

*National Democratic
Institute for
International
Affairs*

**U.S. Ethics Laws and Rules: A Report on a
Meeting of a Delegation of Mozambican Members of
Parliament with Washington, D.C. Ethics Experts**

June 1995

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I. INTRODUCTION

On June 9, 1995, NDI organized a series of meetings in Washington, D.C. for a delegation of members from the Mozambican Parliament, one of which addressed ethics rules.¹ The seminar provided an opportunity for the parliamentarians to learn about and discuss the ethics rules pertaining to Members of the U.S. Congress and their staff, as well as the ethics laws pertaining to executive branch officials and employees.

A panel of three experts made short presentations about ethics rules in the United States. The panelists included staff counsel to the House Committee on Standards of Official Conduct, an attorney from the United States Office of Government Ethics, and a staff attorney from Public Citizen's Congress Watch, a non-governmental organization. Following the three presentations, the Mozambicans engaged the experts in a dialogue about the ethics issues of interest to them.

II. ETHICS LAWS IN CONGRESS AND THE EXECUTIVE²

Bernard Raimo, Counsel, House Committee on Standards of Official Conduct
Jim O'Sullivan, Associate General Counsel, U.S. Office of Government Ethics
Robert Schiff, Staff Attorney, Public Citizen's Congress Watch
Susan R. Benda, NDI Senior Program Officer, Democratic Governance

Bernard Raimo is one of six attorneys who staff the House Committee on Standards of Official Conduct (known as the ethics committee), which was established in 1967. In tracing the committee's origins, Raimo recounted the story of Adam Clayton Powell, a New York Congressman accused of using public funds to take vacations and of other improprieties. The subsequent media debate about Powell's actions resulted in the creation of a congressional committee to set standards of conduct that would establish a framework of acceptable behavior.

Raimo began the discussion by pointing out that the ethics committee, unlike other House committees that reflect the relative strength of the two political parties, has an equal number of Democrats and Republicans. He explained that was an important means of ensuring that the committee is non-partisan. Thus, in order for the committee to act, a majority consisting of both Republicans and Democrats must reach agreement on the pending matter. Committee members are selected by the leadership of their party and serve a limited term of six years. Raimo commented that these fixed terms (which are unlike those of other committee memberships) are

¹The Phelps Stokes Fund organized the program for a delegation of twelve Mozambican Members of Parliament representing three political parties. The program was sponsored by the USIA and included a month-long tour of the United States. NDI coordinated a day-long program for the visitors focusing on legislative-executive affairs during the morning session and U.S. ethics laws during the afternoon session.

²This summary is not a transcript or verbatim record of the proceedings. It is based on notes taken during the program; some of the remarks were conveyed through interpreters.

meant to ensure that the burden of passing judgment on one's peers is shared by all House members.³

Raimo set forth the three functions of the House ethics committee. Its first role, which is the most publicized, is to investigate and judge alleged violations by Members and their employees. In so doing, the following process is followed:

- if, by majority vote, the full committee determines that a complaint “merits further inquiry,” a four or six member subcommittee is appointed by the Chairman and Ranking Minority Member to decide if there is “reason to believe” a violation has occurred;
- if so, a separate subcommittee is appointed to determine if charges have been proved by “clear and convincing evidence;” and
- if so, the full committee reconvenes to determine the punishment to recommend to the House.

Although the committee can act on its own accord, it can only recommend punishment to the House, which then votes on whether to follow the committee's recommendations. The four forms of penalty include reprimand for serious violation, censure for more serious violations, fines if the violation was committed for personal financial benefit and expulsion for the most serious violations.⁴

Addressing the relationship between criminal law enforcement and the internal House ethics system, Raimo explained that the two were separate, but that the facts underlying an ethics investigation can form the basis for criminal prosecution. He also pointed out that unlike most parliaments, in the United States there is no immunity for Members of Congress. While in most parliamentary systems in which parliamentarians are immune from criminal prosecution unless the parliament first votes to lift immunity, prosecutors in the U.S. are free to file charges against Members of Congress without a prior vote of the Congress.

A second function of the committee is to oversee financial disclosure requirements. According to provisions in the Ethics in Government Act of 1978, all Members of Congress and some senior staffers must annually file forms with the ethics committee declaring their financial holdings, income, assets and properties. Candidates campaigning for a seat in the House of Representatives must also file similar forms. The purpose of these disclosure rules is to deter and

³ The House ethics committee governs only the members and staff of the House of Representatives. The Senate has its own committee, the Senate Select Committee on Ethics, and its own rules and procedures which, while similar to the House, also differ in some ways.

⁴ *Rules. Committee on Standards of Official Conduct. Adopted February 9, 1995. 104th Congress. Page 40. See Appendix A. See Appendix B for Highlights of House Ethics Rules, Committee on Standards and Official Conduct. Revised January 1995.*

expose any possible "conflicts of interest." The penalties for falsification or omission of essential facts are fines up to \$10,000 and criminal proceedings.⁵

The third role, which in fact consumes the majority of the committee's time, is to advise and educate members and staff regarding ethics rules. The committee published the *House Ethics Manual*, which contains the committee's rules and accompanying explanations. Committee staff also spend a substantial amount of time responding to inquiries on various ethics questions posed by House Members and their staff.

Raimo then summarized the major rules governing the ethical conduct in the House. The following three areas encompass the framework of these internal House standards:

- **Outside Income Limits:** If yearly earnings of Members and employees are above the GS-15 level, they are prohibited from earning more than 15 percent of that salary from outside sources. In addition, Members are barred from practicing law for compensation and from receiving compensation for serving as an officer or board member of any organization.⁶
- **Gifts:** Members and all House employees are prohibited from receiving more than \$250 in gifts in one year from one source.⁷
- **Post-Congressional Employment:** Former Members of Congress and senior staff are forbidden from lobbying Congress for one year after leaving Congress.⁸

Raimo concluded by emphasizing that Members of Congress do not seek seats on the ethics committee because it is seen as a rather thankless task. He stated that the party leadership attempts to choose "medium to long-term members who command respect and who are elected from districts where re-election prospects are secure so that deliberations are based on facts and fairness, not political considerations."

Jim O'Sullivan, an Associate General Counsel for the U.S. Office of Government Ethics (OGE), next spoke about the rules and regulations governing the ethical conduct of executive branch employees. O'Sullivan recently returned from a tour of Africa with the USIA's U.S. Speakers Program, which included a day-long seminar in Mozambique concerning government ethics regulation. He began by emphasizing that "due to the separation of power within the U.S. federal government [between the Congress, the executive branch and the judiciary], each system of ethics standards is distinct."

⁵ *House Ethics Manual*. Committee on Standards of Official Conduct. April 1992, page 173. See Appendix C.

⁶ *ibid.*, page 101. The GS-15 refers to the civil service status of a government employee whose income level was \$81,530 in 1995.

⁷ *ibid.*, page 21.

⁸ *ibid.*, page 84.

O'Sullivan noted that the Office of Government Ethics grew out of the scandals of the Watergate era. It was established by the Ethics in Government Act of 1978, which requires government employees to file financial disclosure forms and restricts their post-employment activities for a period of time after leaving a government position. OGE is responsible for providing "overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency."⁹ OGE is an independent agency within the executive branch. The director of the OGE is nominated by the President, confirmed by Congress and retains the job for five years. This practice ensures that a director cannot be ousted by an incoming President from a different political party than his predecessor. O'Sullivan described the federal government's ethics system as decentralized in that each federal department is responsible for administering the rules, providing advice, reviewing financial disclosure statements and disciplining offenders.

O'Sullivan reviewed the principal functions of the Office of Government Ethics. First, OGE participates in the confirmation process by reviewing public financial disclosure statements of presidential nominees and certifying those statements to the Senate. OGE also issues regulations governing the public and confidential financial disclosure systems and develops the financial disclosure forms filed by executive branch employees. A third task that the OGE performs is to issue regulations that establish the standards of conduct for federal employees. These regulations limit the acceptance of gifts from individuals or corporations with a possible interest in the business pending before a government agency and have been promulgated to avoid misuse of position and conflicts of interest. For example, executive branch employees cannot accept a gift worth more than \$20 from any one individual or corporation (with a cumulative yearly total of \$50) where the gift is given because of the employee's official position or where the gift is from a prohibited source.¹⁰ The Office also monitors a prohibition on government employees acting in their official capacity on matters in which they have a personal financial interest.¹¹ In addition to the rules on gifts and conflicts of interest, the standards of conduct cover impartiality, seeking employment outside the government, misuse of official position and outside activities such as teaching, speaking and writing.

OGE issues regulations implementing the post employment statute. These rules prohibit all former executive branch employees from representing another person or organization before the government on certain matters that they worked on as a federal employee. A permanent ban exists on matters involving specific parties (such as a court case) in which former employees participated personally and substantially while employed by the government. A two-year ban exists with respect to such issues that were pending under the former employees' direction during their final year of government service.¹²

⁹ *Third Biennial Report to Congress*. Office of Government Ethics. March 1994, page 7. See Appendix D for a description of OGE functions.

¹⁰ Federal Register 5 CFR Part 2635, Standards of Ethical Conduct for Employees of the Executive Branch; Final Rule. August 7, 1992, § 2635.204 (Gifts From Outside Sources; Exceptions). Page 35046. See Appendix E. See also at Appendix F, a descriptive summary of ethics rules in *A Brief Wrap on Ethics*. Office of Government Ethics. February 1995.

¹¹ *ibid.*, § 2635.402 (Conflicting Financial Interests; Disqualifying Financial Interests). Page 35051.

¹² *Take the High Road*. Office of Government Ethics. August 1993, page 16. See Appendix G.

The Office of Government Ethics provides advice and guidance to executive branch employees and the ethics offices within federal government agencies. In addition, there are two OGE programs that are geared to disseminating information to, and assessing the performance of, the numerous federal agencies. A program of education and training provides materials and advice to trainers in each individual agency. In fulfilling this task, OGE assists agencies in implementing ethics training, in part by developing training materials, pamphlets and videotapes for individual agency use. To ensure that all ethics offices of the federal government are meeting minimum program standards, the OGE staff visit the various departments on a three year cycle and meets with agency officials to review their ethics programs. The Office has also established a "desk officer system" in which OGE staff serve as liaison officers designated to specific agencies throughout the executive branch.

In regards to policy formation, O'Sullivan concluded by noting that the two concepts that are fundamental to the management of ethics regulations, commitment to public scrutiny and transparency, are designed to prevent possible conflicts of interest. Transparency is achieved by allowing all citizens to request copies of the public financial disclosure forms filed by government employees. Public scrutiny is further enhanced by the media's practice of reviewing cases in which there appears to be a conflict of interest between an employee's public duties and his or her private finances. The ethics rules are designed to ensure transparency and public scrutiny to enhance the public's confidence in government officials and to maintain government accountability to the public.

Robert Schiff is a staff attorney and lobbyist with Public Citizen's Congress Watch, a non-governmental organization that was founded by Ralph Nader (a nationally famous citizens activist) in the 1970's, and focuses on the "ability of citizens to band together" to influence the political system.

According to Schiff, his organization's commitment to government ethics issues extends beyond abstract notions of honesty and morality. Congress Watch's concern with ethics issues reflects its belief that "good" decisions are more likely to result from a decision-making process that is not tainted by the influence of private interests. Thus, Congress Watch believes that monitoring the environment in which policy decisions are made and ensuring that ethics rules are enforced will result in laws that are more just and effective. He also pointed out that the existence of ethics rules and their enforcement are vital to deterring corruption, which in turn prevents the erosion of public confidence and participation in the political process.

Schiff emphasized the important and beneficial role of independent groups such as Congress Watch, which performs a monitoring function that calls public attention to possible ethics violations and thereby helps ensure that ethics rules are enforced. Schiff asserted that it is worse to have ethics rules ignored than to have no rules at all. As part of its self-appointed supervisory role, Congress Watch does file complaints with the Senate ethics committee. In most cases, the House rules require that all complaints are filed by a Member of Congress and thus Congress Watch needs to find a sympathetic Member to forward its complaint. In the Senate, any

organization or private individual can file complaints directly with the Senate ethics committee.¹³ Schiff echoed Raimo's point that it is inherently difficult to rely on an ethics committee composed entirely of Members of Congress to sit in judgment of their colleagues.

