

Subpart B— Gifts From Outside Sources

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§2635.201 Overview and considerations for declining otherwise permissible gifts.

(a) *Overview.* This subpart contains standards that prohibit an employee from soliciting or accepting any gift from a prohibited source or any gift given because of the employee's official position, unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subpart.

(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.

Example 1 to paragraph (b): An employee of the Peace Corps is in charge of making routine purchases of office supplies. After a promotional presentation to highlight several new products, a vendor offers to buy the employee lunch, which costs less than \$20. The employee is concerned that a reasonable person may question her impartiality in accepting the free lunch, as the timing of the offer indicates that the donor may be seeking to influence an official action and the company has interests that may be substantially affected by the performance or nonperformance of the employee's duties. As such, although acceptance of the gift may be permissible under §2635.204(a), the employee decides to decline the gift.

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§2635.202 General prohibition on solicitation or acceptance of gifts.

(a) *Prohibition on soliciting gifts.* Except as provided in this subpart, an employee may not, directly or indirectly:

- (1) Solicit a gift from a prohibited source; or
- (2) Solicit a gift to be given because of the employee's official position.

(b) *Prohibition on accepting gifts.* Except as provided in this subpart, an employee may not, directly or indirectly:

- (1) Accept a gift from a prohibited source; or
- (2) Accept a gift given because of the employee's official position.

(c) *Relationship to illegal gratuities statute.* A gift accepted pursuant to an exception found in this subpart will not constitute an illegal gratuity otherwise prohibited by 18 U.S.C. 201(c)(1)(B), unless it is accepted in return for being influenced in the performance of an official act. As more fully described in §2635.205(d)(1), an employee may not solicit or accept a gift if to do so would be prohibited by the Federal bribery statute, 18 U.S.C. 201(b).

Example 1 to paragraph (c): A Government contractor who specializes in information technology software has offered an employee of the Department of Energy's information technology acquisition division a \$15 gift card to a local restaurant if the employee will recommend to the agency's contracting officer that she select the contractor's products during the next acquisition. Even though the gift card is less than \$20, the employee may not accept the gift under §2635.204(a) because it is conditional upon official action by the employee. Pursuant to §§2635.202(c) and 2635.205(a), notwithstanding any exception to the rule, an employee may not accept a gift in return for being influenced in the performance of an official act.

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§2635.203 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Agency* has the meaning set forth in §2635.102(a). However, for purposes of this subpart, an executive department, as defined in 5 U.S.C. 101, may, by supplemental agency regulation, designate as a separate agency any component of that department which the department determines exercises distinct and separate functions.

(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:

- (1) Modest items of food and non-alcoholic refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal;
- (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.

(3) Loans from banks and other financial institutions on terms generally available to the public;

(4) Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all Government employees or all uniformed military personnel, whether or not restricted on the basis of geographic considerations;

(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.

(6) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a current or former employer;

(7) Anything which is paid for by the Government or secured by the Government under Government contract;

Example 1 to paragraph (b)(7): An employee at the Occupational Safety and Health Administration is assigned to travel away from her duty station to conduct an investigation of a collapse at a construction site. The employee's agency is paying for her travel expenses, including her airfare. The employee may accept and retain travel promotional items, such as frequent flyer miles, received as a result of her official travel, to the extent permitted by 5 U.S.C. 5702, note, and 41 CFR part 301-53.

(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), 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.

(9) Any gift accepted by the Government under specific statutory authority, including:

(i) Travel, subsistence, and related expenses accepted by an agency under the authority of 31 U.S.C. 1353 in connection with an employee's attendance at a meeting or similar function relating to the employee's official duties which take place away from the employee's duty station, provided that the agency's acceptance is in accordance with the implementing regulations at 41 CFR chapter 304; and

(ii) Other gifts provided in-kind which have been accepted by an agency under its agency gift acceptance statute; and

(10) Anything for which market value is paid by the employee.

(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.

(d) *Prohibited source* means any person who:

(1) Is seeking official action by the employee's agency;

(2) Does business or seeks to do business with the employee's agency;

(3) Conducts activities regulated by the employee's agency;

(4) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; or

(5) Is an organization a majority of whose members are described in paragraphs (d)(1) through (4) of this section.

(e) *Given because of the employee's official position.* A gift is given because of the employee's official position if the gift is from a person other than an employee and would not have been given had the employee not held the status, authority, or duties associated with the employee's Federal position.

