

CHAPTER XXVI—DEPARTMENT OF DEFENSE

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PART 3600 [RESERVED]

PART 3601—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF DEFENSE

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AUTHORITY: 5 U.S.C. 301, 7301, 7351, 7353; 5 U.S.C. Chapter 131; 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; 5 CFR 2635.105, 2635.203(a), 2635.204(k), 2635.803, 2635.807.

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§ 3601.101 Purpose.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Defense (DoD) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. DoD employees are required to comply with part 2635, this part, and implementing guidance and procedures.

§ 3601.102 Designation of DoD components as separate agencies for purposes of gifts from outside sources, and teaching, speaking, and writing.

(a) Pursuant to 5 CFR 2635.203(a), each of the following DoD components is designated as a separate agency for purposes of the regulations in subpart B of 5 CFR part 2635 governing gifts from outside sources and 5 CFR 2635.807 governing teaching, speaking, and writing:

(1) Armed Services Board of Contract Appeals;

(2) Department of the Army;

(3) Department of the Navy;

(4) Department of the Air Force;

(5) Defense Commissary Agency;

(6) Defense Contract Audit Agency;

(7) Defense Finance and Accounting Service;

(8) Defense Information Systems Agency;

(9) Defense Intelligence Agency;

(10) Defense Logistics Agency;

(11) Defense Counterintelligence and Security Agency;

(12) Defense Threat Reduction Agency;

(13) National Geospatial-Intelligence Agency;

(14) National Security Agency;

(15) Office of Inspector General;

(16) Uniformed Services University of the Health Sciences;

(17) National Reconnaissance Office; and

(18) Office of the Secretary of Defense remainder agency.

Example 1 to paragraph (a). For paragraph (a)(1) of this section [Teaching, Speaking, or Writing]: An Armed Services Board of Contract Appeals (ASBCA) employee is asked to give a compensated speech on prisoners of war, a topic on which he has a personal interest. While the Department of Defense has ongoing policies, programs, or operations related to this topic, the ASBCA does not. The employee may give the speech in a personal capacity and receive compensation because the ASBCA is a designated separate agency, the speech is not related to an ongoing program or operation of the ASBCA, and the speech is not otherwise related to the employee's official duties.

Example 2 to paragraph (a). For paragraphs (a)(2) and (18) of this section [Separate component—gift]: An employee of the Department of the Army (Army) and an employee of the Office of the Joint Chiefs of Staff (JCS) are each offered a ticket to a football game by a company that contracts with OSD. As long as the contractor is not a prohibited source for the Army and the gift is not offered because of the employee's official position, the Army employee may accept the ticket because the Army is designated as a separate agency under paragraph (a)(2). The

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JCS employee may not accept the ticket because JCS is not designated as a separate agency and, therefore, is part of the “OSD remainder agency.” The OSD contractor is therefore a prohibited source for the JCS employee or for any employee of any of the other organizations that are part of the OSD remainder agency.

Example 3 to paragraph (a). For paragraph (a)(11) of this section [Agency designation]: An employee of the Department of the Air Force is offered a gift by a company that only does business with the Defense Counterintelligence and Security Agency, which is designated as a separate agency. The company would be a prohibited source of gifts for employees of the Defense Counterintelligence and Security Agency but not for employees of the Department of the Air Force or for any other component which has been designated as a separate agency.

(b) Employees of DoD components not designated as separate agencies, including employees of the Office of the Secretary of Defense, will be treated as employees of the “Office of the Secretary of Defense (OSD) remainder agency.” The OSD remainder agency shall itself be treated as a separate DoD agency for purposes of determining whether the donor of a gift is a prohibited source under 5 CFR 2635.203(d) and for identifying the employee’s agency under 5 CFR 2635.807 governing teaching, speaking, and writing.

(1) The use of the term “agency” in this part does not carry with it the designation and responsibilities of a “defense agency” as set forth in 10 U.S.C. 191–197 (2019).

(2) For purposes of this part, “prohibited source” is defined at 5 CFR 2635.203(d), except that “agency” shall mean the employee’s component.

NOTE 1 TO PARAGRAPH (B). All DoD organizations not individually listed in paragraph (a) of this section are part of the OSD remainder agency.

NOTE 2 TO PARAGRAPH (B). Prohibited sources for each component for purposes of gifts and teaching, speaking, and writing are exclusive to that component and are not imputed to OSD.

NOTE 3 TO PARAGRAPH (B). An employee who is detailed to another component will use the prohibited source list of the compo-

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nent to which they are detailed for purposes of gifts, teaching, speaking, and writing.