In addition to acting as a "watchdog" monitoring compliance with current rules, Congress Watch is also an outspoken advocate for the adoption of more comprehensive ethics rules. The organization lobbies to strengthen ethics rules and to diminish the discrepancies between congressional and executive rules on the acceptance of gifts and meals. Congress Watch has monitored travel expense abuses and the role of honoraria in influencing political decisions. During the political debate over congressional gift ban legislation in 1994, Congress Watch worked with another NGO, Common Cause, to reduce the influence of money on elected officials and the legislature by asking members of the 104th Congress to sign a public pledge refusing to accept gifts, recreational trips, and entertainment from lobbyists.¹⁴

Schiff concluded that Congress Watch's central concern is with preventing corruption in government. The organization therefore advocates for reforms to ensure that money will not be a determining factor either in influencing the outcome of legislation or in the election process itself. Its program is premised on the notion that if Congress is corrupted by the interests of corporate business, it will result in damaging the political system itself and in hindering the ability of ethical politicians to pass effective laws.

III. QUESTIONS AND ANSWERS

A Mozambican M.P. asserted that ethics rules are culturally relative. He stated his belief that ethics rules cannot be the same around the world, and offered the example that in some countries if you invite someone to lunch, it is very offensive not to pay for that person's meal. However, he noticed that the White House staffer who ate lunch with the Members of Parliament and NDI staff earlier that day had insisted on paying for his own lunch and would not allow NDI to pay for him. The MP suggested that ethics is culturally defined and that problems can result if Western-based standards are applied in other countries.

Raimo concurred with this observation but asserted that some principles are applicable across the board. He suggested that regardless of cultural context, everyone could agree on two principles:

- Legislative and executive offices of the government should make decisions based on the merits of the issue and not on pressure from external sources, such as money; and
- In a democracy it is important that citizens have confidence and trust in government, and therefore, rules to guarantee that that trust is not abused are necessary.

¹³ See Appendix H for a Public Citizen Congress Watch letter to Chairman and Vice-Chairman of the Senate Select Committee on Ethics, April 27, 1995.

¹⁴ See Appendix I for a Public Citizen's Congress Watch and Common Cause Congressional Pledge pamphlet, 1994.

NDI Senior Program Officer Susan Benda added that in the United States there is considerable concern about even the appearance of impropriety. Regarding payment of the White House staffer's lunch, she explained that although it might seem ridiculous for NDI not to cover an inexpensive lunch, it does establish that NDI is not attempting to buy a friend in the White House. Benda elaborated that these rules apply to only an elite group of Washington insiders, who may be accustomed to lunches that would appear extravagant to the average American citizen. It is important to keep those citizens in mind and develop rules to ensure that the public will not view the actions of government officials as elite and corrupt.

O'Sullivan agreed with Raimo that there is a broad consensus on some general principles regulating ethical standards. For instance, everyone could agree that an official position should not be used for personal gain or to legitimize acts that are partial. Nevertheless, O'Sullivan noted that problems can result if rules are too harsh and not mindful of local practices and stated that the executive branch attempts to make its rules sensitive to U.S. customs. For example, while the government does regulate business lunches so that officials cannot be "bought off" by lavish meals, the rules recognize the custom of business lunches and accept it, at least to the extent that they accommodate simple inexpensive business lunches. Thus, executive branch officials can accept lunches paid for them that cost less than \$20 (with a cap of \$50 per year per lobbyist) without their integrity being challenged.

As Schiff explained, even governmental monitoring organizations such as Congress Watch recognize international customs of hospitality when lobbying for stricter ethics rules, especially when politicians are traveling to foreign countries.

Another M.P. asked if the President of the United States can and does nominate individuals of the opposite party to serve in the executive branch.

O'Sullivan responded that the President can choose to do so, and that there are some federal regulatory commissions, such as the Federal Communications Commission, that are statutorily required to have a balanced party membership. O'Sullivan reiterated that the director of the Office of Government Ethics is appointed for five years, to reduce the influence of partisanship on that nomination.

Schiff added that presidents seldomly appoint individuals of the opposite party to executive branch positions. He explained that despite the fact that a bipartisan cabinet could theoretically enhance the level of communication and working relations between the two parties, politicians fear ostracism by their own colleagues if they cross party lines.

Another M.P. asked if the ethics committees have a role in developing laws regarding the hiring and firing of civil servants.

Raimo clarified the role of the House ethics committee by stating that it only has jurisdiction over Members of Congress and their staff. The ethics committee does not draft rules pertaining to ethics standards or other personnel policies governing executive branch employees; that task is under the jurisdiction of different House committees.

O'Sullivan clarified that the Office of Personnel Management, not the OGE, is responsible for executive branch policy on hiring practices, promotions, retirement, and other personnel issues.

Benda asked whether ethics hearings should be open to the public, noting that there is a tension between justice and accountability. She pointed as an example to a controversy over Senator Packwood, who is under investigation by the Senate ethics committee for sexual harassment and other alleged violations of Senate rules. Benda commented that while transparency was important to accountability and would be well served by open hearings, she believed there were individuals who would not testify on Senator Packwood's behalf in public because the Senator was unpopular, but would do so if the hearings were closed, thus potentially providing a more balanced investigation.

Raimo responded that the House committee normally conducts closed hearings because it is not a criminal process, but an internal deliberation. He stated that closed hearings were considered more fair to the accused Member and facilitated committee members access to information.

Another M.P. asked for an explanation of the difference between criminal and ethical decisions.

Benda explained that House and Senate ethics rules are written and enforced within the two institutions. In the case of Senator Packwood for example, if the Senate found he had breached Senate rules, it could strip him of his seniority and thus his chairmanship. Criminal prosecutions can be initiated by the executive branch of both federal and state governments based on violations of criminal laws. Civil proceedings are ultimately determined by a court of law and can result in fines, imprisonment or both.

An M.P. asked if the ethics committees hear complaints brought only by Members of Congress or by private individuals as well.

Raimo responded that in the House anyone can bring an issue to the attention of the committee, but in most cases the rules require complaints to be filed through a Member of Congress.¹⁵ He explained that Congress intentionally constructed a complex process to prevent the abuse of the system that might otherwise occur by the filing of baseless complaints in order to gain political advantage during an election.

An M.P. asked if the committee had incurred a situation where an impasse arose because it was too difficult to determine if allegations were legitimate.

Raimo reported that in serious cases this problem had never occurred, and cited the 1989 case against House Speaker Jim Wright, which resulted in his removal from that position.

¹⁵ Rules, page 20 See Appendix A.

An M.P. asked if the committee devoted most of its time to actual cases of ethical misconduct by House Members or staff.

Raimo said that on the contrary, most of the committee's work involves counseling Members of Congress and staff on ethical questions. He asserted that there are fewer ethical violations today, in large measure due to the codification of standards, as well as to a greater awareness by Members and staff of the ethical rules and their implications.

Schiff suggested that part of the criticism lodged against the ethics committee is a result of the structural requirement of equal party membership. Thus, it is plausible that gridlock will occur when deliberating on ethics issues because opposing party members behave in an independent and partisan manner, instead of in a noncombative fashion. However, the use of an appointed, independent council to investigate charges of ethical misconduct reduces partisan conflict and promotes competent decisions.

This report was prepared by Christine J. Mataya, Intern for Democratic Governance. For further information, contact: Susan R. Benda, Senior Program Officer for Democratic Governance, NDI, Washington, D.C.

National Democratic Institute For International Affairs

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1717 Massachusetts Avenue, NW
Fifth Floor
Washington, DC 20036
(202) 328-3136
FAX (202) 939-3166
E-MAIL 5979039@MCIEMAIL.COM

NATIONAL DEMOCRATIC INSTITUTE FOR INTERNATIONAL AFFAIRS

The National Democratic Institute for International Affairs (NDI) was established in 1983. By working with political parties, civic organizations, parliaments, and other institutions, NDI seeks to promote, maintain and strengthen democratic institutions in new and emerging democracies. The Institute is headquartered in Washington, D.C., and has a staff of 120 with field offices in Africa, Asia, the Caribbean, Eastern Europe, Latin America, the Middle East and the former Soviet Union.

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Political Party Training: NDI conducts multipartisan training seminars in political development with a broad spectrum of democratic parties. NDI draws international experts to forums where party members learn first-hand the techniques of organization, communication and constituent contact.

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Strengthening Legislatures: NDI organizes seminars focusing on legislative procedures, staffing, research information, constituent services, committee structures and the function and role of party caucuses. NDI programs also seek to promote access to the legislative process by citizen groups and the public at large.

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Senior Consultant: Eddie Charles Brown



APPENDIX A

Rules

Committee on Standards of Official Conduct



Adopted February 9, 1995
104th Congress

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515

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OF OFFICIAL CONDUCT

UNITED STATES HOUSE OF REPRESENTATIVES

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STANDARDS OF OFFICIAL CONDUCT

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(a) a complaint by a Member of the House of Representatives is transmitted directly to the Committee;

(b) a complaint by an individual not a Member of the House of Representatives is transmitted through a Member who agrees, in writing, to submit it for the purpose of requesting an investigation;

(c) a complaint by an individual not a Member of the House of Representatives is submitted to the Committee after three Members of the House of Representatives have refused, in writing, to transmit the complaint to the Committee for the purpose of requesting an investigation;

(d) the Committee, on its own initiative, determines that a matter warrants inquiry;

(e) a Member, officer, or employee is convicted in a Federal, State, or local court of a criminal offense for which a sentence of one or more years' imprisonment may be imposed; or

(f) the House of Representatives, by resolution, authorizes the Committee to undertake an investigation.

Rule 14. Complaints

(a) A complaint submitted to the Committee shall be in writing, under oath and dated, setting forth in simple, concise, and direct statements—

adopt a motion to issue a Letter of Reapproval or take other appropriate Committee action.

(d) If the Committee determines a Letter of Reapproval constitutes sufficient action, the Committee shall include any such letter as a part of its report to the House of Representatives.

(e) With respect to any proved counts against a Member of the House of Representatives, the Committee may recommend to the House one or more of the following sanctions:

(1) Expulsion from the House of Representatives.

(2) Censure.

(3) Reprimand.

(4) Fine.

(5) Denial or limitation of any right, power, privilege, or immunity of the Member if under the Constitution the House of Representatives may impose such denial or limitation.

(6) Any other sanction determined by the Committee to be appropriate.

(f) With respect to any proved counts against an officer or employee of the House of Representatives, the Committee may recommend to the House one or more of the following sanctions:

(1) Dismissal from employment.

(2) Reprimand.

(3) Fine.

(4) Any other sanction determined by the Committee to be appropriate.

APPENDIX B



Highlights of **House Ethics Rules**

This Presentation Has Been Prepared As A Convenience For
Members and Employees of the House of Representatives.

For Advice Regarding Specific Factual Situations,
Contact the Committee on Standards of Official Conduct's
Office of Advice and Education at (202) 225-3787.

Revised 1/95

Earned Income Restrictions

Members and All Employees

NO HONORARIA

- An honorarium is a fee for ANY speech, appearance, or article.
- Payment for a series not directly related to official duties or status in Congress may be permissible.
- Up to \$2000 per event may be paid directly by the sponsor of the event to a qualified charity:
 - Member or employee may not get a financial or tax benefit from the donation;
 - Payments in lieu of honoraria reported on Financial Disclosure Statements, recipient charities named in confidential report.

