

(2) Accept a gift given because of the employee's official position.

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

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

**§ 2635.203 Definitions.**

For purposes of this subpart, the following definitions apply:

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

(b) *Gift* includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. The term excludes the following:

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

(2) Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended primarily for presentation;

*Example 1 to paragraph (b)(2):* After giving a speech at the facility of a pharmaceutical company, a Government employee is presented with a glass paperweight in the shape of a pill capsule with the name of the company's latest drug and the date of the speech imprinted on the side. The employee may accept the paperweight because it is an item with little intrinsic value which is intended primarily for presentation.

*Example 2 to paragraph (b)(2):* After participating in a panel discussion hosted by an international media company, a Government employee is presented with an inexpensive portable music player emblazoned with the media company's logo. The portable music player has a market value of \$25. The employee may not accept the portable music player as it has a significant independent use as a music player rather than being intended primarily for presentation.

*Example 3 to paragraph (b)(2):* After giving a speech at a conference held by a national association of miners, a Department of Commerce employee is presented with a block of granite that is engraved with the association's logo, a picture of the Appalachian Mountains, the date of the speech, and the employee's name. The employee may accept this item because it is similar to a plaque, is designed primarily for presentation, and has little intrinsic value.

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

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

(5) Rewards and prizes given to competitors in contests or events, including random drawings, open to the public unless the employee's entry into the contest or event is required as part of the employee's official duties;

*Example 1 to paragraph (b)(5):* A Government employee is attending a free trade show on official time. The trade show is held in a public shopping area adjacent to the employee's office building. The employee voluntarily enters a drawing at an individual vendor's booth which is open to the public. She fills in an entry form on the vendor's display table and drops it into the contest box. The

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employee may accept the resulting prize because entry into the contest was not required by or related to her official duties.

*Example 2 to paragraph (b)(5):* Attendees at a conference, which is not open to the public, are entered in a drawing for a weekend getaway to Bermuda as a result of being registered for the conference. A Government employee who attends the conference in his official capacity could not accept the prize under paragraph (b)(5) of this section, as the event is not open to the public.

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

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

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

(8) Free attendance to an event provided by the sponsor of the event to:

(i) An employee who is assigned to present information on behalf of the agency at the event on any day when the employee is presenting;

(ii) An employee whose presence on any day of the event is deemed to be essential by the agency to the presenting employee's participation in the event, provided that the employee is accompanying the presenting employee; and

(iii) The spouse or one other guest of the presenting employee on any day when the employee is presenting, provided that others in attendance will generally be accompanied by a spouse or other guest, the offer of free attendance for the spouse or other guest is unsolicited, and the agency designee, orally or in writing, has authorized the presenting employee to accept;

*Example 1 to paragraph (b)(8):* An employee of the Department of the Treasury who is assigned to participate in a panel discussion of economic issues as part of a one-day conference may accept the sponsor's waiver of the conference fee. Under the separate au-

thority of § 2635.204(a), the employee may accept a token of appreciation that has a market value of \$20 or less.

*Example 2 to paragraph (b)(8):* An employee of the Securities and Exchange Commission is assigned to present the agency's views at a roundtable discussion of an ongoing working group. The employee may accept free attendance to the meeting under paragraph (b)(8) of this section because the employee has been assigned to present information at the meeting on behalf of the agency. If it is determined by the agency that it is essential that another employee accompany the presenting employee to the roundtable discussion, the accompanying employee may also accept free attendance to the meeting under paragraph (b)(8)(ii) of this section.

*Example 3 to paragraph (b)(8):* An employee of the United States Trade and Development Agency is invited to attend a cocktail party hosted by a prohibited source. The employee believes that he will have an opportunity to discuss official matters with other attendees while at the event. Although the employee may voluntarily discuss official matters with other attendees, the employee has not been assigned to present information on behalf of the agency. The employee may not accept free attendance to the event under paragraph (b)(8) of this section.

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

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

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

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

(c) *Market value* means the cost that a member of the general public would reasonably expect to incur to purchase the gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. The market value of a gift of a ticket entitling the holder to food, refreshments, entertainment, or any

other benefit is deemed to be the face value of the ticket.

*Example 1 to paragraph (c):* An employee who has been given a watch inscribed with the corporate logo of a prohibited source may determine its market value based on her observation that a comparable watch, not inscribed with a logo, generally sells for about \$50.

*Example 2 to paragraph (c):* During an official visit to a factory operated by a well-known athletic footwear manufacturer, an employee of the Department of Labor is offered a commemorative pair of athletic shoes manufactured at the factory. Although the cost incurred by the donor to manufacture the shoes was \$17, the market value of the shoes would be the \$100 that the employee would have to pay for the shoes on the open market.

