

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF GOVERNMENT ETHICS

### 5 CFR Part 2635

RIN 3209-AA04

#### Standards of Ethical Conduct for Employees of the Executive Branch; Amendment to the Standards Governing Solicitation and Acceptance of Gifts From Outside Sources

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Government Ethics is proposing to revise the portions of the Standards of Ethical Conduct for Executive Branch Employees that govern the solicitation and acceptance of gifts from outside sources. The proposed amendments modify the existing regulations to more effectively advance public confidence in the integrity of Federal officials. The proposed amendments would also incorporate past interpretive guidance, add and update regulatory examples, improve clarity, update citations and make technical corrections.

**DATES:** Written comments are invited and must be received on or before January 26, 2016.

**ADDRESSES:** You may submit comments, in writing, to OGE on this proposed rule, identified by RIN 3209-AA04, by any of the following methods:

*Email:* [usoge@oge.gov](mailto:usoge@oge.gov). Include the reference "Proposed Amendments to Subpart B" in the subject line of the message.

*Fax:* (202) 482-9237.

*Mail/Hand Delivery/Courier:* Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917, Attention: "Proposed Amendments to Subpart B."

*Instructions:* All submissions must include OGE's agency name and the Regulation Identifier Number (RIN), 3209-AA04, for this proposed rulemaking. All comments, including attachments and other supporting materials, will become part of the public

record and subject to public disclosure. Comments may be posted on OGE's Web site, [www.oge.gov](http://www.oge.gov). Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

#### FOR FURTHER INFORMATION CONTACT:

Christopher J. Swartz, Assistant Counsel, or Vincent J. Salamone, Associate Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917; Telephone: 202-482-9300; TTY: 800-877-8339; FAX: 202-482-9237.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On August 7, 1992, the U.S. Office of Government Ethics (OGE) published the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), which are codified at 5 CFR part 2635. *See* 57 FR 35005-35067, as amended. Subpart B of part 2635 sets forth the regulations governing the solicitation and acceptance of gifts from outside sources by officers and employees of the Executive Branch. These regulations implement the gift restrictions set forth in 5 U.S.C. 7353 and section 101(d) of Executive Order 12674, as modified by Executive Order 12731.

Pursuant to section 402 of the Ethics in Government Act of 1978, Public Law 95-521, codified at 5 U.S.C. Appendix IV, sec. 402, the Director of OGE is responsible for periodically reviewing, evaluating and updating the rules and regulations that pertain to ethics in the Executive Branch. In accordance with section 402, OGE has reviewed the regulations found in subpart B and is proposing changes in light of OGE's experience gained from application of the Standards since they became effective in February 1993.

In formulating this proposed rule, OGE has consulted with the Department of Justice and the Office of Personnel Management pursuant to section 201(a) of Executive Order 12674, as modified by Executive Order 12731, and the authorities contained in title IV of the Ethics in Government Act of 1978, as amended. Prior to promulgating this proposed rule, OGE solicited the views of Executive Branch agency ethics officials through an electronic survey

and multiple in-person meetings. OGE has considered the input received from these agency ethics officials and has incorporated many of their comments and suggestions into the proposed rule.

## II. Regulatory Amendments to Subpart B

### Technical Changes

OGE proposes amending the Table of Contents to subpart B of the Standards to conform to the proposed substantive amendments to subpart B, which are explained elsewhere in this document. OGE also proposes a number of general technical and non-substantive changes that would apply throughout subpart B to enhance clarity and readability and to remove gender-specific terms from the substantive regulatory text. OGE also proposes to replace the term "shall" as used throughout the regulation with the terms "will," "must," or "does" where the term is used to indicate an affirmative obligation or requirement, and to replace the term "shall not" with the terms "may not" or "does not" as appropriate. These changes are intended to enhance clarity and do not constitute a substantive change to the regulation.

### Proposed § 2635.201 Overview and Considerations For Declining Otherwise Permissible Gifts

Proposed § 2635.201(a) reiterates the language that is contained in current § 2635.201, and includes a new subheading "Overview." Proposed § 2635.201(b) is new to the Standards. This section is entitled "Considerations for declining otherwise permissible gifts." OGE is proposing the addition of this section because it is OGE's experience that employees and ethics officials sometimes focus on whether a regulatory exception permits the acceptance of an otherwise impermissible gift, and not on whether acceptance of the gift could affect the perceived integrity of the employee or the credibility and legitimacy of the agency's programs. To counter this tendency, OGE is proposing to add § 2635.201(b)(1), which sets out a flexible, non-binding standard that employees are encouraged to use when deciding whether to accept a gift that would otherwise be permitted by this subpart. Specifically, this section encourages employees to consider the potential that a "reasonable person" would question their integrity if they

were to accept the gift. In a circumstance where an employee concludes that a reasonable person would question his or her integrity, the employee is encouraged to consider declining the gift.

To assist employees in making this determination, OGE has added proposed § 2635.201(b)(2), which sets out some factors that employees can consider when evaluating whether they should decline an otherwise permissible gift because acceptance might cause a reasonable person with knowledge of the relevant facts to question their integrity. Employees are not, however, required to consider these factors in every case; these factors are merely intended to be illustrative of the types of considerations that are relevant to this determination. In addition, because the regulatory exceptions represent OGE's determination that, in most cases, acceptance of a gift under the relevant exception will not adversely affect public confidence, and because the factors are inherently subjective, the proposed rule clarifies that an employee has not violated the subpart by accepting a gift under an exception found in § 2635.204. The section concludes by encouraging employees to seek advice from an appropriate agency ethics official when making this determination or where there are questions related to other provisions of this subpart.