(c) The designations in this section shall only apply for purposes of gifts under 5 CFR 2635.203(a) and teaching, speaking, and writing under 5 CFR 2635.807, and are distinct from the designations approved by the Office of Government Ethics for purposes of the post-Government employment restrictions in 18 U.S.C. 207(c). See 5 CFR 2641.302 and appendix B to part 2641.

§ 3601.103 Additional exceptions for gifts from outside sources.

In addition to the gift exceptions in 5 CFR 2635.204, which authorize acceptance of certain gifts from outside sources, and subject to all provisions of 5 CFR part 2635, subpart B, an employee may accept unsolicited gifts from outside sources otherwise prohibited by 5 CFR 2635.202 as detailed in this section. For purposes of this section, the term “agency” is defined in § 3601.102, and the term “free attendance” is defined in 5 CFR 2635.203(g).

(a) *Community relations events.* (1) An employee may accept an unsolicited gift of free attendance for himself or herself and a guest at a community relations event sponsored by a State or local government, or by a civic organization exempt from taxation under 26 U.S.C. 501(c)(4), when:

(i) The cost of free attendance is provided by the sponsor of the event; and

(ii) The employee’s agency designee determines that the community relations interests of the agency will be served by the employee’s attendance in his or her personal capacity, and the employee’s attendance outweighs any concern that acceptance would cause a reasonable person with knowledge of the relevant facts to question the employee’s integrity or impartiality.

(2) Refer to 5 CFR 2635.204(g)(5) in determining whether the cost of attendance may be considered to be provided by the sponsor of the event.

Example 1 to paragraph (a) [Community relations interest]: The City of Jacksonville, Florida, hosts a Military Appreciation Day event. Members of the general public are charged an admission fee to attend. Department of the Navy employees who have recently returned from deployment are invited

and offered free admission for themselves and a guest. These Navy employees may personally accept the gift of free attendance for themselves and a guest, if their agency designee determines that their attendance at the event will serve a community relations interest and that employees' attendance outweighs concerns that acceptance would call into question their integrity or impartiality.

Example 2 to paragraph (a) [No community relations interest]: A foundation that provides grants to non-profit organizations focusing on environmental initiatives is sponsoring a fund-raising golf tournament. The foundation is offering to waive the entry fee for military personnel at the local installation. Military personnel may not accept the offer by the sponsor to waive the entry fee under paragraph (a) of this section, because participation in this event does not further local community relations interests for the DoD installation. While the community relations exception may not be used to accept the gift, nothing in this section precludes an employee from accepting the gift if another gift exclusion, exception, or authority would apply.

(b) *Scholarships and grants.* An employee and his or her dependents may accept an educational scholarship or grant from an entity that does not have interests that may be substantially affected by the performance or non-performance of the employee's official duties, or from an association or similar entity that does not have a majority of members with such interests, if the Designated Agency Ethics Official (DAEO) or the DAEO's designee makes a written determination that the scholarship or grant is made pursuant to an established program of recognition, including those established for the benefit of employees, or the dependents of employees. A scholarship or grant is made pursuant to an established program of recognition if:

(1) Scholarships or grants have been made on a regular basis or, if the program is new, there is a reasonable basis for concluding that scholarships or grants will be made on a regular basis based on funding or funding commitments; and

(2) Selection of recipients is made pursuant to written standards.

§ 3601.104 Additional limitations on gifts between employees.

The following limitations apply to gifts from groups of employees that include a subordinate and to voluntary contributions to gifts for superiors permitted under 5 CFR 2635.304(c)(1):

(a) *Gifts from a group that includes a subordinate.* Regardless of the number of employees contributing to a gift on a special, infrequent occasion as permitted by 5 CFR 2635.304(c)(1), an employee may not accept a gift or gifts, including indirectly within the meaning of 5 CFR 2635.203(f), from a donating group if the aggregate market value exceeds the minimal value, as established by 5 U.S.C. 7342(a)(5), and if the employee knows or has reason to know that any member of the donating group is a subordinate.

(1) The cost of items excluded from the definition of a gift by 5 CFR 2635.203(b) and the cost of food, refreshments, and entertainment provided to mark the occasion for which the gift is given shall not be included in determining whether the value of a gift or gifts exceeds the aggregate minimal value limit.

(2) The value of a gift or gifts from two or more donating groups will be aggregated and will be considered to be from a single donating group if the employee who is offered the gift knows or has reason to know that an individual who is his or her subordinate is a member of more than one of the donating groups.

(b) *Voluntary contribution.* For purposes of 5 CFR 2635.304(c)(1), the nominal amount of a voluntary contribution that an employee may solicit from another employee for a group gift to the contributory employee's superior for any special, infrequent occasion will not exceed \$10. A voluntary contribution of a nominal amount for food, refreshments, and entertainment at an event to mark the occasion for which a group gift is given may be solicited as a separate, voluntary contribution not subject to the \$10 limit.