Earned Income Restrictions

Members and Senior Employees

(Above GS-15: \$78,930 In 1993-1994; \$81,530 In 1995)

EARNED INCOME LIMIT - 15% of Member's Salary Level

(\$20,040 In 1993-1995)

- NO Paid Professional Services Involving a Fiduciary Relationship.**
- NO Affiliation for Compensation with a Firm Providing Fiduciary Services.**
- NO Use of Name by Firm Providing Fiduciary Services.**
- NO Paid Service as Officer or Board Member of ANY Organization.**
- NO Paid Teaching Without Prior Written Ethics Committee Approval.**

Conflicts of Interest

- **Return on investment is not restricted in most instances.**
- **Official position and confidential information may not be used for personal gain.**
- **Members should vote on matters unless legislation uniquely affects a personal or financial interest.**
- **Members may not contract with the Federal Government.**
- **Spouses and other family members have wide leeway in employment and investments.**
 - Members should avoid doing special favors for family members.**
 - Members may not employ their own families in congressional offices.**

Post-Employment Restrictions

For ONE YEAR after leaving office:

Members:

**MAY NOT Communicate to or Appear before either House
or any Legislative Branch Office with Intent to
Influence Official Action on behalf of Third Party;**

MAY NOT Represent Foreign Government Interests.

Very Senior Staff (75% of Jan. 1st Member pay: \$100,200 in 1993-1995):

**MAY NOT Communicate to or Appear before their Former
Employers or Offices with Intent to Influence
Official Action on behalf of Third Party;**

MAY NOT Represent Foreign Government Interests.

MAY represent oneself or state, local, or U.S. government.

This is a criminal statute:

Penalties include Injunction, fine, and/or Imprisonment.

Gifts

All Members, Officers, and Employees

House Rule 43, Clause 4, Restricts Gift Acceptance:

- \$250 maximum in one year from one source;
- Count everything over \$100;
- Gifts to spouse, dependents generally included;
- All sources limited except relatives;
- Committee waiver in "exceptional circumstances."
- Personal hospitality of individual not subject to limits:
 - Must document after 4 days, 3 nights;
 - Prior approval if more than 30 days.
- Local meals and beverages not considered gifts;

Government-wide statute limits solicitation.

WARNING

**NEVER ACCEPT ANYTHING OF VALUE IN RETURN FOR
OR BECAUSE OF OFFICIAL ACTIONS.**

Travel

All Members, Officers, and Employees

- Privately paid travel acceptable for fact-finding and substantial participation.
- Limit on number of days:
 - 4 days, including travel time, for domestic;
 - 7 days, excluding travel days, for foreign.
- Committee may waive in "exceptional circumstances"
 - Written request must be submitted in advance.
- May take spouse or another family member.
- May extend trip beyond limits at own expense and on own time.
- Limits don't apply to official travel.

Financial Disclosure

Members, Officers, Senior Employees, and Principal Assistants

- **Public reports due by May 15th of each year, covering the prior calendar year.**
- **Must disclose: Income (earned and unearned); assets; liabilities; transactions; gifts; travel; outside positions; agreements.**
- **Information regarding spouse and dependent children generally must be disclosed.**
- **Termination reports required with 30 days of departure.**
- **\$200 late filing fee; possibility of additional Committee action; civil or criminal action may be initiated by the Department of Justice.**
- **Committee on Standards reviews all reports, and will pre-screen Statements.**

Staff Rights and Duties

- **Staff must perform duties commensurate with pay and be based in the employer's office.**
- **Congressional resources and time may be used only for official business.**
- **No use of official position or inside information for personal gain.**
- **Office of Fair Employment Practices helps resolve claims of discrimination based on race, color, religion, sex (including marital or parental status), handicap, age, or national origin.**
- **Members may take into consideration political affiliation and domicile.**
- **Criminal law prohibits Federal employees from representing others before the Federal Government, outside official duties, in matters in which the Government has a direct and substantial interest.**

Communications to Government Agencies

- **Avoid favoritism--treat all constituents fairly.**
- **Avoid ex parte communications.**
- **May request information on status; urge prompt consideration; arrange appointments; express judgment; ask for reconsideration, based on law and regulation, of administrative decisions.**
- **May not make recommendations for non-political positions in the Executive Branch. May provide statement as to character and residence.**
- **Senior Employees - do not contact agency in a matter if you have a personal financial interest.**

Involvement with Outside Entities

- **Avoid mixing of public and private resources.**
- **Official conferences and town meetings may not be jointly sponsored with private groups.**
- **Do not let outside organizations use terms or symbols indicating a congressional connection.**
- **Official mailing lists may only be used for franked mail; unofficial lists must be purchased for fair value if not already available for public use.**
- **Interns and volunteers may be accepted if service is temporary, primarily of educational value to them, and does not supplant the regular duties of paid staff.**

Campaign Activities

- **Staff may volunteer on own time.**
- **No campaign activities in the office.**
- **No staff contributions or outlays for employing Member's campaign.**
- **No contributions directed to congressional office.**
- **Campaign funds may be used only for campaign or political purposes.**
- **No official use, personal use, or borrowing of campaign funds.**

APPENDIX C

ETHICS MANUAL FOR MEMBERS,
OFFICERS, AND EMPLOYEES OF THE
U.S. HOUSE OF REPRESENTATIVES

THE COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT

102d Congress, 2d Session



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House Ethics Manual

102d Congress
2d Session

April 1992



Committee on Standards
of Official Conduct

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Chapter 1

GENERAL ETHICAL STANDARDS

Highlights

Members, officers, and employees of the House should:

- conduct themselves at all times in a manner that reflects creditably on the House;
- abide by the spirit as well as the letter of the House rules; and
- adhere to the broad ethical standards expressed in the Code of Ethics for Government Service.

They should not seek private gain from public office. Nor should they attempt to circumvent any House rule or standard of conduct.

Employees must observe any additional rules, regulations, standards, or practices established by their employing Members.

The Committee on Standards of Official Conduct urges Members, officers, and employees of the House to call or to write with any questions regarding the propriety of any current or proposed conduct. The Committee's Office of Advice and Education will provide confidential, informal advice over the telephone, and the Committee will provide confidential, formal written opinions to any Member, officer, or employee with a question within its jurisdiction.

ADVISORY OPINIONS

The Committee on Standards of Official Conduct urges individuals to call or to write with any questions regarding the appropriateness of contemplated activity. House rules authorize the Committee "to give consideration to the request of any Member, officer, or employee of the House for an advisory opinion with respect to the general propriety of any current or proposed conduct of such Member, officer, or employee."⁶⁷ The Ethics Reform Act of 1989 guarantees that no one may be put in jeopardy by making such a request. Anyone who acts in good faith in accordance with a written advisory opinion from the Committee may not then be investigated by the Committee based on the conduct addressed in the opinion,⁶⁸ and courts will consider reliance on such an opinion a defense to prosecution by the Justice Department.⁶⁹ All such inquiries and their responses will be kept confidential by the Committee.

Chapter 2

GIFTS, TRAVEL, ENTERTAINMENT, AND FAVORS

Highlights

Members, officers, and employees of the House *may not accept gifts* totaling more than \$250 in a calendar year from any person or organization. The following *do not count* towards the \$250 limit:

- gifts of personal hospitality,
- gifts worth \$100 or less,
- gifts from relatives (including fiancées), and
- local meals.

The Committee may grant waivers in exceptional circumstances.

In addition, Members, officers, and employees *may not accept*

- any gift from a foreign government worth more than \$200 unless specifically approved by Congress; or
- any bribe or illegal gratuity, that is, anything of value in return for, or as a reward for, official action.

The Code of Ethics for Government Service admonishes all Federal officials never to accept favors or benefits in circumstances that might create the appearance of influencing the performance of official duties.

Members, officers, and employees *may accept travel expenses* from private sources when necessary to enable them to give a speech or otherwise to participate substantially in an event or to conduct fact-finding. A spouse or other family member may accompany the traveler at the sponsor's expense. Unless this Committee grants prior written approval, the traveler *may not accept* expenses for more than:

⁶⁷ House Rule 10, cl. 4(e)(1)(D).

⁶⁸ 2 U.S.C. § 29d(i)(4); 5 U.S.C. app. 7, § 504(b); Comm. Rule 3(D)-(m).

⁶⁹ See *United States v. Hedges*, 912 F.2d 1397, 1404-1406 (11th Cir. 1990); 5 U.S.C. app. 7, § 504(b).

- 4 days (96 hours), *including* travel time, if the destination lies within the 48 contiguous states, or
- 7 days, *exclusive* of travel days, if the destination lies elsewhere.

The traveler may, however, extend the trip at his or her own expense and on his or her own time.

Members of the House may *not* treat receipts from fund-raisers or testimonials as unrestricted personal gifts but rather *must* treat such receipts as campaign contributions, which may not be used for personal or official congressional purposes.

Members, officers, and employees *may not solicit* anything of value from anyone who:

- seeks official action from the House,
- does business with the House,
- or has interests that may be substantially affected by the performance of official duties, except as expressly permitted by this Committee.

Gifts to a spouse or dependent *do* count towards the Member, officer or employee's gift limit unless the gift is totally independent of the recipient's relationship to the official.

Members and certain House employees must file annual financial disclosure reports, discussed in detail in Chapter 4, which reveal the source and value of gifts received.

Chapter 2

GIFTS, TRAVEL, ENTERTAINMENT, AND FAVORS

Considering the representative nature of congressional offices, it is natural that pressures will be exerted upon Members and employees by concerned constituents. In addition, interest groups will exercise their powers of political persuasion, explanation, or argument on the merits of issues to further their particular positions. When, however, those with special interests bestow gifts, entertainment, and favors upon decision-makers and their advisers, ethical and legal concerns arise.

In a 1951 report entitled *Ethical Standards in Government*, a Senate subcommittee headed by Senator Paul H. Douglas highlighted some of these concerns:

When is it proper to offer [gifts to] public officials and what is it proper for them to receive? A cigar, a box of candy, a modest lunch. . . ? Is any one of these improper? It is difficult to believe so. They are usually a courteous gesture, an expression of good will, or a simple convenience, symbolic rather than intrinsically significant. Normally they are not taken seriously by the giver nor do they mean very much to the receiver. At the point at which they do begin to mean something, however, do they not become improper? Even small gratuities can be significant if they are repeated and come to be expected. . . .

Expensive gifts, lavish or frequent entertainment, paying hotel or travel costs, valuable services, inside advice as to investments, discounts and allowances in purchasing are in an entirely different category. They are clearly improper. . . . The difficulty comes in drawing the line between the innocent or proper and that which is designing or improper. At the mo-

Chapter 3

OUTSIDE EMPLOYMENT AND INCOME OF MEMBERS, OFFICERS, EMPLOYEES, AND SPOUSES

Highlights

Rules concerning the outside employment and compensation of Members, officers, and employees of the House generally address the potential for conflicts of interest, e.g.:

- private commitments that might infringe on public obligations;
- possible improper influences on official conduct;
- distractions from the time and attention expected to be devoted to congressional responsibilities; and
- the appearance that an individual is profiting from a position in Congress.

To avoid these problems, Members, officers, and employees of the House are subject to the following restrictions:

<i>Income Level</i>	<i>Restriction</i>
All Members, officers, and employees	<i>May not</i> accept honoraria for appearances, speeches, or articles. <i>May not</i> represent others in a private capacity before the Government. <i>May not</i> accept compensation of any kind from a foreign government or act as an agent for a foreign principal. <i>May not</i> attempt to cash in on an official position.

ment a doubt arises as to propriety, the line should be drawn.¹

Congress has recognized that "public office is a public trust."² Members of Congress hold office to represent the interests of their constituents and the public at large. Members are assisted in these efforts by officers and employees who are paid from United States Treasury funds. The public has a right to expect Members, officers, and employees to exercise impartial judgment in performing their duties.³ The receipt of gifts, entertainment, or favors from certain persons or special interests may interfere with this impartial judgment.

In the first place, the recipient will naturally feel grateful and the giver may expect favorable treatment or consideration in return.⁴ Certain gifts, moreover, may create a financial conflict of interest for the recipient. A gift of stock, for example, to a Member, employee, spouse, or dependent child may favorably influence the official towards a business or industry on account of the personal holding.⁵ As noted in a study of congressional ethics: "The giver's purpose is usually to create a situation in which the Member has a personal economic stake in common with the giver. Self-interest can then take its course."⁶

The House Bipartisan Task Force on Ethics (101st Congress) noted its concern that gifts to Members may create an appearance of impropriety that may undermine the public's faith in government:

¹ SPECIAL SUBCOMM. ON THE ESTABLISHMENT OF A COMM'N ON ETHICS IN GOV'T, SENATE COMM. ON LABOR AND PUBLIC WELFARE, ETHICAL STANDARDS IN GOVERNMENT, 82d Cong., 1st Sess. 23 (Comm. Print 1951).