*Proposed § 2635.202 General Prohibition on Solicitation or Acceptance of Gifts*

OGE proposes revising the heading of § 2635.202 to "General prohibition on solicitation or acceptance of gifts." OGE proposes to move the provisions setting forth the limitations on use of the exceptions set out in current § 2635.202(c) to redesignated § 2635.205. OGE believes that reordering the regulations to place the rules establishing limitations on the exceptions after the regulatory exceptions will produce a more logical and understandable ordering of the regulation.

OGE proposes to revise current § 2635.202(a) by moving the prohibitions on accepting gifts and soliciting gifts into separate paragraphs. OGE is proposing this revision to emphasize that the prohibition on soliciting gifts from prohibited sources, or that are to be given because of the employee's official position, is an independent restriction from the prohibition on accepting gifts that are restricted under subpart B.

OGE proposes to reword current § 2635.202(b) to increase clarity and

readability. OGE also proposes to move this paragraph to § 2635.202(c). This section describes the relationship between the Standards found in subpart B and the illegal gratuities statute, 18 U.S.C. 201(c)(1)(B). This revision is technical in nature and does not affect the substance of the regulation, which has been consistent since the issuance of the Standards in 1992. OGE also proposes to include a statement reminding employees that, notwithstanding any exception provided in the subpart, no gift may be solicited or accepted if to do so would violate the federal bribery statute, 18 U.S.C. 201(b). OGE proposes to add a new *Example 1 to paragraph (c)* to illustrate a circumstance in which an employee's acceptance of a gift would violate the new § 2635.202(c).

*Proposed § 2635.203 Definitions*

OGE proposes a number of changes to § 2635.203(b), which defines the term "gift" as well as provides exclusions from that definition.

OGE proposes to amend current § 2635.203(b)(2), which excludes from the definition of the term "gift" certain presentation items with little intrinsic value, to permit employees to accept items that are "primarily" for presentation as opposed to only those that are "solely" for presentation. OGE believes distinguishing between items intended for presentation based on whether the item hypothetically could have some independent use is not intuitive or necessary, so long as the presentation item is truly of "little intrinsic value." Items such as watches, artwork, items containing precious metals or gemstones, fine crystal, or that otherwise have significant independent value would not qualify for this exclusion, even if they were inscribed or otherwise adorned with personalized information (such as the name of the donor, the date of an event, or the name of the recipient).

Proposed § 2635.203(b)(6) would clarify that continued participation in an employee welfare or benefit plan with a current or former employer would not constitute a gift for purposes of subpart B.

OGE proposes to delete the Note following current paragraph (b)(7) stating that employees are prohibited from accepting certain frequent flyer program benefits that are earned from Government-financed travel, as it no longer reflects current law.

Proposed § 2635.203(b)(8) is new as an exclusion, and excludes from the definition of "gift" certain offers of free attendance to an event provided to a speaker on the day of his or her

presentation. Such offers of free attendance are currently treated as gifts that employees are permitted to accept pursuant to an exception set out in current § 2635.204(g)(1). As described in current § 2635.204(g)(1), OGE views the employee's attendance in these circumstances as customary and necessary to allow the employee to carry out his or her assignment, and therefore views such offers of free attendance as not constituting a gift to either the agency or the employee. Moving the exception at § 2635.204(g)(1) to the exclusion section at § 2635.203(b)(8) reflects that long-time understanding. Advice OGE has previously provided on the application of current § 2635.204(g)(1) would continue to be applicable to proposed § 2635.203(b)(8).

OGE has also provided that an offer of free attendance provided to an employee's spouse or another accompanying guest on the day the employee is presenting is also excluded from the gift rules in certain circumstances, which accords with the current exception for such attendees under § 2635.204(g)(6). Likewise, OGE has excluded from the definition of "gift" an offer of free attendance to certain personnel, such as security details or press officers, who are assigned by the agency to perform official duties in support of the presenting employee. This regulatory exclusion accords with OGE's longstanding interpretation of current § 2635.204(g)(1). See OGE DAEOgram DO-10-003 (Feb. 18, 2010). OGE also proposes simplifying the language of the exclusion to cover "Free attendance to an event provided by the sponsor of an event to . . . an employee who is assigned to *present information* on behalf of the agency . . ." (emphasis added). Current § 2635.204(g)(1) provides that an employee may accept an offer of free attendance to an event when he or she is assigned to participate as a speaker or panel participant or *otherwise to present information* on behalf of the agency. See also OGE Legal Advisory LA-12-05 (Sept. 7, 2012). The proposed regulation is consistent with this advice.

