§ 7326. Penalties

An employee or individual who violates section 7323 or 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit System Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board.


PRIOR PROVISIONS

A prior section 7326, Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 526, authorized nonpartisan political activities, prior to the general revision of this subchapter by Pub. L. 103–94.

A prior section 7326, Pub. L. 96–191, § 8(e)(1), Feb. 15, 1980, 94 Stat. 88, exempted employees of the United States at the time of acceptance of any unit of foreign government described in subparagraphs (A) through (F) (unless such individual and his or her spouse are separated) or a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986) of such an individual, other than a spouse or dependent who is an employee under subparagraphs (A) through (F); and


AMENDMENTS

1996—Pub. L. 104–93 inserted “and paragraph (2) of section 7323(b)’’ after “section 7323(a)’’.

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SUBCHAPTER IV—FOREIGN GIFTS AND DECORATIONS

AMENDMENTS


§ 7342. Receipt and disposition of foreign gifts and decorations

(a) For the purpose of this section—

(1) “employee” means—

(A) an employee as defined by section 2105 of this title and an officer or employee of the United States Postal Service or of the Postal Regulatory Commission;

(B) an expert or consultant who is under contract under section 3109 of this title with the United States or any agency, department, or establishment thereof, including, in

the case of an organization performing services under such section, any individual involved in the performance of such services;

(C) an individual employed by, or occupying an office or position in, the government of a territory or possession of the United States or the government of the District of Columbia;

(D) a member of a uniformed service;

(E) the President and the Vice President;

(F) a Member of Congress as defined by section 2106 of this title (except the Vice President) and any Delegate to the Congress; and

(G) the spouse of an individual described in subparagraphs (A) through (F) (unless such individual and his or her spouse are separated) or a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986) of such an individual, other than a spouse or dependent who is an employee under subparagraphs (A) through (F); and

(2) “foreign government” means—

(A) any unit of foreign governmental authority, including any foreign national, State, local, and municipal government;

(B) any international or multinational organization whose membership is composed of any unit of foreign government described in subparagraph (A); and

(C) any agent or representative of any such unit or such organization, while acting as such;

(3) “gift” means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government;

(4) “decoration” means an order, device, medal, badge, insignia, emblem, or award tendered by, or received from, a foreign government;

(5) “minimal value” means a retail value in the United States at the time of acceptance of $100 or less, except that—

(A) on January 1, 1981, and at 3 year intervals thereafter, “minimal value” shall be re-defined in regulations prescribed by the Administrator of General Services, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period; and

(B) regulations of an employing agency may define “minimal value” for its employees to be less than the value established under this paragraph; and

(6) “employing agency” means—

(A) the Committee on Standards of Official Conduct of the House of Representatives, for Members and employees of the House of Representatives, except that those responsibilities specified in subsections (c)(2)(A), (e)(1), and (g)(2)(B) shall be carried out by the Clerk of the House;

(B) the Select Committee on Ethics of the Senate, for Senators and employees of the Senate, except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in subsections (c)(2), (d), and (g)(2)(B) shall be carried out by the Secretary of the Senate;

(C) the Administrative Office of the United States Courts, for judges and judicial branch employees; and
(D) the department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees.

(b) An employee may not—

(1) request or otherwise encourage the tender of a gift or decoration; or

(2) accept a gift or decoration, other than in accordance with the provisions of subsections (c) and (d).

(c)(1) The Congress consents to—

(A) the accepting and retaining by an employee of a gift of minimal value tendered and received as a souvenir or mark of courtesy; and

(B) the accepting by an employee of a gift of more than minimal value when such gift is in the nature of an educational scholarship or medical treatment or when it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, except that—

(i) a tangible gift of more than minimal value is deemed to have been accepted on behalf of the United States and, upon acceptance, shall become the property of the United States; and

(ii) an employee may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if such acceptance is appropriate, consistent with the interests of the United States, and permitted by the employing agency and any regulations which may be prescribed by the employing agency.