² Code of Ethics for Government Service ¶ 10, H. Con. Res. 175, 85th Cong., 2d Sess., 72 Stat., pt. 2, B12 (1958), reprinted at the front of this MANUAL.

³ See *id.* ¶ 5. See also 135 CONG. REC. H8764 (daily ed. Nov. 16, 1989) (debate on Ethics Reform Act of 1989, quoting Paul Volcker, Chairman of the National Commission on the Public Service); United States v. Podell, 436 F. Supp. 1039, 1042 (S.D.N.Y. 1977), *aff'd*, 572 F.2d 31 (2d Cir. 1978).

⁴ See PAUL H. DOUGLAS, ETHICS IN GOVERNMENT 48-49 (1952).

⁵ This type of ethical problem in gift giving and receiving caused a congressional scandal in the 1860's when stocks of the Credit Mobilier Corporation were distributed at considerably below market value to several congressmen. See JOINT COMM. ON CONGRESSIONAL OPERATIONS, HOUSE OF REPRESENTATIVES EXCLUSION, CENSURE AND EXPULSION CASES FROM 1789 TO 1973, 93d Cong., 1st Sess. 123-25 (Comm. Print 1973).

⁶ JAMES C. KIRBY, JR. (exec. director), ASS'N OF THE BAR OF THE CITY OF NEW YORK SPECIAL COMM. ON CONGRESSIONAL ETHICS, CONGRESS AND THE PUBLIC TRUST 179 (1970).

Regardless of any actual corruption or undue influence upon a Member or employee of Congress, the receipt of gifts or favors from private interests may affect public confidence in the integrity of the individual and in the institution of the Congress. Legitimate concerns of favoritism or abuse of public position may be raised by disclosure of frequent or expensive gifts from representatives of special interests, or valuable gifts from anyone other than a relative or personal friend.⁷

Thus, Members and employees of the House should always exercise caution concerning the acceptance of gifts, favors, or entertainment from persons who are not relatives. They should be particularly sensitive to the source and value of a gift, the frequency of gifts from one source, and possible motives of the donor.

Members and employees should never "discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not," and never accept favors or benefits for themselves or their families "under circumstances which might be construed by reasonable persons as influencing the performance of [their] governmental duties."⁸ In this context, officials should consider the nature, source, and amount of the favor or benefit and possible conflicts of interest with official duties.⁹ Members and employees should be wary of accepting any gift, favor, or benefit that would not have been offered "but for" the individual's position in Congress. This Committee has cautioned all Members "to avoid situations in which even an inference might be drawn suggesting improper action."¹⁰

⁷ HOUSE BIPARTISAN TASK FORCE ON ETHICS, REPORT ON H.R. 3660, 101st Cong., 1st Sess. 6 (Comm. Print, Comm. on Rules 1989), reprinted in 135 CONG. REC. H9253, H9254 (daily ed. Nov. 21, 1989) (hereinafter BIPARTISAN TASK FORCE REPORT).

⁸ Code of Ethics for Government Service ¶ 5, *supra* note 2.

⁹ See HOUSE COMM. ON STANDARDS OF OFFICIAL CONDUCT, IN THE MATTER OF REPRESENTATIVE CHARLES H. WILSON (of California), H. REP. NO. 96-930, 96th Cong., 2d Sess. 4-5, 19-20 (1980). See also IN THE MATTER OF REPRESENTATIVE DANIEL J. FLOOD, H. REP. NO. 96-856, 96th Cong., 2d Sess. 5-15 (1980).

¹⁰ HOUSE COMM. ON STANDARDS OF OFFICIAL CONDUCT, INVESTIGATION OF FINANCIAL TRANSACTIONS PARTICIPATED IN AND GIFTS OF TRANSPORTATION ACCEPTED BY REPRESENTATIVE FERNAND J. ST GERMAIN, H. REP. NO. 100-46, 100th Cong., 1st Sess. 3, 9, 43 (1987).

Chapter 3

OUTSIDE EMPLOYMENT AND INCOME OF MEMBERS, OFFICERS, EMPLOYEES, AND SPOUSES

Numerous restrictions limit the amount and source of outside earned income that Members, officers, and employees of the House of Representatives may accept. These restrictions attempt to avoid any possible conflict between the narrow interests of private employers and the broader interests of the general public.

As explained by the Bipartisan Task Force on Ethics:

The current limitations on outside earned income and honoraria were prompted by three major considerations: First, substantial payments to a Member of Congress for rendering personal services to outside organizations presents a significant and avoidable potential for conflict of interest; second, substantial earnings from other employment is inconsistent with the concept that being a Member of Congress is a full-time job; and third, substantial outside earned income creates at least the appearance of impropriety and thereby undermines public confidence in the integrity of government officials.

... The earned income limitation was intended to assure the public that (1) Members are not using their positions of influence for personal gain or being affected by the prospects of outside income; and (2) outside activities are not detracting from a Member's full-time attention to his or her official duties.¹

A Member or employee should never use the prestige or influence of a position in Congress for personal gain. The House has adopted various standards of conduct to implement this principle and to preclude conflicts of interest.

¹ HOUSE BIPARTISAN TASK FORCE ON ETHICS, REPORT ON H.R. 3660, 101st Cong., 1st Sess. 12 (Comm. Print, Comm. on Rules 1989), reprinted in 135 CONG. REC. H9253, H9256 (daily ed. Nov. 21, 1989) (hereinafter BIPARTISAN TASK FORCE REPORT).

<i>Income Level</i>	<i>Restriction</i>
<p>Members and those employees earning at least 120% of the GS-15 rate of basic pay (\$77,080 in 1992)</p>	<p><i>May not receive more than 15% of a House Member's salary in total outside earned income (\$19,425 in 1992).</i></p> <p><i>May not accept compensation for providing professional services involving a fiduciary relationship, or for being employed by an organization that provides such services.</i></p> <p><i>May not allow their names to be used, regardless of compensation, by organizations providing fiduciary services.</i></p> <p><i>May not accept compensation for serving as a board member or officer of any organization.</i></p> <p><i>May not accept compensation for teaching, without prior written approval from the Committee on Standards of Official Conduct.</i></p> <p><i>Must file annual financial disclosure forms.</i></p>
<p>Members and those employees paid at least 75% of a Member's rate of basic pay (\$97,125 in 1992)</p>	<p><i>May not lobby former colleagues for one year after leaving office.</i></p> <p><i>May not represent foreign governments for one year after leaving office.</i></p>
<p>Members of the House of Representatives</p>	<p><i>May not contract with the Federal Government.</i></p> <p><i>May not practice in the United States Claims Court or the Court of Appeals for the Federal Circuit.</i></p>

The mere potential of a conflict of interest does not preclude a Member's spouse from accepting outside employment. However, Members should avoid circumstances suggesting that they receive direct or indirect benefits that influence official acts.

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permit use of his or her name on the foundation's letterhead and sign letters on the organization's behalf, using the title "Member of Congress," "Representative," "Congressman" or "Congresswoman."

Official and unofficial activities must remain absolutely separate. By statute as well as regulations of the Committee on House Administration, official resources may not be used to assist the work of an outside organization.³⁵ Conversely, House Rule 45, prohibiting "unofficial office accounts," prevents congressional offices from accepting any funds, goods or in-kind services from private sources.³⁶ The "wall" between public and private activities and resources should not be breached.³⁷

Under the Ethics Reform Act, as of January 1, 1991, Members and other senior government officials may not serve for compensation as officers or members of the board of any association, corporation or other entity. Thus, a Member may sit on the board of a foundation but may not receive any payments, beyond reimbursement for travel and other expenses incurred on the foundation's behalf. In addition, the Internal Revenue Code assesses penalties on certain acts of "self-dealing" (e.g., payment of compensation and certain expenses, lending of money, leasing of property) between private foundations and some Government officials, including elected officials in the legislative branch and House employees who receive a salary of at least \$15,000 per year.³⁸ The tax sanctions include an imposition of excise taxes on both the self-dealer and the manager of the foundation, in an amount that multiplies if the original matter is not rectified within a certain time. A Member contemplating establishing a foundation should consult with a qualified tax accountant or attorney.

³⁵ See 31 U.S.C. § 1301(a); see generally CONGRESSIONAL HANDBOOK, *supra* note 15.

³⁶ See HOUSE SELECT COMMITTEE ON ETHICS, Advisory Opinion No. 6 (May 7, 1977), reprinted in FINAL REPORT OF THE SELECT COMMITTEE ON ETHICS, H. REP. NO. 95-1837, 95th Cong., 2d Sess. app. at 64-66 (1979) and at the end of Chapter 6 of this MANUAL.

³⁷ See Chapter 6 for a general discussion of the parameters of Rule 45.

³⁸ See 26 U.S.C. § 4941.

ADDITIONAL EARNED INCOME LIMITATIONS (affecting Members and Senior Staff)

For Members and those officers and employees earning above the GS-15 level for more than 90 days in a calendar year (i.e., \$77,080 in 1992),³⁹ the Ethics Reform Act and House Rules limit both the total amount of outside earned income and the type of permissible outside employment. House Rule 47 caps the amount of permissible outside earned income in a calendar year at 15 percent of the Executive Level II salary (that is, the Members' base annual salary). In 1992, the cap is \$19,425, for both Members and covered employees.⁴⁰

In addition, the rule restricts, and in some cases prohibits, compensation for certain types of activities, regardless of whether the individual's income has reached the cap.

Fiduciary and Related Restrictions

A Member or [a covered] officer or employee shall not—

- (1) receive compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity which provides professional services involving a fiduciary relationship;
- (2) permit that Member's, officer's, or employee's name to be used by any such firm, partnership, association, corporation, or other entity;
- (3) receive compensation for practicing a profession which involves a fiduciary relationship;
- (4) serve for compensation as an officer or member of the board of any association, corporation, or other entity; or
- (5) receive compensation for teaching, without the prior notification and approval of the appropriate [supervising ethics office].

— 5 U.S.C. app. 7, § 502.

See also House Rule 47, cl. 3(d).

The Ethics Reform Act prohibits Members and senior employees from engaging in professions that provide services

³⁹ See House Rule 47, cl. 2(b)(1). The salary threshold was \$72,298 per year as of January 1, 1991, and rose to \$73,972 as of May 4, 1991. See note 3, *supra*. In 1991, the cap was \$18,765.

and other expenses incurred on behalf of such organizations and may continue to be covered by organizational insurance policies.⁵¹

Example 24. Member K serves on the board of a hospital in his district. He receives no salary, but the hospital pays for his travel expenses if he makes a special trip to attend a board meeting, and he is covered under the hospital's officers' and directors' liability policy. Member K is in compliance with Federal law and House rules.

Example 25. Staffer L, whose congressional salary exceeds the GS-15 level, works on her own time on Member M's campaign. L may be paid for her campaign work, subject to the outside earned income cap, as long as she is not paid as the campaign's Treasurer.

Teaching

Under the terms of the teaching restriction, Members and covered employees may *not* teach for compensation, *unless* they receive prior written permission from the Committee on Standards. This requirement ensures that teaching does not become an avenue for circumventing the honoraria ban. The Committee therefore scrutinizes each request. In order to receive approval, the teaching must conform to the following criteria:

1. The teaching is part of a regular course of instruction at an established academic institution.
2. All compensation comes from the funds of the institution and none is derived from federal grants or earmarked appropriations.
3. The payment is for services on an ongoing basis, not for individual presentations or lectures.
4. The teacher's responsibilities include class preparation and student evaluation (for example, grading papers, testing, and homework).

even if a director tried to have his or her fees donated to charity, those fees could still be deemed constructive income to the individual under tax law, which would permit the individual to take an itemized deduction. Any arrangement whereby a Member, officer, or covered employee receives a direct or indirect financial benefit from board service is prohibited under the Ethics Reform Act.

⁵¹ See BIPARTISAN TASK FORCE REPORT, *supra* note 1, at 16, 135 CONG. REC. H9257.

5. The students receive credit for the course taught.

6. The compensation does not exceed that normally received by others at the institution for a comparable level of instruction and amount of work.