OGE proposes to include ten examples to § 2635.203(b) to provide clarification to the regulatory exclusions to the definition of "gift." These examples are not intended to be comprehensive. Proposed *Example 1 to paragraph (b)(1)* clarifies that the exclusion for "modest items of food and refreshment" would not cover alcoholic beverages served at a Government contractor's holiday party. Proposed *Example 1, Example 2, and Example 3 to paragraph (b)(2)* clarify the meaning

of “items with little intrinsic value . . . which are intended primarily for presentation.” Proposed *Example 1* and *Example 2 to paragraph (b)(5)* both clarify the exclusion for rewards and prizes given to participants in contests or events open to the public. *Example 1 to paragraph (b)(7)* emphasizes that employees may accept certain travel-related benefits, such as frequent flyer miles, pursuant to an applicable statute or regulation. OGE proposes to move *Example 4* following current § 2635.204(g) to *Example 1 to paragraph (b)(8)* following proposed § 2635.203(b)(8). OGE proposes to add *Example 2* and *Example 3 to paragraph (b)(8)* to provide additional guidance on what constitutes “present[ing] information” on behalf of an employee’s agency.

OGE is proposing to revise the first sentence of § 2635.203(c), which sets out the definition of “market value” as used throughout the subpart. The current definition states that “Market value means the retail cost the employee would incur to purchase the gift.” OGE has found that this definition can lead to confusion and in certain circumstances may not be applicable at all if the gift does not have a “retail” price, e.g., if the gift takes the form of services or intangibles. As OGE stated in 1992, the purpose of including a definition of “market value” was to “ensure that the employee pays the fair value” of the gift and to allow the employee to “determine the value or the amount to be reimbursed without having to consult the donor as to the donor’s cost.” 57 FR 35006, 35014 (Aug. 7, 1992); see also OGE Informal Advisory Opinion 96 x 20. To better accord with OGE’s intent that the term “market value” reflect the price the employee would pay for the gift if he or she were to purchase it at fair value and on the open market, OGE has amended the first sentence of the definition to read: “Market value means the cost that a member of the general public would reasonably expect to incur to purchase the gift.” The proposed change also reflects OGE’s interpretation that the “market value” of a gift is the cost the recipient would incur to purchase the item on the open market, not the cost that the donor paid to acquire the gift. This principle is illustrated in proposed *Example 1* and new *Example 2 to paragraph (c)*. Proposed *Example 1 to paragraph (c)* also illustrates OGE’s longstanding guidance that the market value of a gift is not eliminated or significantly diminished because the item has been inscribed or otherwise adorned with the donor or recipient’s

name or information related to an event at which the gift was presented. Proposed *Example 3 to paragraph (c)* is current *Example 2* following § 2635.203(c) without substantive change. *Example 4* and *Example 5 to paragraph (c)* are provided to clarify how to calculate the market value of certain gifts that are not available for retail purchase, such as free admission to a private skybox or an invitation-only event where an entry fee is not charged to attendees.

OGE proposes to modify the formatting of § 2635.203(e) and § 2635.203(f) to enhance clarity. OGE also proposes to amend § 2635.203(f)(1) to expand the definition of “indirectly solicited or accepted” gifts to include gifts that are given to “a member of the employee’s household” on the basis of the person’s relationship with the employee and with the employee’s knowledge and acquiescence. OGE proposes to amend § 2635.203(f)(2) to clarify that employees who solicit or accept funds or other support for a charitable organization in accordance with subpart H of the Standards have not indirectly solicited or accepted a gift under subpart B. Proposed *Example 1 to paragraph (e)* is current *Example 1* following § 2635.203(e). Proposed *Example 2 to paragraph (e)* is current *Example 2* following § 2635.203(e). Proposed *Example 1 to paragraph (f)(2)* is current *Example 1* following § 2635.203(f).

OGE proposes removing current § 2635.203(g), defining the term “vendor promotional training.” The term is no longer used in the substantive provisions of the subpart, and the definition is therefore unnecessary.

OGE proposes to add a new § 2635.203(g) defining the term “free attendance” as used throughout the subpart. The language found in this definition is based on the definition of “free attendance” currently found in § 2635.204(g)(4). Because the term is used throughout the subpart, OGE believes it is more logical for the definition to appear in § 2635.203. OGE has amended the definition as it is currently found in § 2635.204(g)(4) to permit employees who are presenters at an event to accept meals outside of a group context, so long as the meal is open to all presenters and is hosted by the sponsor of the event. OGE is aware that it is customary for the sponsors of an event to provide a separate luncheon or dinner for participating presenters. OGE believes that these meals are often beneficial to the agency because the agency employee is able to interact with other presenters, receive instructions, and hear about program goals or

changes. OGE believes that where a meal is provided to all other presenters, the meal does not constitute a separate gift for the personal benefit of the employee.

OGE has determined that the explanatory Note that follows current § 2635.204(g) is unnecessary. OGE therefore proposes to remove the Note.

#### *Proposed § 2635.204 Exceptions to the Prohibition on Acceptance of Certain Gifts*

OGE proposes retitling this section to provide additional clarity as to the substantive regulatory text. OGE also proposes amending the introductory clause to improve readability.

