts.**

(b) *Considerations for declining otherwise permissible gifts.* (1) Every employee has a fundamental responsibility to the United States and its citizens to place loyalty to the Constitution, laws, and ethical principles above private gain. An employee's actions should promote the public's trust that this responsibility is being met. For this reason, employees should consider declining otherwise permissible gifts if they believe that a reasonable person with knowledge of the relevant facts would question the employee's integrity or impartiality as a result of accepting the gift.



(2) An employee who is considering whether acceptance of a gift would lead a reasonable person with knowledge of the relevant facts to question his or her integrity or impartiality may consider, among other relevant factors, whether:

(i) The gift has a high market value;

(ii) The timing of the gift creates the appearance that the donor is seeking to influence an official action;

(iii) The gift was provided by a person who has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; and

(iv) Acceptance of the gift would provide the donor with significantly disproportionate access.

(3) Notwithstanding paragraph (b)(1) of this section, an employee who accepts a gift that qualifies for an exception under §2635.204 does not violate this subpart or the Principles of Ethical Conduct set forth in §2635.101(b).

(4) Employees who have questions regarding this subpart, including whether the employee should decline a gift that would otherwise be permitted under an exception found in §2635.204, should seek advice from an agency ethics official.

#### **§2635.204 Exceptions to the prohibition for acceptance of certain gifts.**

Subject to the limitations in §2635.205, this section establishes exceptions to the prohibitions set forth in §2635.202(a) and (b). Even though acceptance of a gift may be permitted by one of the exceptions contained in this section, it is never inappropriate and frequently prudent for an employee to decline a gift if acceptance would cause a reasonable person to question the employee's integrity or impartiality. Section 2635.201(b) identifies considerations for declining otherwise permissible gifts.

(a) *Gifts of \$20 or less.* An employee may accept unsolicited gifts having an aggregate market value of \$20 or less per source per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph (a) does not exceed \$50 in a calendar year. This exception does not apply to gifts of cash or of investment interests such as stock, bonds, or certificates of deposit. Where the market value of a gift or the aggregate market value of gifts offered on any single occasion exceeds \$20, the employee may not pay the excess value over \$20 in order to accept that portion of the gift or those gifts worth \$20. Where the aggregate value of tangible items offered on a single occasion exceeds \$20, the employee may decline any distinct and separate item in order to accept those items aggregating \$20 or less.

(j) *Gifts to the President or Vice President.* Because of considerations relating to the conduct of their offices, including those of protocol and etiquette, the President or the Vice President may accept any gift on his or her own behalf or on behalf of any family member, provided that such

acceptance does not violate §2635.205(a) or (b), 18 U.S.C. 201(b) or 201(c)(3), or the Constitution of the United States.

**§2635.502 Personal and business relationships.**

(a) *Consideration of appearances by the employee.* Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.

(1) In considering whether a relationship would cause a reasonable person to question his impartiality, an employee may seek the assistance of his supervisor, an agency ethics official or the agency designee.

(2) An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.

(b) *Definitions.* For purposes of this section:

(1) An employee has a *covered relationship* with:

(i) A person, other than a prospective employer described in §2635.603(c), with whom the employee has or seeks a business, contractual or other financial relationship that involves other than a routine consumer transaction;

NOTE: An employee who is seeking employment within the meaning of §2635.603 shall comply with subpart F of this part rather than with this section.

(ii) A person who is a member of the employee's household, or who is a relative with whom the employee has a close personal relationship;

(iii) A person for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;

(iv) Any person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or

(v) An organization, other than a political party described in 26 U.S.C. 527(e), in which the employee is an active participant. Participation is active if, for example, it involves service as an official of the organization or in a capacity similar to that of a committee or subcommittee chairperson or spokesperson, or participation in directing the activities of the organization. In other cases, significant time devoted to promoting specific programs of the organization, including coordination of fundraising efforts, is an indication of active participation. Payment of dues or the donation or solicitation of financial support does not, in itself, constitute active participation.

NOTE: Nothing in this section shall be construed to suggest that an employee should not participate in a matter because of his political, religious or moral views.

(2) *Direct and predictable effect* has the meaning set forth in §2635.402(b)(1).

(3) *Particular matter involving specific parties* has the meaning set forth in §2637.102(a)(7) of this chapter.

(c) *Determination by agency designee.* Where he has information concerning a potential appearance problem arising from the financial interest of a member of the employee's household in a particular matter involving specific parties, or from the role in such matter of a person with whom the employee has a covered relationship, the agency designee may make an independent determination as to whether a reasonable person with knowledge of the relevant facts would be likely to question the employee's impartiality in the matter. Ordinarily, the agency designee's determination will be initiated by information provided by the employee pursuant to paragraph (a) of this section. However, at any time, including after the employee has disqualified himself from participation in a matter pursuant to paragraph (e) of this section, the agency designee may make this determination on his own initiative or when requested by the employee's supervisor or any other person responsible for the employee's assignment.

(1) If the agency designee determines that the employee's impartiality is likely to be questioned, he shall then determine, in accordance with paragraph (d) of this section, whether the employee should be authorized to participate in the matter. Where the agency designee determines that the employee's participation should not be authorized, the employee will be disqualified from participation in the matter in accordance with paragraph (e) of this section.

(2) If the agency designee determines that the employee's impartiality is not likely to be questioned, he may advise the employee, including an employee who has reached a contrary conclusion under paragraph (a) of this section, that the employee's participation in the matter would be proper.