7. No official resources, including staff time, are used in connection with the teaching.

8. The teaching does not interfere with official responsibilities nor is it otherwise inconsistent with the performance of congressional duties.

9. The employment or compensation does not present a significant potential for conflict of interest.

Items 1 through 6 should be confirmed in writing by the institution at which the paid teaching will occur. Documentation might be in the form of an explanatory letter or copy of a teaching contract attached to the request for Committee approval. Items 7 through 9 should be affirmed in writing by the individual seeking to teach.

The Committee also approves requests to teach for compensation in less formal settings such as Sunday School, piano lessons, aerobics classes, and other situations clearly unrelated to official duties or an individual's status in Congress. No documentation need be submitted from the employing institution in such instances.

The 15 Percent Cap: Earned vs. Unearned Income

Rule 47 restricts compensation for personal services (termed "earned income"), but not moneys received from ownerships or other investments of equity (so-called "unearned income").⁵² The distinction between earned and unearned income is important because only earned income is subject to the 15-percent cap. In an advisory opinion, the Select Committee on Ethics of the 95th Congress emphasized that the "real facts" of a particular case would control as to whether moneys received would be deemed earned income:

[T]he label or characterization placed on a transaction, arrangement, or payment by the parties may be disregarded for purposes of the Rule. Thus, if the amounts received or to be received by a Member are in fact attributable to any significant extent to serv-

⁵² See 123 CONG. REC. 5901-02 (Mar. 2, 1977) (statement of Representative Frenzel).

"Charitable organization" means an organization described in section 170(c) of the Internal Revenue Code. 5 U.S.C. app. 7, §505(5); House Rule XLVII, clause 3(f). To qualify, an entity generally must be organized in the United States and operated exclusively for religious, charitable, scientific, literary, or educational purposes. Donated funds and earnings may not benefit any private individual, nor may a qualified organization attempt to influence legislation or political campaigns.

TRAVEL AND FINANCIAL DISCLOSURE CONSIDERATIONS

The Committee has long authorized Members, officers, and employees to accept necessary travel expenses from the sponsors of events in which they substantially participate, but for which no honoraria are paid. See Advisory Opinion No. 2 of the House Select Committee on Ethics, 95th Congress. Privately paid travel to events involving speaking or appearing is subject to restrictions concerning the number of days for which expenses may be accepted, who may accompany a Member, officer, or employee at the sponsor's expense, and financial disclosure of travel received and payments to charity in lieu of honoraria.

If an individual receives an improper honorarium, not only may the Committee take action under House rules, but the Attorney General may seek a civil penalty of the greater of \$10,000 or the amount of compensation received. 5 U.S.C. app. 7, §504.

Any questions regarding the honoraria prohibition or any other matters within this Committee's jurisdiction should be directed to the Committee's Office of Advice and Education at (202) 225-3787. Requests for written opinions should be directed to the Chairman of the Committee on Standards of Official Conduct at HT-2, The Capitol, Washington, D.C. 20515.

Chapter 4

FINANCIAL DISCLOSURE

Highlights

Financial interests and investments of Members and employees, as well as those of candidates for the House of Representatives, may present conflicts of interest with official duties. Members and employees need not, however, divest themselves of assets upon assuming their positions, nor must Members disqualify themselves from voting on issues that generally affect their personal financial interests. Instead, public financial disclosure provides a means of monitoring and deterring conflicts.

All Members, officers, and employees are prohibited from improperly using their official positions for personal gain. Members, officers, candidates, and certain employees must file annual Financial Disclosure Statements, summarizing financial information concerning themselves, their spouses, and dependent children. Such Statements must indicate outside compensation, holdings, and business transactions, generally for the calendar year preceding the filing date.

Who Must File

The following individuals must file Financial Disclosure Statements:

- Members of the House of Representatives;
- Candidates for the House of Representatives;
- House officers and employees earning at least 120 percent of the Federal GS-15 base level salary, i.e., \$73,972 in 1991 and \$77,080 in 1992; and
- Principal assistants on Members' personal staffs, as designated by the Members. At least one employee on each Member's personal staff

Example 19. Member A resigns from Congress to take a position as a Cabinet Secretary. A need not file a termination report.

Filing Deadlines, Committee Review, and Amendments

A report must be physically filed or postmarked by the due date, unless an extension has been granted by the Committee pursuant to a written request. Total extensions for any report may not exceed 90 days.⁵² An individual who files a report more than 30 days after it is due must pay a filing fee of \$200, unless the Committee waives the fee in exceptional circumstances.⁵³

Within 60 days of receipt, the Committee on Standards of Official Conduct reviews Financial Disclosure Statements of filers under its jurisdiction to determine whether the reports have been filed in a timely manner, appear substantially accurate and complete, and comply with applicable conflict of interest laws and rules.⁵⁴ If the review indicates a possible problem, the reporting individual is notified and given an opportunity to amend within a specified period.

A filer may also amend a Financial Disclosure Statement on his or her own initiative. Such amendments are normally given a presumption of good faith by the Committee if submitted before the end of the year in which the report was originally filed.⁵⁵

To amend a Financial Disclosure Statement, a filer need not submit an entirely new form. Instead, an amendment can be in the form of a letter addressed to, and filed with, the Clerk of the House. Both the original filing and the amendment are made public.

⁵² *Id.* § 101(g).

⁵³ *Id.* § 104(d).

⁵⁴ *Id.* § 106.

⁵⁵ The Committee's amendment policy is reprinted at the end of this chapter. Memorandum to all Members, Officers, and Employees from Julian C. Dixon, Chairman, and John T. Myers, Ranking Minority Member, House Comm. on Standards of Official Conduct (Apr. 23, 1986).

FAILURE TO FILE OR FILING FALSE DISCLOSURE STATEMENTS

The financial disclosure provisions of the Ethics in Government Act have been incorporated by reference as a rule of the House of Representatives,⁵⁶ over which the Committee on Standards of Official Conduct has jurisdiction.⁵⁷ In addition to any Committee action, the Ethics in Government Act authorizes the Attorney General of the United States to seek a civil penalty of up to \$10,000 against an individual who knowingly and willfully falsifies or fails to file or to report any required information.⁵⁸ Moreover, under the U.S. Criminal Code, anyone who knowingly and willfully falsifies or conceals any material fact in a statement to the Government may be fined up to \$10,000 and/or imprisoned for up to five years.⁵⁹ One Member was convicted, imprisoned, and fined under this criminal law for having significant omissions on his financial disclosure forms over a period of four years.⁶⁰

ADVISORY OPINIONS

The Committee is authorized to render advisory opinions interpreting the financial disclosure provisions of the Ethics in Government Act for any person under its jurisdiction. An individual who acts in good faith in accordance with a written advisory opinion shall not be subject to any sanction under the Act.⁶¹

⁵⁶ House Rule 44.

⁵⁷ See House Rule 10, cl. 1(t).

⁵⁸ 5 U.S.C. app. 6, § 104(a).

⁵⁹ 18 U.S.C. § 1001.

⁶⁰ See *United States v. Hansen*, 772 F.2d 940 (D.C. Cir. 1985), cert. denied, 475 U.S. 1045 (1986).

⁶¹ 5 U.S.C. app. 6, § 106(b)(7).

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must file, even if no one earns 120 percent of the GS-15 base salary.

When to File

Members, officers, and covered employees must file Financial Disclosure Statements by *May 15* of each year.

New officers and covered employees must file within 30 days of assuming their positions.

Candidates who raise or spend more than \$5,000 for their campaigns must file within 30 days of doing so, or by May 15, whichever is later, but in any event at least 30 days prior to the elections in which they run.

Termination reports must be filed within 30 days of leaving government employment by *Members, officers, and employees* who file Financial Disclosure Statements.

Chapter 4

FINANCIAL DISCLOSURE

The private financial interests and investment holdings of Members and employees of, and candidates for, the House, as well as those of their immediate families, may present conflicts of interest with official duties. Circumstances may arise where a Member must act on legislation or an employee must give assistance concerning a matter that directly affects a personal financial interest. The personal financial interest, rather than the interest of the general public or the Member's constituency, *could* then influence official action. As discussed by the New York City Bar Association:

The evil is not only the possibility or appearance of private gain from public-office, but the risk that official decisions, whether consciously or otherwise, will be motivated by something other than the public's interests. The ultimate concern is bad government, which always means actual harm to the public.

* * *

The evil, then, is risk of impairment of impartial judgment, a risk which arises whenever there is temptation to serve personal interests. The quality of specific results is immaterial. In this sense, conflict-of-interest regulation is true to the fiduciary principle. Like other fiduciaries, such as guardians, executors, lawyers, and agents, the public trustee has a duty to avoid private interests which cause even a risk that he will not be motivated solely by the interests of the beneficiaries of his trust.¹

USE OF OFFICE FOR PERSONAL GAIN

No Federal statute or rule of the House absolutely prohibits a Member or employee from holding assets that might conflict with or influence the performance of official duties.

¹JAMES C. KIRBY, JR. (exec. director), ASSN OF THE BAR OF THE CITY OF NEW YORK SPECIAL COMM. ON CONGRESSIONAL ETHICS, CONGRESS AND THE PUBLIC TRUST 38-39 (1970).

In such a case, the burden will be on the filer to establish such a presumption.

The Committee is well aware that disclosure statements filed in years past may be in need of revision. To this end, the Committee has determined that a grace period ending at the close of calendar year 1986 will be granted during which time all filers may amend any previously submitted FD Statements. Again, while an amendment may be timely from the standpoint of when it is submitted — i.e., within the current year — information regarding the need for and, hence, appropriateness of the amendment will also be considered *vis-a-vis* the rebuttable presumption of good faith.

In sum, the effect of the new policy is to establish a practice of receiving and anticipating that FD Statements and amendment thereto will be submitted within the same calendar year and that departures based on either timeliness or circumstances can be readily identified for scrutiny and possible Committee action. As noted, implementation of the new policy will affect not only statements filed this year but also all statements filed in prior years in light of the grace period being adopted.

Should you have a question regarding this matter, please feel free to contact the Committee staff at 225-7103.

Chapter 5

STAFF RIGHTS AND DUTIES

Highlights

House employees are public servants, paid with United States Treasury funds. They must perform official duties commensurate with the compensation they receive. Employees are *not* paid to perform nonofficial, personal, or campaign duties on behalf of a Member or anyone else.

Hiring

A Member, officer, or employee of Congress may *not*:

- discriminate on the basis of race, color, religion, sex (including marital or parental status), handicap, age, or national origin in hiring, pay, or working conditions;
- hire, promote, or recommend for hiring or promotion a relative;
- promise to help someone get a Federal job in return for a political contribution or anything else of value;
- prevent someone, or threaten to prevent someone, from getting a Federal job or benefit in order to obtain a political contribution or to coerce political activity.

Salaries

Employees of the House may *not* be required:

- to divide or share their salaries;
- to "kick back" a portion of their salaries to a Member or an aide;
- to spend personal money to benefit a Member or the operation of a Member's office.

Campaign Activities

House employees are not covered by the "Hatch Act." Once they fulfill their required official duties, employees are free to engage voluntarily in campaign activities. Employees may not make political contributions to their employing Members of Congress.

Outside Employment

House employees may not allow outside jobs to interfere with official congressional duties and so must restrict outside employment to their free time.

Employees must avoid any inherent conflict of interest between the substance of their outside employment and their congressional jobs.

Chapter 5

STAFF RIGHTS AND DUTIES

The House has adopted specific laws, regulations, and rules governing the employer-employee relationship. This chapter discusses restrictions against discrimination in hiring and compensation; nepotism; protection of employees from "kickback" schemes and other illegal hiring, firing, and compensation practices; regulations on pay; and guidelines affecting interns and volunteers. Outside employment and campaign activity by House employees are also briefly addressed.¹

The general terms, conditions, and specific duties of House employees traditionally have been within the discretion of the employing Members or committees.² Nonetheless, certain general principles apply to all House employees. Employees of the House are paid from funds of the United States Treasury to perform public duties. These include assisting the Members in official responsibilities³ and working on official committee business⁴ but do not include performing nonofficial, personal, or campaign duties.⁵ The Code of Official Conduct (House Rule 43, clause 8) instructs Members and officers to retain no one on their staffs "who does not perform official duties commensurate with the compensation received in the offices of the employing authority."⁶

¹See Chapters 3 and 8 of this MANUAL for more detail on these topics.