(2) Within 60 days after accepting a tangible gift of more than minimal value (other than a gift described in paragraph (1)(B)(i)), an employee shall—

(A) deposit the gift for disposal with his or her employing agency; or

(B) subject to the approval of the employing agency, deposit the gift with that agency for official use.

Within 30 days after terminating the official use of a gift under subparagraph (B), the employing agency shall forward the gift to the Administrator of General Services in accordance with subsection (e)(1), or provide for its disposal in accordance with subsection (e)(2).

(3) When an employee deposits a gift of more than minimal value for disposal or for official use pursuant to paragraph (2), or within 30 days after accepting travel or travel expenses as provided in paragraph (1)(B)(i) unless such travel or travel expenses are accepted in accordance with specific instructions of his or her employing agency, the employee shall file a statement with his or her employing agency or its delegate containing the information prescribed in subsection (f) for that gift.

(d) The Congress consents to the accepting, retaining, and wearing by an employee of a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the employing agency of such employee. Without this approval, the decoration is deemed to have been accepted on behalf of the United States, shall become the property of the United States, and shall be deposited by the employee, within sixty days of acceptance, with the employing agency for official use, for forwarding to the Administrator of General Services for disposal in accordance with subsection (e)(1), or for disposal in accordance with subsection (e)(2).

(e)(1) Except as provided in paragraph (2), gifts and decorations that have been deposited with an employing agency for disposal shall be (A) returned to the donor, or (B) forwarded to the Administrator of General Services for transfer, donation, or other disposal in accordance with the provisions of subtitle I of title 40 and division C (except sections 3302, 3501(b), 3509, 3906, 4710, and 4711) of subtitle I of title 41. However, no gift or decoration that has been deposited for disposal may be sold without the approval of the Secretary of State, upon a determination that the sale will not adversely affect the foreign relations of the United States. Gifts and decorations may be sold by negotiation.

(2) Gifts and decorations received by a Senator or an employee of the Senate that are deposited with the Secretary of the Senate for disposal, or are deposited for an official use which has terminated, shall be disposed of by the Commission on Arts and Antiquities of the United States Senate. Any such gift or decoration may be returned by the Commission to the donor or may be transferred or donated by the Commission, subject to such terms and conditions as it may prescribe, (A) to an agency or instrumentality of (i) the United States, (ii) a State, territory, or possession of the United States, or a political subdivision of the foregoing, or (ii) the District of Columbia, or (B) to an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code. Any such gift or decoration not disposed of as provided in the preceding sentence shall be forwarded to the Administrator of General Services for disposal in accordance with paragraph (1). If the Administrator does not dispose of such gift or decoration within one year, he shall, at the request of the Commission, return it to the Commission and the Commission may dispose of such gift or decoration in such manner as it considers proper, except that such gift or decoration may be sold only with the approval of the Secretary of State upon a determination that the sale will not adversely affect the foreign relations of the United States.

(f)(1) Not later than January 31 of each year, each employing agency or its delegate shall compile a listing of all statements filed during the preceding year by the employees of that agency pursuant to subsection (c)(3) and shall transmit such listing to the Secretary of State who shall publish a comprehensive listing of all such statements in the Federal Register.

