CAN THIS PAYMENT BE ACCEPTED?

Guidance for 18 U.S.C. § 209 and 5 C.F.R. § 2635.503 Issues

Is the payee an Executive branch employee or an appointee who has begun the duties of his/her office at the time the payment is made?

NO →

Does the payment constitute an **"extraordinary payment"**?

Is it any item with a value in excess of $10,000, which is paid:

- On the basis of a determination made after it became known to the former employer that the individual was being considered for or had accepted a government position; and
- Other than pursuant to an established compensation, partnership or benefits program (contained in bylaws, a contract, or other written form or is there a history of similar payments made to those not entering Federal service).

NO ↓ No recusal necessary

YES ↓ Employee is **disqualified** from participating in **any particular matter in which the former employer is a party or represents a party** for **two years** from the date the payment is received.

YES ↓

Is the payment from a source other than the U.S. Government?

NO → **No 18 U.S.C § 209 violation**

YES ↓

Is the payment anything of monetary value?

NO → **No 18 U.S.C § 209 violation**

YES ↓

Is the payment intended to be compensation for services as an employee of the United States?

Review relevant factors to assess intent of the parties:

- What is the nature of the services provided by the payee?
- Did the payor express his/her intent to compensate for gov't services?
- Is the employee in a position to influence the gov't on behalf of the payor?
- Is there a substantial relationship or pattern of dealings between the payee's agency and the payor?
- Is the compensation given because of the employee's official position?
- Is the payor also a gov't employee?
- Do circumstances indicate the payment is motivated by something other than to compensate for gov't service?
- Are similar payments made to non-gov't employees?
- Is the payment a *bona fide* public service award?

NO → **No 18 U.S.C § 209 violation**

YES ↓

Does an exception apply?

YES ↓ **No 18 U.S.C § 209 violation**

NO ↓ **Potential 18 U.S.C § 209 violation**