

§ 2635.203

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shall not, directly or indirectly, solicit or accept a gift:

- (1) From a prohibited source; or
- (2) Given because of the employee's official position.

(b) *Relationship to illegal gratuities statute.* Unless accepted in violation of paragraph (c)(1) of this section, a gift accepted under the standards set forth in this subpart shall not constitute an illegal gratuity otherwise prohibited by 18 U.S.C. 201(c)(1)(B).

(c) *Limitations on use of exceptions.* Notwithstanding any exception provided in this subpart, other than § 2635.204(j), an employee shall not:

- (1) Accept a gift in return for being influenced in the performance of an official act;
- (2) Solicit or coerce the offering of a gift;
- (3) 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 his public office for private gain;

*Example 1:* A purchasing agent for a Veterans Administration hospital 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 de minimis gifts of \$20 or less, the practice of accepting even these modest gifts on a recurring basis is improper.

(4) Accept a gift in violation of any statute. Relevant statutes applicable to all employees include:

(i) 18 U.S.C. 201(b), which prohibits a public official from seeking, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or omit to take any action in violation of his 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

(ii) 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; or

(5) Accept vendor promotional training contrary to applicable regulations, policies or guidance relating to the procurement of supplies and services for the Government, except pursuant to § 2635.204(1).

[57 FR 35041, Aug. 7, 1992; 57 FR 48557, Oct. 27, 1992, as amended at 62 FR 48747, Sept. 17, 1997]

§ 2635.203 Definitions.

For purposes of this subpart, the following definitions shall 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. It does not include:

(1) Modest items of food and 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 solely for presentation;

(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 his official duties;

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

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

NOTE: Some airlines encourage those purchasing tickets to join programs that award free flights and other benefits to frequent fliers. Any such benefit earned on the basis of Government-financed travel belongs to the agency rather than to the employee and may be accepted only insofar as provided under 41 CFR 301-53.

(8) 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 his official duties which takes place away from his duty station. The agency's acceptance must be in accordance with the implementing regulations at 41 CFR part 304-1; and

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

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

(c) *Market value* means the retail cost the employee would 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 shall be the face value of the ticket.

*Example 1:* An employee who has been given an acrylic paperweight embedded with the

corporate logo of a prohibited source may determine its market value based on her observation that a comparable acrylic paperweight, not embedded with a logo, generally sells for about \$20.

*Example 2:* A prohibited source has offered an 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.

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

NOTE: Gifts between employees are subject to the limitations set forth in subpart C of this part.

*Example 1:* 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:* 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

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with their Federal position, but instead is based on their mere presence in the building as occupants at the time of the fire.

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

(1) Given with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person's relationship to the employee, or

(2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee, except as permitted for the disposition of perishable items by § 2635.205(a)(2) or for payments made to charitable organizations in lieu of honoraria under § 2636.204 of this chapter.

*Example 1:* 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) *Vendor promotional training* means training provided by any person for the purpose of promoting its products or services. It does not include training provided under a Government contract or by a contractor to facilitate use of products or services it furnishes under a Government contract.

[57 FR 35042, Aug. 7, 1992, as amended at 60 FR 51667, Oct. 3, 1995; 63 FR 69993, Dec. 18, 1998; 64 FR 2422, Jan. 14, 1999]

### § 2635.204 Exceptions.

The prohibitions set forth in § 2635.202(a) do not apply to a gift accepted under the circumstances described in paragraphs (a) through (1) of this section, and an employee's acceptance of a gift in accordance with one of those paragraphs will be deemed not to violate the principles set forth in § 2635.101(b), including appearances. Even though acceptance of a gift may be permitted by one of the exceptions contained in paragraphs (a) through (1) of this section, it is never inappropriate and frequently prudent for an employee to decline a gift offered by a prohibited source or because of his official position.

(a) *Gifts of \$20 or less.* An employee may accept unsolicited gifts having an aggregate market value of \$20 or less

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per source per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph shall 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:* An employee of the Securities and Exchange Commission and his spouse have been invited by a representative of a regulated entity to a Broadway play, 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:* An employee of the Defense Mapping Agency has been invited by an association of cartographers to speak about his agency's role in the evolution of missile technology. At the conclusion of his speech, the association presents the employee a framed map with a market value of \$18 and a book about the history of cartography with a market value of \$15. The employee may accept the map or the book, but not both, since the aggregate value of these two tangible items exceeds \$20.

*Example 3:* On four occasions during the calendar year, an employee of the Defense Logistics Agency 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 § 2635.204(b) for gifts based on a personal relationship.