NOTE TO PARAGRAPH (E): Gifts between employees are subject to the limitations set forth in subpart C of this part.

Example 1 to paragraph (e): Where free season tickets are offered by an opera guild to all members of the Cabinet, the gift is offered because of their official positions.

Example 2 to paragraph (e): Employees at a regional office of the Department of Justice (DOJ) work in Government-leased space at a private office building, along with various private business tenants. A major fire in the building during normal office hours causes a traumatic experience for all occupants of the building in making their escape, and it is the subject of widespread news coverage. A corporate hotel chain, which does not meet the definition of a prohibited source for DOJ, seizes the moment and announces that it will give a free night's lodging to all building occupants and their families, as a public goodwill gesture. Employees of DOJ may accept, as this gift is not being given because of their Government positions. The donor's motivation for offering this gift is unrelated to the DOJ employees' status, authority, or duties associated with their Federal position, but instead is based on their mere presence in the building as occupants at the time of the fire.

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

(1) Given with the employee's knowledge and acquiescence to the employee's parent, sibling, spouse, child, dependent relative, or a member of the employee's household 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, 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.

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.

(g) *Free attendance* includes waiver of all or part of the fee for an event or the provision of food, refreshments, entertainment, instruction or materials furnished to all attendees as an integral part of the event. It does not include travel expenses, lodgings, or entertainment collateral to the event. It does not include meals taken other than in a group setting with all other attendees, unless the employee is a presenter at the event and is invited to a separate meal for participating presenters that is hosted by the sponsor of the event. Where the offer of free attendance has been extended to an accompanying spouse or other guest, the market value of the gift of free attendance includes the market value of free attendance by both the employee and the spouse or other guest.

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§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.

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) 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.

Example 4 to paragraph (a): Under the authority of 31 U.S.C. 1353 for agencies to accept payments from non-Federal sources in connection with attendance at certain meetings or similar functions, the Environmental Protection Agency (EPA) has accepted an association's gift of travel expenses and conference fees for an employee to attend a conference on the long-term effect of radon exposure. While at the conference, the employee may accept a gift of \$20 or less from the association or from another person attending the conference even though it was not approved in advance by the EPA. Although 31 U.S.C. 1353 is the authority under which the EPA accepted the gift to the agency of travel expenses and conference fees, a gift of \$20 or less accepted under paragraph (a) of this section is a gift to the employee rather than to her employing agency.

Example 5 to paragraph (a): During off-duty time, an employee of the Department of Defense (DoD) attends a trade show involving companies that are DoD contractors. He is offered software worth \$15 at X Company's booth, a calendar worth \$12 at Y Company's booth, and a deli lunch worth \$8 from Z Company. The employee may accept all three of these items because they do not exceed \$20 per source, even though they total more than \$20 at this single occasion.

Example 6 to paragraph (a): An employee of the Department of Defense (DoD) is being promoted to a higher level position in another DoD office. Six individuals, each employed by a different defense contractor, who have worked with the DoD employee over the years, decide to act in concert to pool their resources to buy her a nicer gift than each could buy her separately. Each defense contractor employee contributes \$20 to buy a desk clock for the DoD employee that has a market value of \$120. Although each of the contributions does not exceed the \$20 limit, the employee may not accept the \$120 gift because it is a single gift that has a market value in excess of \$20.

Example 7 to paragraph (a): During a holiday party, an employee of the Department of State is given a \$15 store gift card to a national coffee chain by an agency contractor. The employee may accept the card as the market value is less than \$20. The employee could not, however, accept a gift card that is issued by a credit card company or other financial institution, because such a card is equivalent to a gift of cash.

(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.

Example 3 to paragraph (b): A Peace Corps employee enjoys using a social media site on the internet in his personal capacity outside of work. He has used the site to keep in touch with friends, neighbors, coworkers, professional contacts, and other individuals he has met over the years through both work and personal activities. One of these individuals works for a contractor that

provides language services to the Peace Corps. The employee was acting in his official capacity when he met the individual at a meeting to discuss a matter related to the contract between their respective employers. Thereafter, the two communicated occasionally regarding contract matters. They later also granted one another access to join their social media networks through their respective social media accounts. However, they did not communicate further in their personal capacities, carry on extensive personal interactions, or meet socially outside of work. One day, the individual, whose employer continues to serve as a Peace Corps contractor, contacts the employee to offer him a pair of concert tickets worth \$30 apiece. Although the employee and the individual are connected through social media, the circumstances do not demonstrate that the gift was clearly motivated by a personal relationship, rather than the position of the employee, and therefore the employee may not accept the gift pursuant to paragraph (b) of this section.