²Some House employees, generally those under the employ of an officer of the House, will be subject to the House Employees Position Classification Act (2 U.S.C. §§ 291-303) and regulations on applicable employment standards issued by the Committee on House Administration.

³See, e.g., Legislative Branch Appropriations Act, 1992, Pub. L. No. 102-90, 105 Stat. 447, 453, title I - Congressional Operations, Members' Clerk Hire (1991).

⁴See DONALD K. ANDERSON, CLERK OF THE HOUSE OF REPRESENTATIVES, RULES OF THE HOUSE OF REPRESENTATIVES, 102d Cong. (1991) (hereinafter House Rules), Rule 11, cl. 6(a)(3), 6(b)(1)-(2).

⁵See *United States v. Diggs*, 613 F.2d 988, 994-997, 1002 (D.C. Cir. 1979), cert. denied, 446 U.S. 982 (1980).

⁶See also COMM. ON HOUSE ADMIN., U.S. HOUSE OF REPRESENTATIVES CONGRESSIONAL HANDBOOK § 2.11.B.2, at 2.5 (as amended by Dear Colleague letter from Frank Annunzio, Chairman and William M. Thomas, Ranking Republican Member, Continued

mittee's approval for any volunteer, intern, or fellowship program in which they wish to participate.

The above guidelines do not prohibit a Member or other House office from accepting services, including detailed staff, provided on an official basis by a unit of Federal, state, or local government. (House staff and resources may not, however, be similarly used to perform the work of other governmental units, or of any private organization.)

As a related matter, House Rule XLIII, clause 11, part of the Code of Official Conduct, provides that a Member of the House of Representatives shall not authorize or otherwise allow a non-House individual or organization to use the words "Congress of the United States," "House of Representatives," or "official business" on any letterhead or envelope. The intent of this provision is to prevent persons who are not Members, officers, or employees of the House from representing that their activities are officially sponsored or sanctioned. This prohibition also extends to other printed matter, such as business cards. Accordingly, individuals not paid by the House of Representatives may *not* use or obtain business cards or other materials suggesting an employment relationship with the House.

Any questions concerning these matters should be directed to the Committee's Office of Advice and Education at 225-3787.

Sincerely,

JULIAN C. DIXON

Chairman

JOHN T. MYERS

Ranking Minority Member

Chapter 6

OFFICIAL ALLOWANCES AND FRANKING

Highlights

Official Allowances

Official allowances may be used only for official expenses. Official allowances may *not* be converted to personal or campaign use or applied towards any unofficial activity.

Only official allowances (appropriated funds) and Members' personal funds may be used to defray official expenses.

House Rule 45, the prohibition on unofficial office accounts, bars the use of private funds or services from outside sources for official activities.

The misuse of official allowances violates House rules and may also subject Members or employees to criminal prosecution and actions to recover the misspent funds.

The Committee on House Administration governs certifications, documentation, and other standards for reimbursement from the official allowances. Many of that Committee's regulations are set forth in the *U.S. House of Representatives Congressional Handbook*.

The Frank

A Member's frank may be used only to mail material relating to the official duties, activities, and business of a congressional office.

Each Member receives a limited annual franking account. Expenditures from this account are publicly disclosed by the Clerk of the House four times a year.

The frank may be used for:

- constituent mail relating to public issues;
- press releases, newsletters, and questionnaires;
- mail to other legislators and government bodies;

Chapter 7

CASEWORK CONSIDERATIONS

Highlights

Members and staff of the House often assist constituents in their dealings with administrative agencies by acting as facilitators or "ombudsmen." Members may *properly* communicate with agencies on behalf of constituents:

- to request information or status reports;
- to urge prompt consideration of a matter based on the merits of the case;
- to arrange for appointments;
- to express judgment on a matter (subject to *ex parte* communication rules); and/or
- to ask for reconsideration, based on law and regulation, of an administrative decision.

Congressional officials should make clear to administrators that action is only being requested to the extent consistent with governing law and regulations.

In communicating with a Federal agency on behalf of a constituent, a Member, officer, or employee of the House should *not*:

- make prohibited, off-the-record comments to an official considering a matter in a formal proceeding;
- receive money or things of value (other than congressional salary) in return for or because of official help; or
- exert undue or improper pressure on agency officials, such as by suggestions of favoritism or threats of reprisals.

Section 216 provides for imprisonment for up to one year for engaging in the conduct, and for imprisonment for up to five years knowingly engaging in the conduct, plus fines.

The Committee emphasizes that it is not herein interpreting this statute but notes that the law does refer to any compensation, directly or indirectly, for services by himself or another. In this connection, the Committee suggests the need for caution to prevent the accrual to a Member of any compensation for any such services which may be performed by a law firm in which the Member retains a residual interest.

It should be noted that the above statute applies to officers and employees of the House of Representatives as well as to Members.

Chapter 8

CAMPAIGN FUNDS AND PRACTICES

Highlights

Use of Campaign Funds

Campaign funds may not be converted to personal use (e.g., loaned to the Member) or used for official expenses.

Campaign funds may be used only for bona fide campaign or political purposes.

Money received at testimonials or other fundraisers must be treated as campaign funds.

A Member may not use official resources, including funds, supplies, and equipment, for campaign activity.

Campaign Activity by House Employees

Employees of the House are not covered by the "Hatch Act" and may engage in partisan campaign activity in their free time.

Staffers may not make political contributions to their employing Members of Congress.

Members of Congress are prohibited from soliciting political contributions from their staff, as well as from other Federal employees.

Members of the House, like all candidates, must abide by the provisions of the Federal Election Campaign Act concerning required record keeping, reporting, registration, and organization.

Statutory Campaign Restrictions

Federal law prohibits:

- receiving corporate, labor union, foreign national, and government contractor contributions;
- soliciting contributions from Federal employees;

A House employee may not privately represent someone before the Government other than in the performance of official duties.

Members may make **recommendations** for career agency or Postal Service employment, but should limit their comments to the applicant's character and residence. Members have greater flexibility when recommending individuals for appointment to policy positions.

The standards applicable to Federal agency contacts may also apply when a Member makes communications on behalf of constituents to courts, other governments, or private entities. Particular care should be exercised when providing assistance to individuals who are not from the Member's congressional district.

The staff of the Committee's Office of Advice and Education will review the text of any proposed communication upon request.

Chapter 7

CASEWORK CONSIDERATIONS

An important aspect of a House Member's representative function is to act as a "go-between" or conduit between his constituents and administrative agencies of the Federal Government. Whether promoting projects that will benefit constituents or assisting in the resolution of the problems that are an inevitable by-product of government regulation, the Member is serving as a facilitator, or ombudsman. Such activity, in the opinion expressed by the late Senator Paul H. Douglas, plays a useful role in the governmental process by helping legislators and administrators perform their respective jobs adequately through the interest of the former in the work of the latter.

In a committee print entitled *Ethical Standards in Government*, a subcommittee headed by Senator Douglas stated that legislators performing casework functions can "legitimately serve as an informal board of inspectors" over administrators, "can prevent the administrators from flagging in their zeal and can detect and check abuses in the conduct of public business."² Douglas concluded in his own study of ethics in government that there is a "sound ethical basis for legislators to represent the interests of constituents and other citizens in their dealings with administrative officials and bodies."³

The Constitution guarantees all citizens the right to petition the Government for redress of grievances.⁴ The most logical point of contact is one's elected representative. Furthermore, Members of Congress continually must monitor Government programs and the administration of public laws. Given the unique role of a congressman in the American con-

¹ PAUL H. DOUGLAS, *ETHICS IN GOVERNMENT* 87 (1952).

² SPECIAL SUBCOMM. ON THE ESTABLISHMENT OF A COMM'N ON ETHICS IN GOV'T. SENATE COMM. ON LABOR AND PUBLIC WELFARE, *ETHICAL STANDARDS IN GOVERNMENT*, 82d Cong., 1st Sess. 28 (Comm. Print 1951).

³ DOUGLAS, *supra* note 1, at 87.

⁴ U.S. CONST., amend. I.

untary efforts are not considered to be a "contribution." See 2 U.S.C. § 431(8)(B)(i).

The difficulty arises when a congressional employee finds it necessary to make an outlay on behalf of the campaign of an employing Member which will be reimbursed quickly. The FEC regulation, found at 11 C.F.R. § 116.5(b), was promulgated June 27, 1990. It provides in pertinent part as follows:

The payment by an individual from his or her personal funds, including a personal credit card, for the costs incurred in providing goods or services to, or obtaining goods or services that are used by or on behalf of a candidate or a political committee is a contribution

The exigencies of a congressional campaign may require action by a campaign worker on short notice. An individual may be called upon, for example, to arrange a rental car for campaign use or pick up some yard signs, anticipating prompt reimbursement in each case. Under the above-cited regulation, such an individual is deemed to have made a contribution. If the individual is also a congressional employee of the candidate, the effect of the regulation appears to be to make the contribution a criminal act under 18 U.S.C. § 603.

To avoid possible problems, the FEC suggests alternative procedures that may be taken instead of relying on out-of-pocket outlays. Staff engaged in campaign work could be provided with checks drawn on campaign committee accounts, be given authority to use a campaign credit card, or use a campaign petty cash fund for transactions under \$100.

Anyone desiring further information, including copies of the Committee's exchange of correspondence with the Federal Election Commission, should contact the Committee's Office of Advice and Education, at (202) 225-3787.

Chapter 9

INVOLVEMENT WITH OFFICIAL AND UNOFFICIAL ORGANIZATIONS

Highlights

Members and employees of the House need to distinguish carefully between official and unofficial activities when they interact with private organizations.

A Legislative Service Organization (LSO) is an organization comprised solely of Members of Congress and financed exclusively from official allowances, which provides legislative support to the Members. LSO's are governed by regulations of the Committee on House Administration. Neither LSO's nor any less formal caucuses that are similarly supported with official funds may receive any outside income or contributions from unofficial sources.

Members may not permit any non-House organization or individual to use expressions or symbols that might erroneously convey official endorsement, particularly of a commercial enterprise.

Joint endeavors, undertaken with a combination of private resources and officials funds, are generally prohibited. This does not preclude the personal involvement of Members and employees with private undertakings, including lending their names to specific causes. However, congressional resources may not be used to support private activities and no official endorsement may be suggested. Members have greater leeway in undertaking cooperative programs with Federal, state, and local government agencies.

(307)

- soliciting contributions in Federal (including House) office buildings;
- accepting contributions over specified statutory limits;
- making cash contributions over \$100;
- misrepresenting oneself as working on behalf of a particular candidate or circulating anonymous campaign literature;
- failing to report contributions received or expenditures made.

Chapter 8

CAMPAIGN FUNDS AND PRACTICES

Numerous restrictions limit the use of campaign funds by Members of the House of Representatives. Like all candidates for Federal office, Members are subject to regulations on campaign finance pursuant to the Federal Election Campaign Act of 1971, as amended.¹ Under the provisions of that act, the Federal Election Commission (FEC) has been established as an independent regulatory agency to oversee Federal campaign finance procedures and practices. Members should thus examine closely provisions of the Federal Election Campaign Act, regulations promulgated by the FEC,² and explanatory publications prepared by the FEC. In addition, certain campaign activities may run afoul of provisions of the Federal Criminal Code.

This chapter will focus on those provisions not specifically under the authority of the FEC, including Criminal Code provisions and restrictions in the House rules. In addition, it will briefly highlight the major provisions of the large body of Federal campaign law relating to registration, disclosure and use of campaign contributions. Advisory opinions interpreting specific provisions of that law may be requested from the FEC.

Members and supervising employees should carefully counsel all House staff as to the requirements and restrictions pertaining to political activities. The distinction between official and campaign responsibilities should be made clear. Campaign work should be kept out of the congressional office, and vice versa. Management controls, such as time and attendance records, should be implemented to permit adequate supervision of both Washington and district staff and to document compliance with applicable standards.