OGE is proposing to revise and add a number of examples to § 2635.204(a) to clarify the application of the rule in various contexts. Proposed *Examples 1 through 5 to paragraph (a)* are unchanged except for technical modification. Proposed *Example 6 to paragraph (a)* is new and emphasizes that an employee may not rely on the exception for gifts of \$20 or less to accept a group gift with an aggregate market value in excess of \$20. Proposed *Example 7 to paragraph (a)* is new and incorporates OGE’s advice that store gift cards that are worth \$20 or less may be accepted under § 2635.204(a), but that general-use prepaid gift cards may not be accepted under the exception, even if their value is below the regulatory threshold. See OGE Legal Advisory LA–15–04 (April 30, 2015). General-use prepaid cards operate similarly to debit cards in practice and are therefore akin to gifts of cash. See *id.*

OGE proposes amending § 2635.204(b) to incorporate OGE’s longstanding interpretation that the exception for gifts based on a personal relationship applies only to gifts provided by an individual. As used in the Standards, the term “individual” refers only to a natural person, i.e., a human being. See 5 CFR 2635.102(k) (defining “person” to include an “individual” as well as a “corporation” “company” or “other organization or institution”). This accords with the common understanding of the term. See *Mohammed v. Palestinian Authority*, 132 S. Ct. 1702, 1707 (2012). OGE also proposes amending § 2635.204(b) to make explicit that in determining whether a gift is motivated by a personal relationship, employees and agencies may consider not only the “history of the relationship” but also the “nature of the relationship.” This amendment accords with advice that OGE has issued on this exception in the past. See OGE Informal Advisory Opinion 06 x 3 (Mar. 21, 2006).

Proposed *Example 1 to paragraph (b)* is revised to reflect circumstances that arise more frequently. Proposed *Example 2 to paragraph (b)* has no substantive change. Proposed *Example 3 to paragraph (b)* is new and provides guidance on the application of the exception at § 2635.204(b) to personal contacts made through social media networking Web sites.

OGE is proposing to revise § 2635.204(c)(1) to clarify that an employee may accept a reduction or waiver of membership or other fees to an organization where the only restriction on membership is related to professional qualifications and the reduction or waiver is available to all Government employees or all uniformed military personnel. OGE proposes to amend § 2635.204(c)(2) to explain that “opportunities and benefits” under this section may include free attendance or participation at an event if the other criteria of the section are met. OGE also proposes to amend § 2635.204(c)(3) to provide that the general prohibition on an employee accepting for personal use a benefit to which the Government is entitled does not apply when the employee is specifically authorized by statute or regulation to retain the benefit. Proposed *Example 1 to paragraph (c)(2)* illustrates circumstances under which an employee would not be able to accept a discount under § 2635.204(c)(2)(i), as it would be related to the employee’s Government employment. Proposed *Example 2 and Example 3 to paragraph (c)(2)* and *Example 1 to paragraph (c)(3)* are renumbered but not substantively changed.

OGE proposes to restructure § 2635.204(d), *Awards and honorary degrees*, to clarify this exception. Proposed § 2635.204(d)(l) covers awards. The elements are the same as currently set forth in § 2635.204(d), but are reordered for clarity. Proposed § 2635.204(d)(2) defines an “Established program of recognition.” Proposed § 2635.204(d)(3), entitled “Honorary degrees,” is current § 2635.204(d)(2). As proposed, this paragraph updates the citation for the definition of an institution of higher education found at 20 U.S.C. 1001 and provides that employees may also accept honorary degrees from “similar foreign institution[s] of higher education.” For purposes of this exception, a “foreign institution of higher education” would include an institution of higher education that is physically located outside of the United States if it is accredited by a recognized quality assurance or accreditation organization. OGE proposes to add a note following

§ 2635.204(d)(3) reminding agency ethics officials that before approving the acceptance of an honorary degree from a foreign institution of higher education, the agency should also consider the potential applicability of the Emoluments Clause of the U.S. Constitution and the Foreign Gifts and Decorations Act.

Proposed § 2635.204(d)(4) is similar to current § 2635.204(d)(3), but is reworded to clarify that, for the purpose of determining whether the value of an award exceeds \$200 (and therefore is subject to additional restrictions), the value of the free attendance at the event does not need to be included but the cost of any travel expenses do. This is consistent with OGE’s current interpretation, as reflected in *Example 3* in the awards section of the current regulation.

OGE also proposes to amend the examples to § 2635.204(d) by adding one new example and updating the remaining example designations. Proposed *Example 1 to paragraph (d)(1)*, *Example 3 to paragraph (d)(1)*, and *Example 1 to paragraph (d)(3)* are currently in the regulation, and OGE proposes no substantive amendment to these examples. Proposed *Example 2 to paragraph (d)(1)* is a new example added to emphasize the existing rule that even where there is an “established program of recognition,” an employee may not accept the award if the entity that is giving the award has interests that may be substantially affected by the performance or nonperformance of the employee’s official duties.

OGE proposes to amend § 2635.204(e) by moving the definition of “employment” currently found at § 2635.204(e)(4) to a new § 2635.204(e)(5). Currently the term “employment” is defined by cross-reference to the definition of “employment” in § 2635.603(a). New § 2635.204(e)(5) removes the cross-reference and incorporates the substantive definition found in § 2635.603(a), *i.e.*, “‘employment’ means any form of non-Federal employment or business relationship involving the provision of personal services.” OGE is also proposing to add a new subparagraph (e)(4) providing that an employee may accept an invitation from his or her former employer to attend a reception or similar event, and accept benefits that are provided at the event, if other former employees have also been invited to attend and it is clear that these benefits are not being offered or enhanced because of the employee’s official position. There is currently some ambiguity in this regard because of the phrasing of the existing

paragraph. OGE does not believe a distinction should be made between events based on current and former business or employment activities. Under either situation, the invitation and any benefits must clearly be offered because of the employee’s former or current non-Government position and not because of Federal employment or the official’s status. Proposed *Example 1 to paragraph (e)(4)* illustrates this provision. There are no substantive changes to the other examples to paragraph (e).