(c) *Discounts and similar benefits.* In addition to those opportunities and benefits excluded from the definition of a gift by §2635.203(b)(4), an employee may accept:

(1) A reduction or waiver of the fees for membership or other fees for participation in organization activities offered to all Government employees or all uniformed military personnel by professional organizations if the only restrictions on membership relate to professional qualifications; and

(2) Opportunities and benefits, including favorable rates, commercial discounts, and free attendance or participation not precluded by paragraph (c)(3) of this section:

(i) Offered to members of a group or class in which membership is unrelated to Government employment;

(ii) Offered to members of an organization, such as an employees' association or agency credit union, in which membership is related to Government employment if the same offer is broadly available to large segments of the public through organizations of similar size; or

(iii) Offered by a person who is not a prohibited source to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of type of official responsibility or on a basis that favors those of higher rank or rate of pay.

Example 1 to paragraph (c)(2): A computer company offers a discount on the purchase of computer equipment to all public and private sector computer procurement officials who work in organizations with over 300 employees. An employee who works as the computer procurement official for a Government agency could not accept the discount to purchase the personal computer under the exception in paragraph (c)(2)(i) of this section. Her membership in the group to which the discount is offered is related to Government employment because her membership is based on her status as a procurement official with the Government.

Example 2 to paragraph (c)(2): An employee of the Consumer Product Safety Commission (CPSC) may accept a discount of \$50 on a microwave oven offered by the manufacturer to all members of the CPSC employees' association. Even though the CPSC is currently conducting studies on the safety of microwave ovens, the \$50 discount is a standard offer that the manufacturer has made broadly available through a number of employee associations and similar organizations to large segments of the public.

Example 3 to paragraph (c)(2): An Assistant Secretary may not accept a local country club's offer of membership to all members of Department Secretariats which includes a waiver of its \$5,000 membership initiation fee. Even though the country club is not a prohibited source, the offer discriminates in favor of higher ranking officials.

(3) An employee may not accept for personal use any benefit to which the Government is entitled as the result of an expenditure of Government funds, unless authorized by statute or regulation (e.g., 5 U.S.C. 5702, note, regarding frequent flyer miles).

Example 1 to paragraph (c)(3): The administrative officer for a field office of U.S. Immigration and Customs Enforcement (ICE) has signed an order to purchase 50 boxes of photocopy paper from a supplier whose literature advertises that it will give a free briefcase to anyone who purchases 50 or more boxes. Because the paper was purchased with ICE funds, the administrative officer cannot keep the briefcase which, if claimed and received, is Government property.

(d) *Awards and honorary degrees—(1) Awards.* An employee may accept a *bona fide* award for meritorious public service or achievement and any item incident to the award, provided that:

(i) The award and any item incident to the award are not from a person who has interests that may be substantially affected by the performance or nonperformance of the employee's official duties, or from an association or other organization if a majority of its members have such interests; and

(ii) If the award or any item incident to the award is in the form of cash or an investment interest, or if the aggregate value of the award and any item incident to the award, other than free attendance to the event provided to the employee and to members of the employee's family by the sponsor of the event, exceeds \$200, the agency ethics official has made a written determination that the award is made as part of an established program of recognition.

Example 1 to paragraph (d)(1): Based on a written determination by an agency ethics official that the prize meets the criteria set forth in paragraph (d)(2) of this section, an employee of the National Institutes of Health (NIH) may accept the Nobel Prize for Medicine, including the cash award which accompanies the prize, even though the prize was conferred on the basis of laboratory work performed at NIH.

Example 2 to paragraph (d)(1): A defense contractor, ABC Systems, has an annual award program for the outstanding public employee of the year. The award includes a cash payment of \$1,000. The award program is wholly funded to ensure its continuation on a regular basis for the next twenty years and selection of award recipients is made pursuant to written standards. An employee of the Department of the Air Force, who has duties that include overseeing contract performance by ABC Systems, is selected to receive the award. The employee may not accept the cash award because ABC Systems has interests that may be substantially affected by the performance or nonperformance of the employee's official duties.