¹ 2 U.S.C. §§ 431-455.

² Title 11 of the Code of Federal Regulations.

APPENDIX D



Third

Biennial Report

to Congress

March 1994



United States
Office of Government Ethics

1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

March 31, 1994

I am pleased to submit to Congress this third biennial report of the Office of Government Ethics covering activities from January 1992 through December 1993.

Within these two years, the executive branch ethics program has substantially expanded as required by earlier executive orders and legislation. At the same time, the Office has met the dual challenge of assisting with the financial conflict of interest analyses necessary for appointees of a new Administration as well as assisting with the ethics issues facing the members of the prior Administration as they sought, and then left for, positions outside Government.

During this period the Office issued the first uniform set of administrative standards of conduct for the executive branch, replacing a system of agency-issued regulations. The Office also issued final regulations on both the public and confidential financial disclosure systems and set forth guidance through regulation on the requirements an agency must meet in training its employees about the various ethics requirements. It expanded its agency ethics program review capabilities as well as its day-to-day support services for agency ethics programs. The Office sponsored two annual conferences and other, smaller, training opportunities for agency ethics officials to provide forums for discussion of ethics program issues and problems and to strengthen the working relationships within the ethics community.

These are just some of the highlights of the activities of this Office during the preceding two years. This report sets forth more fully the complete range of the activities during this period. I am proud of what the Office has accomplished and look forward to its continuing to build upon this very solid and thoughtful body of accomplishments.

Respectfully,

A handwritten signature in cursive script, which appears to read "Stephen D. Potts".

Stephen D. Potts
Director

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History

The Office of Government Ethics (OGE) was created by the Congress in 1978, as an agency within the Office of Personnel Management. It began operation January 1, 1979. OGE became a separate agency on October 1, 1989.

The current and past Directors are:

August 1990 - present	Mr. Stephen D. Potts
November 1989 - July 1990	Mr. Donald E. Campbell (acting)
December 1987 - October 1989	Judge Frank Q. Nebeker
August 1987 - December 1987	Mr. Donald E. Campbell (acting)
August 1983 - August 1987	Mr. David H. Martin
August 1982 - August 1983	Mr. David R. Scott (acting)
October 1979 - August 1982	Mr. J. Jackson Walter
January 1979 - October 1979	Mr. Bernard Wruble (interim)

Introduction

In 1988, as part of the legislation reauthorizing the Office of Government Ethics (OGE), Congress began requiring the Director to submit a biennial report summarizing action taken during the previous two years and providing any other information which the Director considers appropriate.

This particular report covers the activities of the Office from January 1, 1992 through December 31, 1993.

Significant activities of this period included:

- processing the financial disclosure reports required as a result of a Presidential transition period causing increased activity at the Office of Government Ethics -- reviewing public disclosure reports for nominees to high level Government positions as well as the reports of those departing from Government positions, providing interpretations and advice in resolving questions of conflict of interest, establishing recusal agreements, certifying blind trusts, and issuing Certificates of Divestiture;
- completing analysis and issuing the first branch-wide administrative standards of conduct for executive branch employees;
- completing analysis and issuing a new rule on personal financial disclosure requirements;
- completing analysis and issuing the regulations implementing ethics training for executive branch employees required by Executive Order 12674, as amended;
- establishing strategies to assist agencies in implementing ethics training including developing training materials, pamphlets and videotapes for individual agency use;
- improving and conducting effective communications with the executive branch ethics community, and those outside the Federal Government, including establishing an electronic bulletin board, The Ethics Bulletin Board System (TEBBS), hosting two annual conferences for agency ethics officials, publishing the *Government Ethics Newsgram*, hosting a mini-conference on the Standards of Conduct, and meeting with other entities with responsibilities for ethics programs-- public and private groups, state and local governments, professional associations, and foreign government agencies;
- strengthening OGE reviews of agency ethics programs by increasing the number of staff available to conduct reviews;
- performing 104 agency ethics program reviews with shorter times between revisiting individual agencies for reviews and an opportunity to assess the effectiveness of agencies' ethics programs, including implementation of OGE's new regulations;
- strengthening OGE relationships with agencies' ethics programs by increasing the number of desk officers available to agencies' staff and by enhancing the role of desk officers within OGE; and
- managing resource and staff allocation increases to achieve the goals set by the President and the Congress.

Organization

The Office of the Director provides direction to the executive branch ethics programs and is responsible for OGE's fulfilling its Congressional and Presidential mandates. It also has an outreach program to inform the public about OGE's statutory and regulatory responsibilities. This activity encompasses professional and trade associations, local and state governments, as well as governments of foreign countries.

The Office of General Counsel and Legal Policy is responsible for establishing and maintaining a uniform legal framework of Government ethics for executive branch employees, for interpreting laws and regulations, for assisting agencies in legal and policy implementation, and for reviewing legislation and recommending changes in conflicts of interest and ethics statutes.

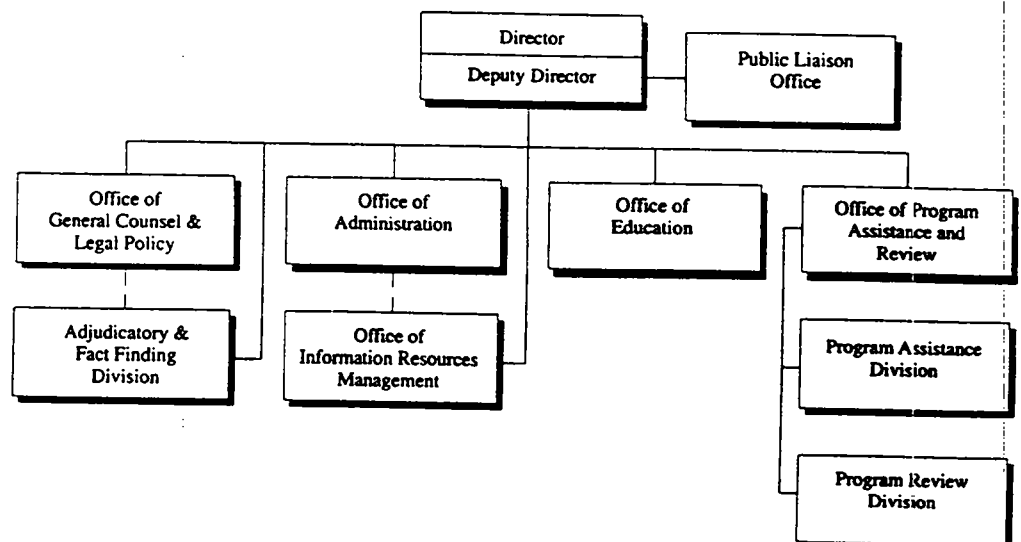
The Office of Education is responsible for ensuring that quality ethics education programs are provided by agencies to executive branch employees and that appropriate materials are made available

to support and assist delivery of these programs.

The Office of Program Assistance and Review has oversight responsibilities for executive branch agency ethics programs. Ethics specialists, who serve as desk officers in the Program Assistance Division, assist agencies in the development and improvement of their ethics programs. Management analysts in the Program Review Division monitor agency compliance with executive branch ethics laws and regulations through a series of ethics program reviews conducted according to an annual program plan.

The Office of Administration provides essential support to all OGE operating programs in the area of personnel, payroll, fiscal resource management, facilities and property management, travel management, procurement, publishing and distribution, printing, information resource management, telecommunications, and office automation support.

Office of Government Ethics



Overview

The Office of Government Ethics, a small agency with wide-ranging responsibilities, was established by the Ethics in Government Act in 1978. Originally part of the Office of Personnel Management, OGE became a separate agency on October 1, 1989 (Pub. L. No. 100-598). The statute creating the Office of Government Ethics states it is responsible for providing "overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency." Specific responsibilities fall into six general areas:

- **Regulatory Authority**
develop, recommend and review rules and regulations pertaining to conflicts of interest, post-employment restrictions, standards of conduct, and public and confidential financial disclosure in the executive branch;
- **Financial Disclosure**
review executive branch public financial disclosure reports of certain Presidential nominees/appointees to assess potential violations of applicable laws or regulations and recommend appropriate corrective action; administer executive branch blind trust and Certificate of Divestiture programs;
- **Education and Training**
implement statutory responsibility of "providing information on and promoting understanding of ethical standards in executive agencies;"
- **Guidance and Interpretation**
prepare formal advisory opinions, informal advice letters and policy

memoranda on how to interpret and comply with requirements on conflict of interest and post-employment statutes, standards of conduct and financial disclosure requirements applicable to the executive branch; consult with agency ethics officials in individual cases;

- **Enforcement**
monitor agency ethics programs and review compliance, including financial disclosure systems; refer possible violations of conflict of interest laws to the Department of Justice, and advise them on prosecutions and appeals, and, in limited circumstances, investigate possible ethics violations and order corrective action or recommend disciplinary action; and
- **Evaluation**
evaluate the effectiveness of conflict of interest laws and recommend appropriate amendments.

The Office of Government Ethics is organized into three major program areas: Office of General Counsel and Legal Policy, Office of Program Assistance and Review, and Office of Education. They are supported by a small administrative staff who provide normal office functions: personnel, budget, administrative services, and information management.

Throughout the executive branch there is a network of Designated Agency Ethics Officials (DAEOs), one in every executive department and agency. These individuals and their staffs make up the "Federal ethics community" to which OGE communicates policy and regulatory changes. These men and women are

employees of the agencies and they conduct the Federal ethics program on site: giving advice and guidance on matters of conflict of interest, financial disclosure, standards of ethical conduct, and post-employment restrictions; educating employees about the statutes and standards; assisting in individual employee disciplinary actions and implementing their agencies' public and confidential financial disclosure systems.

OGE sends out periodic memoranda, referred to as DAEOgrams, to these Designated Agency Ethics Officials. These DAEOgrams are sent to inform agencies about specific topics or to remind agencies of future events. OGE also sponsors a conference annually, and small training workshops throughout the year, to discuss programs and problems with agency ethics officials and their staffs. On a daily basis, OGE desk officers work with agencies and DAEOs.

Fourteen Principles of Ethical Conduct for Federal Employees

(1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

(2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.

(3) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(4) An employee shall not, except as permitted by the Standards of Ethical Conduct, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

(5) Employees shall put forth honest effort in the performance of their duties.

(6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

(7) Employees shall not use public office for private gain.

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

(11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(12) Employees shall satisfy in good faith their obligations as citizens, including all financial obligations, especially those -- such as Federal, State, or local taxes -- that are imposed by law.

(13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in the Standards of Ethical Conduct. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

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 similar organizations to large segments of the public.

Example 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.

Example 3: The administrative officer for a district office of the Immigration and Naturalization Service has signed an INS 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 INS funds, the administrative officer cannot keep the briefcase which, if claimed and received, is Government property.

(d) *Awards and honorary degrees.* (1) An employee may accept gifts, other than cash or an investment interest, with an aggregate market value of \$200 or less if such gifts are a bona fide award or incident to a bona fide award that is given for meritorious public service or achievement by a person who does not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties or by an association or other organization the majority of whose members do not have such interests. Gifts with an aggregate market value in excess of \$200 and awards of cash or investment interests offered by such persons as awards or incidents of awards that are given for these purposes may be accepted upon a written determination by an agency ethics official that the award is made as part of an established program of recognition:

(i) Under which awards have been made on a regular basis or which is funded, wholly or in part, to ensure its continuation on a regular basis; and

(ii) Under which selection of award recipients is made pursuant to written standards.

(2) An employee may accept an honorary degree from an institution of higher education as defined at 20 U.S.C. 1141(a) 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.

(3) An employee who may accept an award or honorary degree pursuant to

paragraph (d)(1) or (2) of this section may also accept meals and entertainment given to him and to members of his family at the event at which the presentation takes place.

Example 1: Based on a determination by an agency ethics official that the prize meets the criteria set forth in § 2635.204(d)(1), 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: Prestigious University 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.

Example 3: An ambassador selected by a nonprofit organization as 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.

(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: A Department of Agriculture employee whose husband is a computer programmer employed by an Agriculture Department 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: 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 his outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of his official status; or

Example 1: The members of an Army Corps of Engineers environmental advisory committee that meets 6 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 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.