OGE proposes to amend § 2635.204(f) to clarify that a gift that may be accepted in connection with certain political activities includes offers of free attendance to an accompanying spouse and other guests. Proposed *Example 1 to paragraph (f)* is currently *Example 1* following § 2635.204(f). There is no substantive change to this example.

OGE is proposing a number of substantive revisions to § 2635.204(g). As described above, OGE proposes to remove § 2635.204(g)(1), *Speaking and similar engagements*. The substance of the exception will be included in a new exclusion from the definition of “gift” at proposed § 2635.203(b)(8). Proposed § 2635.204(g) will focus on when an employee may accept an invitation of free attendance at a “widely attended gathering.” Accordingly, OGE proposes re-titling § 2635.204(g) as “Gifts of free attendance at widely attended gatherings.” Proposed § 2635.204(g)(1) would set forth the rule for when an employee may accept an unsolicited gift of free attendance at such a gathering, while proposed subparagraphs (g)(2)–(g)(5) provide definitions and concepts that apply throughout § 2635.204(g). Proposed § 2635.204(g)(6) is similar to current § 2635.204(g)(6), but has been amended to clarify that an employee may bring only one accompanying guest under the authority found in that section. This has been OGE’s interpretation of the regulation since its promulgation in 1996. *See* 61 FR 42965, 42968 (Aug. 20, 1996).

Proposed § 2635.204(g)(1) provides that an employee may accept a gift of free attendance to attend a widely attended gathering only upon receiving a written authorization from the agency designee. This is a change from the current rule. Currently, a written determination is required only when the person extending the invitation has interests that may be substantially affected by the performance or non-performance of the employee’s official duties, or is an organization the majority of whose members have such interests.

Although OGE is sympathetic to agency concerns that requiring that all

determinations be made in writing may increase workload, OGE believes that increased access to certain technologies since the Standards were promulgated, such as the Internet and mobile devices, reduces this concern. Additionally, OGE believes that requiring a written authorization on all occasions will promote the public's confidence in Government operations.

Proposed § 2635.204(g)(2) defines "widely attended gatherings." This definition is similar to the definition that is used in current § 2635.204(g)(2). OGE is proposing to amend the current definition to highlight that an event does not qualify as a widely attended gathering unless it is "expected that . . . there will be an opportunity to exchange ideas and views among invited persons." OGE has long held that an event does not meet the criteria of this exception if an opportunity to exchange ideas and views is not available. *See, e.g.,* OGE Informal Advisory Opinion 08 x 1 (Jan. 30, 2008) (stating that "the 'widely attended gathering' exception cannot be used to justify free attendance at an event that is not structured to allow interchange among attendees"); OGE Informal Advisory Opinion 07 x 14 (Dec. 5, 2007) (stating that OGE "considers it fundamental that a WAG must provide the opportunity for 'an exchange of ideas' with a large and diverse group. . . . If an event is so structured that an employee has little opportunity to exchange views with a large and diverse number of persons, then the very purpose of the exception would be defeated."); OGE Informal Advisory Opinion 99 x 2 (March 15, 1999). This amendment is being proposed to codify OGE's long-standing interpretation.

Proposed § 2635.204(g)(3) describes the finding that the agency designee must make before authorizing an employee to accept an offer of free attendance at a widely attended gathering. The proposed rule does not require a particular degree of specificity in making this finding, but does require written evidence that the determination was made. For example, an email from the agency designee to the employee indicating the designee's approval would be sufficient. This section also sets out the limitations that apply when the gift of free attendance is from someone other than the sponsor, including restrictions on the aggregate value of such gifts. OGE has set the ceiling for nonsponsor gifts of free attendance to match the threshold set by the General Service Administration (GSA) as the "minimal value" level used in the regulations implementing the Foreign Gifts and Decorations Act, 5

U.S.C. 7342. OGE raises this threshold on a three-year basis to match the dollar value set by GSA. The last time the regulatory ceiling was raised was in 2014. *See, e.g.,* 79 FR 28605 (May 19, 2014).

As described above, OGE proposes removing § 2635.204(g)(4) and the explanatory Note following the regulation, which sets out the definition of "free attendance" for the purposes of § 2635.204(g), because there is now a proposed subpart-wide definition of "free attendance" at § 2635.203(g). OGE proposes adding a new § 2635.204(g)(4) establishing factors the agency designee may consider in determining whether the agency's interest in having the employee attend the event outweighs the potential that the employee may be, or may appear to be, improperly influenced in the performance of his or her duties by accepting the gift.

OGE proposes to reword § 2635.204(g)(5) to more clearly state the criteria that apply when making a determination that a gift is from a person other than the sponsor.