Example 3 to paragraph (d)(1): An ambassador selected by a nonprofit organization as a recipient of its annual award for distinguished service in the interest of world peace may, together with his spouse and children, attend the awards ceremony dinner and accept a crystal bowl worth \$200 presented during the ceremony. However, where the organization has also offered airline tickets for the ambassador and his family to travel to the city where the awards ceremony is to be held, the aggregate value of the tickets and the crystal bowl exceeds \$200, and he may accept only upon a written determination by the agency ethics official that the award is made as part of an established program of recognition.

(2) *Established program of recognition.* An award and an item incident to the award are made pursuant to an established program of recognition if:

(i) Awards have been made on a regular basis or, if the program is new, there is a reasonable basis for concluding that awards will be made on a regular basis based on funding or funding commitments; and

(ii) Selection of award recipients is made pursuant to written standards.

(3) *Honorary degrees.* An employee may accept an honorary degree from an institution of higher education, as defined at 20 U.S.C. 1001, or from a similar foreign institution of higher education, based on a written determination by an agency ethics official that the timing of the award of the degree would not cause a reasonable person to question the employee's impartiality in a matter affecting the institution.

NOTE TO PARAGRAPH (d)(3): When the honorary degree is offered by a foreign institution of higher education, the agency may need to make a separate determination as to whether the institution of higher education is a foreign government for purposes of the Emoluments Clause of the U.S. Constitution (U.S. Const., art. I, sec. 9, cl. 8), which forbids employees from accepting emoluments, presents, offices, or titles from foreign governments, without the consent of Congress. The Foreign Gifts and Decorations Act, 5 U.S.C. 7342, however, may permit the acceptance of honorary degrees in some circumstances.

Example 1 to paragraph (d)(3): A well-known university located in the United States wishes to give an honorary degree to the Secretary of Labor. The Secretary may accept the honorary degree only if an agency ethics official determines in writing that the timing of the award of the degree would not cause a reasonable person to question the Secretary's impartiality in a matter affecting the university.

(4) *Presentation events.* An employee who may accept an award or honorary degree pursuant to paragraph (d)(1) or (3) of this section may also accept free attendance to the event provided to the employee and to members of the employee's family by the sponsor of an event. In addition, the employee may also accept unsolicited offers of travel to and from the event provided to the employee and to members of the employee's family by the sponsor of the event. Travel expenses accepted under this paragraph (d)(4) must be added to the value of the award for purposes of determining whether the aggregate value of the award exceeds \$200.

(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, 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.

(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.

(3) Customarily provided by a prospective employer in connection with *bona fide* employment discussions. If the prospective employer has interests that could be affected by performance or nonperformance of the employee's duties, acceptance is permitted only if the employee first has complied with the disqualification requirements of subpart F of this part applicable when seeking employment; or

Example 1 to paragraph (e)(3): An employee of the Federal Communications Commission with responsibility for drafting regulations affecting all cable television companies wishes to apply for a job opening with a cable television holding company. Once she has properly disqualified herself from further work on the regulations as required by subpart F of this part, she may enter into employment discussions with the company and may accept the company's offer to pay for her airfare, hotel, and meals in connection with an interview trip.

(4) Provided by a former employer to attend a reception or similar event when other former employees have been invited to attend, the invitation and benefits are based on the former employment relationship, and it is clear that such benefits have not been offered or enhanced because of the employee's official position.

Example 1 to paragraph (e)(4): An employee of the Department of the Army is invited by her former employer, an Army contractor, to attend its annual holiday dinner party. The former employer traditionally invites both its current and former employees to the holiday dinner regardless of their current employment activities. Under these circumstances, the employee may attend the dinner because the dinner invitation is a result of the employee's former outside employment activities, other former employees have been asked to attend, and the gift is not offered because of the employee's official position.

(5) For purposes of paragraphs (e)(1) through (4) of this section, "employment" means any form of non-Federal employment or business relationship involving the provision of personal services.

(f) *Gifts in connection with political activities permitted by the Hatch Act Reform Amendments.* An employee who, in accordance with the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323, may take an active part in political management or in political campaigns, may accept meals, lodgings, transportation, and other benefits, including free attendance at events, for the employee and an accompanying spouse or other guests, when provided, in connection with such active participation, by a political organization described in 26 U.S.C. 527(e). Any other employee, such as a security officer, whose official duties require him or her to accompany an employee to a political event, may accept meals, free attendance, and entertainment provided at the event by such an organization.