*Example 3 to paragraph (c):* A prohibited source has offered a Government employee a ticket to a charitable event consisting of a cocktail reception to be followed by an evening of chamber music. Even though the food, refreshments, and entertainment provided at the event may be worth only \$20, the market value of the ticket is its \$250 face value.

*Example 4 to paragraph (c):* A company offers an employee of the Federal Communication Commission (FCC) free attendance for two to a private skybox at a ballpark to watch a major league baseball game. The skybox is leased annually by the company, which has business pending before the FCC. The skybox tickets provided to the employee do not have a face value. To determine the market value of the tickets, the employee must add the face value of two of the most expensive publicly available tickets to the game and the market value of any food, parking or other tangible benefits provided in connection with the gift of attendance that are not already included in the cost of the most expensive publicly available tickets.

*Example 5 to paragraph (c):* An employee of the Department of Agriculture is invited to a reception held by a prohibited source. There is no entrance fee to the reception event or to the venue. To determine the market value of the gift, the employee must add the market value of any entertainment, food, beverages, or other tangible benefit provided to attendees in connection with the reception, but need not consider the cost incurred by the sponsor to rent or maintain the venue where the event is held. The employee may rely on a per-person cost estimate provided by the sponsor of the event, unless the employee or an agency designee has determined that a reasonable person would find that the estimate is clearly implausible.

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

- (1) Is seeking official action by the employee's agency;
- (2) Does business or seeks to do business with the employee's agency;
- (3) Conducts activities regulated by the employee's agency;
- (4) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; or
- (5) Is an organization a majority of whose members are described in paragraphs (d)(1) through (4) of this section.

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

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

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

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

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

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

person's relationship to the employee; or

(2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee, except the employee has not indirectly solicited or accepted a gift by the raising of funds or other support for a charitable organization if done in accordance with § 2635.808.

*Example 1 to paragraph (f)(2):* An employee who must decline a gift of a personal computer pursuant to this subpart may not suggest that the gift be given instead to one of five charitable organizations whose names are provided by the employee.

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

#### § 2635.204 Exceptions to the prohibition for acceptance of certain gifts.

Subject to the limitations in § 2635.205, this section establishes exceptions to the prohibitions set forth in § 2635.202(a) and (b). Even though acceptance of a gift may be permitted by one of the exceptions contained in this section, it is never inappropriate and frequently prudent for an employee to decline a gift if acceptance would cause a reasonable person to question the employee's integrity or impartiality. Section 2635.201(b) identifies considerations for declining otherwise permissible gifts.

(a) *Gifts of \$20 or less.* An employee may accept unsolicited gifts having an aggregate market value of \$20 or less per source per occasion, provided that

the aggregate market value of individual gifts received from any one person under the authority of this paragraph (a) does not exceed \$50 in a calendar year. This exception does not apply to gifts of cash or of investment interests such as stock, bonds, or certificates of deposit. Where the market value of a gift or the aggregate market value of gifts offered on any single occasion exceeds \$20, the employee may not pay the excess value over \$20 in order to accept that portion of the gift or those gifts worth \$20. Where the aggregate value of tangible items offered on a single occasion exceeds \$20, the employee may decline any distinct and separate item in order to accept those items aggregating \$20 or less.

*Example 1 to paragraph (a):* An employee of the Securities and Exchange Commission and his spouse have been invited by a representative of a regulated entity to a community theater production, tickets to which have a face value of \$30 each. The aggregate market value of the gifts offered on this single occasion is \$60, \$40 more than the \$20 amount that may be accepted for a single event or presentation. The employee may not accept the gift of the evening of entertainment. He and his spouse may attend the play only if he pays the full \$60 value of the two tickets.

*Example 2 to paragraph (a):* An employee of the National Geospatial-Intelligence Agency has been invited by an association of cartographers to speak about her agency's role in the evolution of missile technology. At the conclusion of her speech, the association presents the employee a framed map with a market value of \$18 and a ceramic mug that has a market value of \$15. The employee may accept the map or the mug, but not both, because the aggregate value of these two tangible items exceeds \$20.

*Example 3 to paragraph (a):* On four occasions during the calendar year, an employee of the Defense Logistics Agency (DLA) was given gifts worth \$10 each by four employees of a corporation that is a DLA contractor. For purposes of applying the yearly \$50 limitation on gifts of \$20 or less from any one person, the four gifts must be aggregated because a person is defined at § 2635.102(k) to mean not only the corporate entity, but its officers and employees as well. However, for purposes of applying the \$50 aggregate limitation, the employee would not have to include the value of a birthday present received from his cousin, who is employed by the same corporation, if he can accept the birthday present under the exception at paragraph (b) of this section for gifts based on a personal relationship.