Because the exception for widely attended gatherings generates more questions than perhaps any other gift exception, OGE has provided eight examples to the regulation. Proposed *Example 1 to paragraph (g)* is part of current *Example 1* following § 2635.204(g), but has been modified to illustrate when acceptance would not be permitted under the exception because the value of the gift from a nonsponsor is in excess of the regulatory threshold. *Example 2 to paragraph (g)* is new, and illustrates when acceptance would not be permitted under the exception because the gift is from a nonsponsor and the event is not expected to be attended by more than 100 persons. *Example 3 to paragraph (g)* is part of current *Example 1* following § 2635.204(g), but has been modified to illustrate when acceptance could be permitted under the exception because the gift is from the sponsor of the event. *Example 4 to paragraph (g)* is current *Example 2* following § 2635.204(g) modified to account for changes in the regulatory dollar threshold. *Example 5 to paragraph (g)* is current *Example 3* following § 2635.204(g). *Example 6 to paragraph (g)* is current *Example 5* following § 2635.204(g). *Example 7 to paragraph (g)* is current *Example 6* following § 2635.204(g) modified to reflect that all widely attended gathering authorizations must be in writing. Proposed *Example 8 to paragraph (g)* is new, and explains that an employee may not accept gifts of transportation to or from an event pursuant to the exception at § 2635.204(g). This is

consistent with OGE's longstanding interpretation of the definition.

OGE proposes to revise § 2635.204(h) to clarify that an employee may accept an invitation to attend a social event permitted under the current rule only when that invitation is unsolicited. OGE also proposes clarifying that the gift exception includes food, refreshments, and entertainment that are provided to the employee's spouse or other accompanying guests. OGE further proposes to add a new § 2635.204(h)(3) to require an employee to receive a written determination that the employee's attendance at the event complies with the proposed standard set out at § 2635.201(b) when either the sponsor of the event or the person extending the invitation is not an individual. If the event is being hosted by an organization or the invitation is from an organization, as opposed to an individual, OGE believes that it is appropriate to require an independent written determination by an agency ethics official confirming that the employee's acceptance of free meals, refreshments, and entertainment would not cause a reasonable person to question the employee's integrity under the standard found in proposed § 2635.201(b). OGE proposes removing the examples following § 2635.204(h), and replacing them with new *Example 1 to paragraph (h)* illustrating a situation in which acceptance under this paragraph would be permitted.

OGE proposes to amend § 2635.204(i) to clarify that gifts of meals, refreshments, and entertainment provided in a foreign area may be accepted only when unsolicited. OGE has also updated the citations throughout the regulation.

OGE proposes revising § 2635.204(k) to include a cross-reference to § 2635.105, which sets forth the requirements that agencies must follow to promulgate supplemental agency regulations.

OGE proposes to revise § 2635.204(l) by removing the Note following paragraph (1), as it is not necessary for understanding the scope or substance of the exception.

OGE proposes to add a new gift exception for unsolicited gifts of informational materials at proposed § 2635.204(m). Executive Branch employees occasionally receive unsolicited gifts of books and periodicals. These items are often given with the goal of communicating the ideas and positions of the donor rather than personally benefitting the individual employee. The proposed gift exception would allow acceptance of these materials when either they are less

than \$100 or, if they are in excess of \$100, there has been a determination that their acceptance accords with the general standard found at proposed § 2635.201(b). An employee could not use the proposed exception to accept entertainment materials, such as novels, audio or video recordings of entertainment programs, or pictures, photographs, or artwork intended for display or decoration. Section (m)(2) provides guidance on what constitutes informational materials. OGE also proposes providing two new examples to illustrate this exception.

*Proposed § 2635.205 Limitations on Use of Exceptions*

As previously described, OGE is proposing to move the limitations on employees' ability to use and rely on the exceptions in § 2635.204, which were previously located at § 2635.202(c), to § 2635.205. OGE further proposes to revise the regulatory text of proposed § 2635.205(b), which is current § 2635.202(c)(2), by rewording this paragraph to prohibit an employee from "[u]s[ing], or permit[ing] the use of, the employee's Government position, or any authority associated with public office, to solicit or coerce the offering of a gift." This rewording is consistent with the language currently found in subpart G of the Standards, which broadly prohibits employees from using their public office for private gain. See 5 CFR 2635.702(a).

Some exceptions would permit employees to solicit certain gifts in limited circumstances where it is clear that they have not used their official positions to induce the offering of the gifts, as in the case of an employee who solicits a gift from his or her spouse even though the spouse is employed by a prohibited source, pursuant to the exception at § 2635.204(b). These exceptions include: § 2635.204(b) (Gifts based on a personal relationship); § 2635.204(c) (Discounts and similar benefits); § 2635.204(d) (Awards and honorary degrees); § 2635.204(e) (Gifts based on outside business or employment relationships); § 2635.204(f) (Gifts in connection with political activities permitted by the Hatch Act Reform Amendments); § 2635.204(j) (Gifts to the President or Vice President); § 2635.204(k) (Gifts authorized by supplemental agency regulation); and § 2635.204(l) (Gifts accepted under specific statutory authority). However, these exceptions would continue to prohibit employees from using the authority of their positions to solicit or coerce the offering of gifts. They would also continue to prohibit employees from soliciting gifts

to be given because of the employee's position.

Other exceptions would bar solicitation of gifts under any circumstances, even where employees have not used the authority of their positions to influence or induce the giving of the gift. To emphasize this broader prohibition, OGE retained, and in some cases added, language in these exceptions clarifying that they apply only to the acceptance of "unsolicited" gifts. These exceptions include: § 2635.204(a) (Gifts of \$20 or less); § 2635.204(g) (Gifts of free attendance at widely attended gatherings); § 2635.204(h) (Social invitations); § 2635.204(i) (Meals, refreshments and entertainment in foreign areas); and § 2635.204(m) (Gifts of informational materials).

