

§ 2635.301

5 CFR Ch. XVI (1–1–08 Edition)

(3) For any entertainment, favor, service, benefit or other intangible, reimburse the donor the market value. Subsequent reciprocation by the employee does not constitute reimbursement.

Example 1: 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) Dispose of gifts from foreign governments or international organizations in accordance with 41 CFR part 101–49, and dispose of materials received in conjunction with official travel in accordance with 41 CFR 101–25.103.

(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 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 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 his own initiative.

Subpart C—Gifts Between Employees

§ 2635.301 Overview.

This subpart contains standards that prohibit an employee from giving, donating to, or soliciting contributions for, a gift to an official superior and from accepting a gift from an employee receiving less pay than himself, unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subpart.

§ 2635.302 General standards.

(a) *Gifts to superiors.* Except as provided in this subpart, an employee may not:

(1) Directly or indirectly, give a gift to or make a donation toward a gift for an official superior; or

(2) Solicit a contribution from another employee for a gift to either his own or the other employee's official superior.

(b) *Gifts from employees receiving less pay.* Except as provided in this subpart, an employee may not, directly or indirectly, accept a gift from an employee receiving less pay than himself unless:

(1) The two employees are not in a subordinate-official superior relationship; and

(2) There is a personal relationship between the two employees that would justify the gift.

(c) *Limitation on use of exceptions.* Notwithstanding any exception provided in this subpart, an official superior shall not coerce the offering of a gift from a subordinate.

§ 2635.303 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) *Gift* has the meaning set forth in §2635.203(b). For purposes of that definition an employee will be deemed to have paid market value for any benefit received as a result of his participation in any carpool or other such mutual arrangement involving another employee or other employees if he bears his fair proportion of the expense or effort involved.

(b) *Indirectly*, for purposes of §2635.302(b), has the meaning set forth in §2635.203(f). For purposes of §2635.302(a), it includes a gift:

(1) Given with the employee's knowledge and acquiescence by his parent, sibling, spouse, child, or dependent relative; or

(2) Given by a person other than the employee under circumstances where the employee has promised or agreed to reimburse that person or to give that person something of value in exchange for giving the gift.

(c) Subject to paragraph (a) of this section, market value has the meaning set forth in §2635.203(c).

(d) *Official superior* means any other employee, other than the President and the Vice President, including but not limited to an immediate supervisor, whose official responsibilities include

directing or evaluating the performance of the employee's official duties or those of any other official superior of the employee. For purposes of this subpart, an employee is considered to be the subordinate of any of his official superiors.

(e) *Solicit* means to request contributions by personal communication or by general announcement.

(f) *Voluntary contribution* means a contribution given freely, without pressure or coercion. A contribution is not voluntary unless it is made in an amount determined by the contributing employee, except that where an amount for a gift is included in the cost for a luncheon, reception or similar event, an employee who freely chooses to pay a proportionate share of the total cost in order to attend will be deemed to have made a voluntary contribution. Except in the case of contributions for a gift included in the cost of a luncheon, reception or similar event, a statement that an employee may choose to contribute less or not at all shall accompany any recommendation of an amount to be contributed for a gift to an official superior.

Example 1: A supervisory employee of the Agency for International Development has just been reassigned from Washington, DC to Kabul, Afghanistan. As a farewell party, 12 of her subordinates have decided to take her out to lunch at the Khyber Repast. It is understood that each will pay for his own meal and that the cost of the supervisor's lunch will be divided equally among the twelve. Even though the amount they will contribute is not determined until the supervisor orders lunch, the contribution made by those who choose to participate in the farewell lunch is voluntary.

§ 2635.304 Exceptions.

The prohibitions set forth in § 2635.302(a) and (b) do not apply to a gift given or accepted under the circumstances described in paragraph (a) or (b) of this section. A contribution or the solicitation of a contribution that would otherwise violate the prohibitions set forth in § 2635.302(a) and (b) may only be made in accordance with paragraph (c) of this section.

(a) *General exceptions.* On an occasional basis, including any occasion on which gifts are traditionally given or exchanged, the following may be given

to an official superior or accepted from a subordinate or other employee receiving less pay:

(1) Items, other than cash, with an aggregate market value of \$10 or less per occasion;

(2) Items such as food and refreshments to be shared in the office among several employees;

(3) Personal hospitality provided at a residence which is of a type and value customarily provided by the employee to personal friends;

(4) Items given in connection with the receipt of personal hospitality if of a type and value customarily given on such occasions; and

(5) Leave transferred under subpart I of part 630 of this title to an employee who is not an immediate supervisor, unless obtained in violation of § 630.912 of this title.

Example 1: Upon returning to work following a vacation at the beach, a claims examiner with the Department of Veterans Affairs may give his supervisor, and his supervisor may accept, a bag of saltwater taffy purchased on the boardwalk for \$8.

Example 2: An employee of the Federal Deposit Insurance Corporation whose bank examination responsibilities require frequent travel may not bring her supervisor, and her supervisor may not accept, souvenir coffee mugs from each of the cities she visits in the course of performing her duties, even though each of the mugs costs less than \$5. Gifts given on this basis are not occasional.

Example 3: The Secretary of Labor has invited the agency's General Counsel to a dinner party at his home. The General Counsel may bring a \$15 bottle of wine to the dinner party and the Secretary may accept this customary hostess gift from his subordinate, even though its cost is in excess of \$10.

Example 4: For Christmas, a secretary may give his supervisor, and the supervisor may accept, a poinsettia plant purchased for \$10 or less. The secretary may also invite his supervisor to a Christmas party in his home and the supervisor may attend.

(b) *Special, infrequent occasions.* A gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

(1) In recognition of infrequently occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or