Example 1 to paragraph (f): The Secretary of the Department of Health and Human Services may accept an airline ticket and hotel accommodations furnished by the campaign committee of a candidate for the United States Senate in order to give a speech in support of the candidate.

(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.

Example 5 to paragraph (g): An employee of the Department of Energy (DOE) and his spouse have been invited by a major utility executive to a small dinner party. A few other officials of the utility and their spouses or other guests are also invited, as is a representative of a consumer group concerned with utility rates and her spouse. The DOE official believes the dinner party will provide him an opportunity to socialize with and get to know those in attendance. The employee may not accept the free invitation under this exception, even if his attendance could be determined to be in the interest of the agency. The small dinner party is not a widely attended gathering. Nor could the employee be authorized to accept even if the event were instead a corporate banquet to which forty company officials and their spouses or other guests were invited. In this second case, notwithstanding the larger number of persons expected (as opposed to the small dinner party just noted) and despite the presence of the consumer group representative and her spouse who are not officials of the utility, those in attendance would still not represent a diversity of views or interests. Thus, the company banquet would not qualify as a widely attended gathering under those circumstances either.

Example 6 to paragraph (g): An Assistant U.S. Attorney is invited to attend a luncheon meeting of a local bar association to hear a distinguished judge lecture on cross-examining expert witnesses. Although members of the bar association are assessed a \$15 fee for the meeting, the Assistant U.S. Attorney may accept the bar association's offer to attend for free, even without a determination of agency interest. The gift can be accepted under the \$20 gift exception at paragraph (a) of this section.

Example 7 to paragraph (g): An employee of the Department of the Interior authorized to speak on the first day of a four-day conference on endangered species may accept the sponsor's waiver of the conference fee for the first day of the conference under §2635.203(b)(8). If the conference is widely attended, the employee may be authorized to accept the sponsor's offer to waive the attendance fee for the remainder of the conference if the agency designee has made a written determination that attendance is in the agency's interest.

Example 8 to paragraph (g): A military officer has been approved to attend a widely attended gathering, pursuant to paragraph (g) of this section, that will be held in the same city as the officer's duty station. The defense contractor sponsoring the event has offered to transport the officer in a limousine to the event. The officer may not accept the offer of transportation because the definition of "free attendance" set forth in §2635.203(g) excludes travel, and the market value of the transportation would exceed \$20.

(h) *Social invitations.* An employee may accept food, refreshments, and entertainment, not including travel or lodgings, for the employee and an accompanying spouse or other guests, at a social event attended by several persons if:

- (1) The invitation is unsolicited and is from a person who is not a prohibited source;
- (2) No fee is charged to any person in attendance; and

(3) If either the sponsor of the event or the person extending the invitation to the employee is not an individual, the agency designee has made a written determination after finding that the employee's attendance would not cause a reasonable person with knowledge of the relevant facts to question the employee's integrity or impartiality, consistent with §2635.201(b).

Example 1 to paragraph (h): An employee of the White House Press Office has been invited to a social dinner for current and former White House Press Officers at the home of an individual who is not a prohibited source. The employee may attend even if she is being invited because of her official position.

(i) *Meals, refreshments, and entertainment in foreign areas.* An employee assigned to duty in, or on official travel to, a foreign area as defined in 41 CFR 300-3.1 may accept unsolicited food, refreshments, or entertainment in the course of a breakfast, luncheon, dinner, or other meeting or event provided:

- (1) The market value in the foreign area of the food, refreshments or entertainment provided at the meeting or event, as converted to U.S. dollars, does not exceed the per diem rate for the foreign area specified in the U.S. Department of State's Maximum Per Diem Allowances for Foreign Areas, Per Diem Supplement Section 925 to the Standardized Regulations (GC-FA), available on the Internet at www.state.gov;
- (2) There is participation in the meeting or event by non-U.S. citizens or by representatives of foreign governments or other foreign entities;
- (3) Attendance at the meeting or event is part of the employee's official duties to obtain information, disseminate information, promote the export of U.S. goods and services, represent the United States, or otherwise further programs or operations of the agency or the U.S. mission in the foreign area; and
- (4) The gift of meals, refreshments, or entertainment is from a person other than a foreign government as defined in 5 U.S.C. 7342(a)(2).