(d) *Authorization by agency designee.* Where an employee's participation in a particular matter involving specific parties would not violate 18 U.S.C. 208(a), but would raise a question in the mind of a reasonable person about his impartiality, the agency designee may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the

concern that a reasonable person may question the integrity of the agency's programs and operations. Factors which may be taken into consideration include:

- (1) The nature of the relationship involved;
- (2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;
- (3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) The sensitivity of the matter;
- (5) The difficulty of reassigning the matter to another employee; and
- (6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Authorization by the agency designee shall be documented in writing at the agency designee's discretion or when requested by the employee. An employee who has been authorized to participate in a particular matter involving specific parties may not thereafter disqualify himself from participation in the matter on the basis of an appearance problem involving the same circumstances that have been considered by the agency designee.

(e) *Disqualification.* Unless the employee is authorized to participate in the matter under paragraph (d) of this section, an employee shall not participate in a particular matter involving specific parties when he or the agency designee has concluded, in accordance with paragraph (a) or (c) of this section, that the financial interest of a member of the employee's household, or the role of a person with whom he has a covered relationship, is likely to raise a question in the mind of a reasonable person about his impartiality. Disqualification is accomplished by not participating in the matter.

(1) *Notification.* An employee who becomes aware of the need to disqualify himself from participation in a particular matter involving specific parties to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a particular matter involving specific parties from which he is disqualified.

(2) *Documentation.* An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is specifically asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement.

However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

(f) *Relevant considerations.* An employee's reputation for honesty and integrity is not a relevant consideration for purposes of any determination required by this section.

### **§2635.808 Fundraising activities.**

An employee may engage in fundraising only in accordance with the restrictions in part 950 of this title on the conduct of charitable fundraising in the Federal workplace and in accordance with paragraphs (b) and (c) of this section.

(a) *Definitions.* For purposes of this section: (1) *Fundraising* means the raising of funds for a nonprofit organization, other than a political organization as defined in 26 U.S.C. 527(e), through:

(i) Solicitation of funds or sale of items; or

(ii) Participation in the conduct of an event by an employee where any portion of the cost of attendance or participation may be taken as a charitable tax deduction by a person incurring that cost.

(2) *Participation in the conduct of an event* means active and visible participation in the promotion, production, or presentation of the event and includes serving as honorary chairperson, sitting at a head table during the event, and standing in a reception line. The term does not include mere attendance at an event provided that, to the employee's knowledge, his attendance is not used by the nonprofit organization to promote the event. While the term generally includes any public speaking during the event, it does not include the delivery of an official speech as defined in paragraph (a)(3) of this section or any seating or other participation appropriate to the delivery of such a speech. Waiver of a fee for attendance at an event by a participant in the conduct of that event does not constitute a gift for purposes of subpart B of this part.

NOTE: This section does not prohibit fundraising for a political party, candidate for partisan political office, or partisan political group. However, there are statutory restrictions that apply to political fundraising. For example, under the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323(a), employees may not knowingly solicit, accept, or receive a political contribution from any person, except under limited circumstances. In addition, employees are prohibited by 18 U.S.C. 607 from soliciting or receiving political contributions in Federal offices, and, except as permitted by the Hatch Act Reform Amendments, are prohibited by 18 U.S.C. 602 from knowingly soliciting political contributions from other employees.

(3) *Official speech* means a speech given by an employee in his official capacity on a subject matter that relates to his official duties, provided that the employee's agency has determined that the event at which the speech is to be given provides an appropriate forum for the dissemination of the information to be presented and provided that the employee does not request donations or other support for the nonprofit organization. Subject matter relates to an employee's official duties

if it focuses specifically on the employee's official duties, on the responsibilities, programs, or operations of the employee's agency as described in §2635.807(a)(2)(i)(E), or on matters of Administration policy on which the employee has been authorized to speak.

(4) *Personally solicit* means to request or otherwise encourage donations or other support either through person-to-person contact or through the use of one's name or identity in correspondence or by permitting its use by others. It does not include the solicitation of funds through the media or through either oral remarks, or the contemporaneous dispatch of like items of mass-produced correspondence, if such remarks or correspondence are addressed to a group consisting of many persons, unless it is known to the employee that the solicitation is targeted at subordinates or at persons who are prohibited sources within the meaning of §2635.203(d). It does not include behind-the-scenes assistance in the solicitation of funds, such as drafting correspondence, stuffing envelopes, or accounting for contributions.

(b) *Fundraising in an official capacity.* An employee may participate in fundraising in an official capacity if, in accordance with a statute, Executive order, regulation or otherwise as determined by the agency, he is authorized to engage in the fundraising activity as part of his official duties. When authorized to participate in an official capacity, an employee may use his official title, position and authority.

(c) *Fundraising in a personal capacity.* An employee may engage in fundraising in his personal capacity provided that he does not:

(1) Personally solicit funds or other support from a subordinate or from any person:

(i) Known to the employee, if the employee is other than a special Government employee, to be a prohibited source within the meaning of §2635.203(d); or

(ii) Known to the employee, if the employee is a special Government employee, to be a prohibited source within the meaning of §2635.203(d)(4) that is a person whose interests may be substantially affected by performance or nonperformance of his official duties;

(2) Use or permit the use of his official title, position or any authority associated with his public office to further the fundraising effort, except that an employee who is ordinarily addressed using a general term of address, such "The Honorable," or a rank, such as a military or ambassadorial rank, may use or permit the use of that term of address or rank for such purposes; or

(3) Engage in any action that would otherwise violate this part.