(2) Such listings shall include for each tangible gift reported—

(A) the name and position of the employee; (B) a brief description of the gift and the circumstances justifying acceptance;
(C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift;
(D) the date of acceptance of the gift;
(E) the estimated value in the United States of the gift at the time of acceptance; and
(F) disposition or current location of the gift.
(3) Such listings shall include for each gift of travel or travel expenses—
(A) the name and position of the employee;
(B) a brief description of the gift and the circumstances justifying acceptance; and
(C) the identity, if known, of the foreign government and the name and position of the individual who presented the gift.
(4)(A) In transmitting such listings for an element of the intelligence community, the head of such element may delete the information described in subparagraph (A) or (C) of paragraph (2) or in subparagraph (A) or (C) of paragraph (3) if the head of such element certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources or methods.
(B) Any information not provided to the Secretary of State pursuant to the authority in subparagraph (A) shall be transmitted to the Director of National Intelligence who shall keep a record of such information.
(C) In this paragraph, the term “intelligence community” has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(g)(1) Each employing agency shall prescribe such regulations as may be necessary to carry out the purpose of this section. For all employing agencies in the executive branch, such regulations shall be prescribed pursuant to guidance provided by the Secretary of State. These regulations shall be implemented by each employing agency for its employees.

(2) Each employing agency shall—
(A) report to the Attorney General cases in which there is reason to believe that an employee has violated this section;
(B) establish a procedure for obtaining an appraisal, when necessary, of the value of gifts; and
(C) take any other actions necessary to carry out the purpose of this section.

(h) The Attorney General may bring a civil action in any district court of the United States against any employee who knowingly solicits or accepts a gift from a foreign government not consented to by this section or who fails to deposit or report such gift as required by this section. The court in which such action is brought may assess a penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus $5,000.

(i) The President shall direct all Chiefs of a United States Diplomatic Mission to inform their host governments that it is a general policy of the United States Government to prohibit United States Government employees from receiving gifts or decorations of more than minimal value.

(j) Nothing in this section shall be construed to derogate any regulation prescribed by any employing agency which provides for more stringent limitations on the receipt of gifts and decorations by its employees.

(k) The provisions of this section do not apply to grants and other forms of assistance to which section 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies.

(HISTORICAL AND REVISION NOTES)


The definitions of “employee” and “uniformed services” in 5 U.S.C. 2105 and 2101 are broad enough to cover the persons included in 22 U.S.C. 2621(1) with the exception of (1) individuals employed by, or occupying an office or position in, the government of a territory or possession of the United States or of the District of Columbia, (2) the President, and (3) Members of Congress, who, accordingly, are covered in paragraphs (B), (D), and (E). As the Canal Zone Government is an independent agency of the United States, see section 31 of title 2, Canal Zone Code, an employee thereof is an “employee” as defined in 5 U.S.C. 2105.

In subsection (e), the words “under regulations prescribed under this section” are substituted for “in accordance with the rules and regulations issued pursuant to this Act”.

In subsection (e), the words “The President may prescribe regulations to carry out the purpose of this section” are substituted for “Rules and regulations to carry out the purposes of this Act may be prescribed by or under the authority of the President”. Under 3 U.S.C. 301, the President may delegate the authority vested in him by this subsection.

REFERENCES IN TEXT


AMENDMENTS

2011—Subsec. (e)(1). Pub. L. 111–350 substituted “division C (except sections 3302, 3301(b), 3509, 3906, 4710, and
provisions as par. (1), substituted "Except as provided in accordance with subsection (e)(2)" for "subsection (e)".

2010—Subsec. (f)(4). Pub. L. 111–259 amended par. (4) generally. Prior to amendment, par. (4) read as follows: "(A) In transmitting such listings for the Central Intelligence Agency, the Director of the Central Intelligence Agency may delete the information described in subparagraphs (A) and (C) of paragraphs (2) and (3) if the Director certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources.

"(B) In transmitting such listings for the Office of the Director of National Intelligence, the Director of National Intelligence may delete the information described in subparagraphs (A) and (C) of paragraphs (2) and (3) if the Director certifies in writing to the Secretary of State that the publication of such information could adversely affect United States intelligence sources."


Subsec. (a)(6)(B). Pub. L. 95–426, §172(a)(2), inserted ", except that those responsibilities (other than responsibilities involving approval of the employing agency’s specified in subsection (e)(2), (d), and (g)(2)), shall be carried out by the Secretary of the Senate."