Example 1 to paragraph (i): A number of local business owners in a developing country are eager for a U.S. company to locate a manufacturing facility in their province. An official of the Overseas Private Investment Corporation may accompany the visiting vice president of the U.S. company to a dinner meeting hosted by the business owners at a province restaurant where the market value of the food and refreshments does not exceed the per diem rate for that country.

(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.

(k) *Gifts authorized by supplemental agency regulation.* An employee may accept any gift when acceptance of the gift is specifically authorized by a supplemental agency regulation issued with the concurrence of the Office of Government Ethics, pursuant to §2635.105.

(l) *Gifts accepted under specific statutory authority.* The prohibitions on acceptance of gifts from outside sources contained in this subpart do not apply to any item which a statute specifically authorizes an employee to accept. Gifts which may be accepted by an employee under the authority of specific statutes include, but are not limited to:

- (1) Free attendance, course or meeting materials, transportation, lodgings, food and refreshments or reimbursements therefor incident to training or meetings when accepted by the employee under the authority of 5 U.S.C. 4111. The employee's acceptance must be approved by the agency in accordance with part 410 of this title; or
- (2) Gifts from a foreign government or international or multinational organization, or its representative, when accepted by the employee under the authority of the Foreign Gifts and Decorations Act, 5 U.S.C. 7342. As a condition of acceptance, an employee must comply with requirements imposed by the agency's regulations or procedures implementing that Act.

(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).

(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). The employee may not accept the gift under paragraph (m) of this section.

[81 FR 81648, Nov. 18, 2016, as amended at 82 FR 22736, May 18, 2017]

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§2635.205 Limitations on use of exceptions.

Notwithstanding any exception provided in this subpart, other than §2635.204(j), an employee may not:

- (a) Accept a gift in return for being influenced in the performance of an official act;
- (b) Use, or permit the use of, the employee's Government position, or any authority associated with public office, to solicit or coerce the offering of a gift;
- (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) on gifts of \$20 or less, the practice of accepting even these modest gifts on a recurring basis is improper.

(d) Accept a gift in violation of any statute; relevant statutes applicable to all employees include, but are not limited to:

(1) 18 U.S.C. 201(b), which prohibits a public official from, directly or indirectly, corruptly demanding, seeking, receiving, accepting, or agreeing to receive or accept anything of value personally or for any other person or entity in return for being influenced in the performance of an official act; being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States; or for being induced to do or omit to do any action in violation of his or her official duty. As used in 18 U.S.C. 201(b), the term "public official" is broadly construed and includes regular and special Government employees as well as all other Government officials; and

(2) 18 U.S.C. 209, which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. The statute contains several specific exceptions to this general prohibition, including an exception for contributions made from the treasury of a State, county, or municipality;

(e) Accept a gift in violation of any Executive Order; or

(f) Accept any gift when acceptance of the gift is specifically prohibited by a supplemental agency regulation issued with the concurrence of the Office of Government Ethics, pursuant to §2635.105.

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§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.

(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.

(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.

(3) *Gifts of intangibles.* The employee must promptly reimburse the donor the market value for any entertainment, favor, service, benefit or other intangible. Subsequent reciprocation by the employee does not constitute reimbursement.

Example 1 to paragraph (a)(3): A Department of Defense employee wishes to attend a charitable event to which he has been offered a \$300 ticket by a prohibited source. Although his attendance is not in the interest of the agency under §2635.204(g), he may attend if he reimburses the donor the \$300 face value of the ticket.

(4) *Gifts from foreign governments or international organizations.* The employee must dispose of gifts from foreign governments or international organizations in accordance with 41 CFR part 102-42.

(b) An agency may authorize disposition or return of gifts at Government expense. Employees may use penalty mail to forward reimbursements required or permitted by this section.

(c) An employee who, on his or her own initiative, promptly complies with the requirements of this section will not be deemed to have improperly accepted an unsolicited gift. An employee who promptly consults his or her agency ethics official to determine whether acceptance of an unsolicited gift is proper and who, upon the advice of the ethics official, returns the gift or otherwise disposes of the gift in accordance with this section, will be considered to have complied with the requirements of this section on the employee's own initiative.

(d) Employees are encouraged to record any actions they have taken to properly dispose of gifts that cannot be accepted under this subpart, such as by sending an electronic mail message to the appropriate agency ethics official or the employee's supervisor.