OGE proposes to expand the description of the federal bribery statute, found at proposed § 2635.205(d)(1), to more closely follow the text of the law. OGE also proposes to add two new limitations on the use of the exceptions found at § 2635.204. Proposed § 2635.205(e) would bar an employee from relying on an exception to the general gift prohibition when the acceptance of the gift would be prohibited by Executive Order. Similarly, proposed § 2635.205(f) would bar an employee from relying on an exception to the general gift prohibition when the acceptance of the gift would be prohibited by supplemental agency regulation issued with the concurrence of OGE.

OGE proposes removing the limitation currently found at § 2635.202(c)(5) dealing with the acceptance of vendor promotional training. This limitation was originally included to ensure that any gift would be consistent with the guidelines on vendor promotional training in the Federal Information Resources Management Regulation, which was issued by the General Services Administration (GSA). See 57 FR 35006, 35012–13 (Aug. 7, 1992). However, that GSA regulation was rescinded in 1996.

Proposed *Example 1 to paragraph (c)* is current *Example 1* following § 2635.202(c)(3).

*Proposed § 2635.206 Proper Disposition of Prohibited Gifts*

OGE proposes to move the regulations pertaining to the proper disposition of prohibited gifts from § 2635.205 to § 2635.206.

OGE proposes to modify the language currently found at § 2635.205(a), and redesignated at § 2635.206(a), to enhance readability, to add headings to the subparagraphs, and to emphasize

that employees must promptly dispose of gifts that are accepted in violation of the subpart. OGE also proposes to add a sentence explaining that the obligation to dispose of prohibited gifts is independent of an agency's decision to initiate corrective or disciplinary action.

Currently, § 2635.205(a)(1) provides that an employee who receives a tangible gift that is prohibited by the subpart must either return the gift to the donor or pay the donor the market value. Proposed § 2635.206(a)(1) would amend the regulation to provide employees with the option of destroying gifts with a market value not in excess of \$100. OGE understands that on occasion it may be impossible, cost-prohibitive, or time-consuming for the employee or agency to return the prohibited gift. This could be the case, for example, if the donor was unknown or unreachable. In these cases, where the gift is a tangible item and the market value is \$100 or less, OGE believes the Government's interest may be better served by permitting an employee to destroy the gift. Destruction may be carried out by physical destruction or by permanently discarding the gift by placing it in a waste receptacle. OGE has provided examples illustrating proper gift disposition at the end of the relevant paragraphs.

OGE proposes revising § 2635.206(a)(2) for technical reasons. Proposed § 2635.206(a)(4) updates the citation that relates to disposition of gifts received from foreign governments or international organizations and strikes the language related to disposal of materials related to official travel. The latter provision has become obsolete following statutory changes occurring after the original promulgation of the Standards.

OGE proposes to add a new § 2635.206(d) to encourage employees to record any actions that they take to dispose of gifts that cannot be accepted under the subpart.

### III. Matters of Regulatory Procedure

#### *Regulatory Flexibility Act*

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed rule would not have a significant economic impact on a substantial number of small entities because it primarily affects current Federal Executive Branch employees.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain information collection requirements that

require approval of the Office of Management and Budget.

#### *Unfunded Mandates Reform Act*

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 5, subchapter II), this proposed rule would not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

#### *Executive Order 13563 and Executive Order 12866*

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select the regulatory approaches that maximize net benefits (including economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated as a “significant regulatory action” although not economically significant, under section 3(f) of Executive Order 12866. Accordingly this rule has been reviewed by the Office of Management and Budget.

#### *Executive Order 12988*

As Director of the Office of Government Ethics, I have reviewed this proposed rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

#### **List of Subjects in 5 CFR Part 2635**

Conflict of interests, Executive Branch standards of ethical conduct, Government employees.

Approved: November 9, 2015.

**Walter M. Shaub, Jr.,**

*Director, Office of Government Ethics.*

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to amend 5 CFR part 2635 as set forth below:

#### **PART 2635—STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH**

■ 1. The authority citation for part 2635 continues to read as follows:

**Authority:** 5 U.S.C. 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

■ 2. Revise subpart B of part 2635 to read as follows:

#### **Subpart B—Gifts From Outside Sources**

Sec.

- 2635.201 Overview and considerations for declining otherwise permissible gifts.
- 2635.202 General prohibition on solicitation or acceptance of gifts.
- 2635.203 Definitions.
- 2635.204 Exceptions to the prohibition on acceptance of certain gifts.
- 2635.205 Limitations on use of exceptions.
- 2635.206 Proper disposition of prohibited gifts.

#### **Subpart B—Gifts From Outside Sources**

##### **§ 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 responsibility to the United States and its citizens to place loyalty to the Constitution, laws, and ethical principles above personal gain. An employee’s actions should promote the public’s trust that this fundamental responsibility is being met. Even when acceptance of a gift would be permitted by one of the exceptions contained in § 2635.204, it is frequently prudent for an employee to decline a gift offered by a prohibited source or because of the employee’s official position. In determining whether acceptance of a gift otherwise permitted by an exception set forth in § 2635.204 would be prudent, an employee should consider whether a reasonable person with knowledge of the relevant facts would question the employee’s integrity.