Subsec. (c)(2). Pub. L. 95–426, §172(b)(1), substituted "subsection (e)(1) or for its disposal in accordance with subsection (e)(2)" for "subsection (e)"

Subsec. (d). Pub. L. 95–426, §172(b)(2), substituted "official use, for forwarding", for "official use, or forwarding", and "subsection (e)(1) or for its disposal in accordance with subsection (e)(2)" for "subsection (e)"

Subsec. (e). Pub. L. 95–426, §172(c), designated existing provisions as par. (1), substituted "Except as provided in subsection (e)(1)(A) and (B)" for "subsection (e)(1) and (2)", respectively, and added par. (2).

1977—Subsec. (a). Pub. L. 95–105 in par. (1) inserted provisions expanding definition of "employee" to include an officer or employee of the United States Postal Service or Postal Rate Commission, certain experts and consultants, the Vice President, and any Delegate to Congress, in par. (2) incorporated existing provisions into subpars. (A) and (C) and added subpar. (B), in par. (3) substituted reference to tangible or intangible present for reference to present, in par. (4) inserted reference to award, and added pars. (5) and (6).

Subsec. (b). Pub. L. 95–105 designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 95–105 incorporated existing provisions of pars. (1) and (2) into par. (1), inserted provisions giving congressional consent to acceptance of a gift in the nature of an educational scholarship, medical treatment, or travel or travel expenses, and added pars. (2) and (3).

Subsec. (d). Pub. L. 95–105 struck out provisions requiring the Secretary of State to concur with the approval of the employing agency and substituted provisions requiring the employee to deposit property within 60 days of acceptance with the employing agency for official use or forwarding to the Administrator of General Services for disposal for provisions requiring the employee to deposit the decoration or emblem accepted (1) under the United States may wear any decoration, order, medal, or emblem accepted (1) under the Act of July 20, 1942, chapter 508 (56 Stat. 662), or (2) before August 1, 1947, from the government of a cobelligerent or neutral nation or an American Republic."
§ 7351. GIFTS TO SUPERIORS

(a) An employee may not—

(1) solicit a contribution from another employee for a gift to an official superior;

(2) make a donation as a gift or give a gift to an official superior; or

(3) accept a gift from an employee receiving less pay than himself.

(b) An employee who violates this section shall be subject to appropriate disciplinary action by the employing agency or entity.

(c) Each supervising ethics office (as defined in section 7353(d)(1)) is authorized to issue regulations exempting voluntary gifts or contributions that are given or received for special occasions such as marriage or retirement or under other circumstances in which gifts are traditionally given or exchanged.

Historical and Revision Notes

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The word “employed” is substituted for “appointed to, or retained in” because it includes both. Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 7352. EXCESSIVE AND HABITUAL USE OF INTOXICANTS

An individual who habitually uses intoxicating beverages to excess may not be employed in the competitive service.

Historical and Revision Notes

The application of the section is confined to employees, since the President and Members of Congress, though officers, could not have been intended to be “summarily discharged”, and members of uniformed services are not covered by this statute. In the last sentence, the word “removed” is substituted for “summarily discharged” because of the provisions of the Lloyd-LaFollette Act, 37 Stat. 555, as amended, and the Veterans’ Preference Act of 1944, 68 Stat. 367, as amended, which are carried into this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS


Subsec. (c). Pub. L. 101–194, § 4(a)(2), substituted “Each supervising ethics office (as defined in section 7353(d)(1))” for “The Office of Government Ethics” and “circumstances in which gifts are traditionally given or exchanged” for “similar circumstances”.

1989—Pub. L. 101–194 designated existing provisions as subsec. (a), struck out “An employee who violates this section shall be removed from the service.” at end, and added subsec. (b) and (c).

APPlicABILITY TO TRANSFERS OF UNUSED ACCRUED ANNUAL LEAVE BY FEDERAL EMPLOYEES; EXCEPTION