(2) In considering whether acceptance of a gift would lead a reasonable person to question the employee’s integrity, an employee may consider, among other factors:

- (i) Whether the gift has a high or low market value;
- (ii) Whether the gift was provided by a person or organization who has interests that may be affected substantially by the performance or nonperformance of the employee’s official duties;
- (iii) Whether acceptance of the gift would lead the employee to feel a sense of obligation to the donor;

(iv) Whether acceptance of the gift would reasonably create an appearance that the employee is providing the donor with preferential treatment or access to the Government;

(v) With regard to a gift of free attendance at an event, whether the Government is also providing persons with views or interests that differ from those of the donor with access to the Government;

(vi) With regard to a gift of free attendance at an event, whether the event is open to interested members of the public or representatives of the news media;

(vii) Whether acceptance of the gift would cause a reasonable person to question the employee’s ability to act impartially; and

(viii) Whether acceptance of the gift would interfere with the employee’s conscientious performance of official duties.

(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. *See* § 2635.107(b).

##### **§ 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 allow the vendor to present a demonstration of the contractor's products at the division's staff meeting. Even though the gift card is less than \$20, the employee may not accept the gift under 5 CFR 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.

### § 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 refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal;

*Example 1 to paragraph (b)(1):* A Department of Defense employee is invited to a defense contractor's holiday party. Alcoholic beverages are served at the party. Attendance at the party would be a gift to the employee because alcoholic beverages are not modest items of food or refreshment.

(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 for 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):* All 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 at the Government's expense cannot accept the weekend getaway, which is a "door prize," because his entry in the contest was a result of registering for the conference as part of his official duties. Similarly, the employee could not accept the prize if entry into the drawing were restricted to those conference attendees who completed a conference evaluation, even if completing the evaluation was optional, because completing the evaluation was part of the conference and, therefore, incident to the performance of his official duties.

(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, if done in accordance with 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 has authorized the presenting employee orally or in writing to accept.

*Example 1 to paragraph (b)(8):* An employee of the Department of the Treasury 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 for her speech having 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 § 2635.203(b)(8) 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 § 2635.203(b)(8)(ii).

*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 while at the event he will have an opportunity to discuss official matters with other attendees. 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 § 2635.203(b)(8).

(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. To determine the market value of

the tickets, the employee must add the market 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.

*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 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.

**§ 2635.204 Exceptions to the prohibition on 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).

(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 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 § 2635.204(b) 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 § 2635.204(a) 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 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 § 2635.204(b).

(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 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 § 2635.204(c)(2)(i). 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 § 2635.204(d)(2), an employee of the National Institutes of Health 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 wife 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, § 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 paragraphs (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 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 husband 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 husband'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 wife 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 wife received a special invitation for herself and her spouse.

(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) 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 and 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 \$375.

(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 similar 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 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 \$375 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 \$375 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, 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 \$375. 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 \$375.

*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 husband 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 § 2635.204(a).

*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 makes a written determination after finding that the employee's attendance would not cause a reasonable person to question the employee's integrity. See § 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](http://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 5 CFR 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 from an organization with tax-exempt status under 26 U.S.C. 501(c)(3) or from a person to whom the prohibitions in 18 U.S.C. 209 do not apply. 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 when:

(i) The informational materials are primarily provided for educational or instructive purposes, rather than entertainment; and

(ii)(A) The aggregate market value of the informational materials is \$100 or less; or

(B) If the aggregate market value exceeds \$100, an agency designee makes a written determination that acceptance would not be inconsistent with the standard set forth in § 2635.201(b).

(2) *Informational materials.* Informational materials are writings, recordings, documents, records, or other items intended primarily to communicate information, not including images intended primarily for display or decoration, provided that the information relates in whole or in part to the following categories:

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

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

(iii) 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.

#### **§ 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 5 CFR 2635.105.

#### **§ 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 that the tangible item has a market value not in excess of \$100, 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. See § 2635.203(c).

*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.

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## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

#### 6 CFR Part 5

[Docket No. DHS 2015-0079]

### Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/United States Coast Guard-029 Notice of Arrival and Departure System of Records

**AGENCY:** Privacy Office, Department of Homeland Security.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Homeland Security is giving concurrent notice of an updated and reissued system of records pursuant to the Privacy Act of 1974 for the "Department of Homeland Security/United States Coast Guard-029 Notice of Arrival and Departure System of Records" and this proposed

rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

**DATES:** Comments must be received on or before December 28, 2015.

**ADDRESSES:** You may submit comments, identified by docket number DHS 2015-0079, by one of the following methods:

- *Federal e-Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-343-4010.

- *Mail:* Karen L. Neuman, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

*Instructions:* All submissions received must include the agency name and docket number for this document. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For general questions, please contact: Marilyn Scott-Perez, (202) 475-3515, Privacy Officer, Commandant (CG-61), United States Coast Guard, 2703 Martin Luther King Jr. Ave. SE., Mail Stop 7710, Washington, DC 20593. For privacy questions, please contact: Karen L. Neuman, (202) 343-1717, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528-0655.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS), United States Coast Guard (USCG) is giving notice of a proposed rulemaking that DHS/USCG intends to update its regulations to exempt portions of a system of records from certain provisions of the Privacy Act. Specifically, DHS/USCG proposes to exempt portions of the "DHS/USCG-029 Notice of Arrival and Departure System of Records" from one of more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. DHS/USCG is issuing an updated notice and proposed rule for proposed exemptions for these new categories of records pursuant to 5 U.S.C. 552a(j)(2) and 5 U.S.C. 552 a(k)(2). Furthermore, to the extent certain categories of records are ingested from other systems, the