Example 1: 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) For purposes of paragraphs (e)(1) through (3) of this section, employment shall have the meaning set forth in § 2635.603(a).

(f) *Gifts from a political organization.* An employee who is exempt under 5 U.S.C. 7324(d) from the Hatch Act prohibitions against active participation in political management or political campaigns may accept meals, lodgings, transportation and other benefits, including free attendance at events, 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 to accompany an exempt employee to a political event may accept meals, free attendance and entertainment provided at the event by such a political organization.

Example 1: The Secretary of the Department of Health and Human Services is exempt from the noted Hatch Act restrictions. He 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) *Widely attended gatherings and other events—*(1) *Speaking and similar engagements.* When an employee is assigned to participate as a speaker or panel participant or otherwise to present

Federal Register

Friday
August 7, 1992

Part II

**Office of
Government Ethics**

5 CFR Part 2635
Standards of Ethical Conduct for
Employees of the Executive Branch; Final
Rule

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RIN 3209-AA04

Standards of Ethical Conduct for Employees of the Executive Branch**AGENCY:** Office of Government Ethics.**ACTION:** Final rule.

SUMMARY: The Office of Government Ethics is issuing a final rule which establishes uniform standards of ethical conduct for officers and employees of the executive branch of the Federal Government (hereinafter Government). When effective in 180 days, part 2635 will supersede most of subparts A, B and C of 5 CFR part 735 and agency regulations thereunder, as well as 5 CFR 2635.101 of the Office of Government Ethics regulations.

The final rule establishes standards relating to the receipt of gifts, whether from prohibited sources, because of official position, or between employees. It establishes standards for dealing with the employee's own and other financial interests that conflict with an employee's official duties. These include disqualification requirements that apply when a matter to which the employee is assigned affects a person with whom he or she is seeking employment. In addition to standards relating to use of official position and time, Government property and nonpublic information, it establishes specific standards for application to outside activities in which an employee may participate, including fundraising and outside employment.

EFFECTIVE DATE: February 3, 1993.

FOR FURTHER INFORMATION CONTACT: Leslie L. Wilcox, Office of Government Ethics, telephone (202/FTS) 523-5757, FAX (202/FTS) 523-6325.

SUPPLEMENTARY INFORMATION:**I. Rulemaking History**

On July 23, 1991, the Office of Government Ethics (OGE) published for comment a proposed rule to establish uniform standards of ethical conduct for all employees of the executive branch (56 FR 33778-33815). The proposed rule was issued pursuant to section 201 of Executive Order 12674 of April 12, 1989, as modified by E.O. 12731, which directs the Office of Government Ethics to "establish a single, comprehensive, and clear set of executive-branch standards of conduct that shall be objective, reasonable, and enforceable" and gives the Office of Government Ethics authority, with the concurrence of the Attorney General, to issue regulations interpreting 18 U.S.C. 207-209.

Title III of the Ethics Reform Act of 1989 amended title 5 of the U.S. Code to add a new section 7353 which, in language virtually identical to that contained in section 101(d) of Executive Order 12674, restricts the solicitation and receipt of gifts from outside sources and authorizes the Office of Government Ethics to issue implementing regulations for the executive branch. Subpart B of this regulation was thus proposed as the Office of Government Ethics' implementation of both 5 USC 7353 and the Executive order. Subpart C of the rule, which concerns gifts between employees, was proposed as the Office of Government Ethics' implementation of the longstanding statutory prohibition against gifts to superiors at 5 U.S.C. 7351. As amended by the Ethics Reform Act of 1989, 5 U.S.C. 7351 authorizes the Office of Government Ethics to issue implementing regulations applicable to employees of the executive branch.

The proposed rule provided a 60-day comment period and invited comments by agencies and the public. Timely comments were received from 1,068 sources. After carefully considering all comments and making appropriate modifications, the Office of Government Ethics is publishing this final rule after consultation with the Department of Justice and the Office of Personnel Management pursuant to section 201(a) of Executive Order 12674 of April 12, 1989, as modified by E.O. 12731, and authorities contained in titles I and IV of the Ethics in Government Act of 1978, Public Law 95521, October 26, 1978, as amended, 5 U.S.C. Appendix, and 5 U.S.C. 7351(d)(1) and 7353(b)(1) as added by the Ethics Reform Act of 1989, Public Law 101-194, November 30, 1989, as amended. Those portions of subparts D and F of this final rule which involve an interpretation of 18 U.S.C. 208 are issued with the concurrence of the Attorney General pursuant to section 201(c) of Executive Order 12674. The Office of Government Ethics expects to issue separate regulations to interpret 18 U.S.C. 207 and 209 and to provide waivers under 18 U.S.C. 208(b)(2).

II. Summary of Comments

Of the 1,068 sets of comments timely submitted, 37 were from executive branch agencies (including 7 from agency inspectors general) and 1,031 were from organizations and individuals. Many commented on several different sections of the proposed rule. OGE has considered each comment submitted by each commenter and those determined to be significant are discussed below in the context of the particular subparts or sections to

which they pertain. We have not specifically discussed comments that were either generally laudatory or generally critical, either of style or substantive content, or that offered editorial suggestions or suggestions regarding format that would not affect meaning. In addition, we have not specifically discussed comments that were plainly unreasonable or that exhibited a clear misunderstanding of the purpose or language of the proposed regulation or of Government processes in general. The following comments fall within these categories: Proposals to revise the regulations to include a list of ethical obligations the Government owes to individual employees; recommendations to make the same ethical standards applicable to employees in all three branches of Government; comments that pertain to ethics training requirements that are the subject of other regulations; a suggestion to discuss the relationship between part 2635 and the ethical standards of the legal profession; and a recommendation to establish standards of "courtesy" for employees who deal with members of the public.

Other comments not separately addressed below include those that pertain only to a single agency. Comments that fall within this category include requests to clarify the application of certain provisions in the regulation to various types of military reserve officers and to include in the listing of statutory prohibitions generally relevant to outside activities a synopsis of a statute applicable only to employees of the Bureau of Indian Affairs and the Indian Health Service. The regulations in this new 5 CFR part 2635 apply to all executive branch personnel and, thus, contain provisions intended for broad application throughout the executive branch. To the extent they may need to be tailored to the functions and activities of a given agency, § 2635.105 of this rule provides authority for individual agencies to issue supplemental regulations. We also have not addressed recommendations which information contained in the preamble accompanying the proposed rule made clear could not be adopted because they are contrary to underlying legal authority. See, for instance, the discussion in the preamble of the proposed rule (56 FR 33779) of why the regulations do not cover enlisted members of the uniformed services. We have not specifically addressed comments that have been rendered inapplicable by changes to the regulation which have been made for other reasons. And, lastly, we have not

discussed recommendations for additional examples unless, in our opinion, the proposed example would be helpful to illustrate a point in need of clarification.

Subpart A—General Provisions

Section 2635.101 Basic Obligation of Public Service

Because certain of the principles listed in § 2635.101 are not further amplified in the regulation, one individual observed that the sentence, as proposed, introducing that listing inaccurately states that the general principles "form the basis for the standards contained in this part." This sentence has been revised to more accurately state that the general principles "apply to every employee and many form the basis for the standards contained in this part." One agency recommended a restructuring of § 2635.101(b) to make it clear that the last sentence, as proposed, applies to all fourteen principles and not just the fourteenth. In accordance with this recommendation, the statement directing employees to apply the general principles to conduct not otherwise addressed in the subpart has been moved to the beginning of § 2635.101(b) of this regulation.

The three agencies that commented on § 2635.101(b)(6) agreed that an employee who acted without knowledge that those actions exceeded his or her authority should not be disciplined for violating the ethical principle, as stated in Executive Order 12674, that an employee "shall make no unauthorized commitments or promises of any kind purporting to bind the Government." While two endorsed the proposed addition of a knowledge standard to the restatement of that principle, one expressed concern that, as an evidentiary matter, § 2635.101(b)(6) would require an agency to show that the employee acted knowingly. The Office of Government Ethics has not changed this paragraph. Whatever burden an explicit knowledge standard may impose upon an agency seeking to discipline an employee for a violation of this principle is more than compensated for by the fairness it affords thousands of employees who are called upon to exercise discretion in applying complex laws and regulations.

One agency suggested that the principle at § 2635.101(b)(7) be rephrased to include the prefatory caveat, "Except as authorized or permitted by law," in order to ensure that it is not interpreted to prohibit an employee's receipt of Federal salary and benefits. That agency suggested that the statement of the principle be further

revised to prohibit employees' use of public office for private gain "of themselves and others." The Office of Government Ethics has not made the revisions suggested. The prohibition against use of public office for private gain has been in effect and stated in essentially the same terms since the 1960's with never a serious suggestion that it prohibits an employee's receipt of Federal salary or benefits. And § 2635.702 serves to clarify that the principle is sufficiently broad to prohibit an employee's use of public office for the private gain of other persons.

Two agencies suggested that the impartiality principle at § 2635.101(b)(8) be qualified so that the obligation to act impartially and not give preferential treatment does not apply when preferential treatment is required by law, such as the statute according veterans a preference when applying for Federal employment. Because the impartiality principle is further amplified in subpart E of this regulation, OGE did not adopt this suggestion.

Five agencies suggested changes to § 2635.101(b)(11), the principle requiring disclosure of fraud, waste, abuse and corruption. The recommendation by two agencies to change "shall" to "should" was not adopted. Section 2635.101(b)(11) is a verbatim restatement of the principle enunciated in the Executive order and the recommended substitution of precatory for mandatory language would change the principle. The Office of Government Ethics does not share those agencies' concern that the principle will elicit frivolous reporting. The Government's interest in curbing waste, fraud, abuse and corruption is better served by overreporting than by underreporting, and the authorities to whom such disclosures are to be made can best determine the merits of allegations and ensure that harm does not result from any that are spurious.

The suggestion by two agencies to specify agency Inspectors General as an appropriate authority for reporting required by § 2635.101(b)(11) was also rejected. The Executive order requires employees to report waste, fraud, abuse and corruption to "an" appropriate authority. Adoption of this suggestion might be viewed as limiting an employee's reporting options. The Office of Government Ethics also did not adopt the recommendation by one agency to revise § 2635.101(b)(11) to include references to legal definitions of "fraud" and "corruption." Such references would tend to suggest that an employee is responsible for applying complex legal principles in determining whether improprieties should be reported. The

purpose of the principle is to elicit disclosures of improprieties, and the terms "waste" and "abuse" are sufficiently broad that an employee should not hesitate to report activities or conduct that he or she believes involve fraud or corruption as those terms are commonly used. The Office of Government Ethics also rejected the suggestion by one agency to expand upon the statement of the ethical principle at § 2635.101(b)(11) to state that employees shall cooperate with Inspectors General.

The Office of Government Ethics did not adopt a suggestion by one agency and one individual to delete §§ 2635.101(b)(12) and 2635.101(b)(13), dealing respectively with just financial obligations and adherence to equal opportunity laws and regulations, on the basis that agencies do not have sufficient authority to enforce these principles. Both principles are stated in the Executive order. For example, while agencies do not generally have authority to act as collection agents on behalf of an employee's creditors, they do have authority to initiate disciplinary action for failure to satisfy financial obligations in good faith to the extent that such action promotes the efficiency of the service. Because it is beyond the scope of the Executive order, we did not adopt the suggestion by one agency to augment the listing of prohibited bases for discrimination at § 2635.101(b)(13) to reflect Federal Personnel Manual provisions prohibiting discrimination on the basis of politics or marital status. The term "handicap" is used in the Executive order. For this reason and for reasons of consistency with other statutes and regulations applicable within the executive branch, OGE did not adopt that agency's other recommendation to substitute the term "disability" for the term "handicap."

Of the three agencies that commented on § 2635.101(b)(14), two specifically endorsed addition of the reasonable person test to the appearance principle as it is stated in the Executive order. While one agreed that appearances should be judged from the "perspective of a reasonable person with knowledge of the relevant facts," the third agency was concerned that so judging appearances would weaken the principle, since the public may not have knowledge of all relevant facts. The Office of Government Ethics has retained the reasonable person test as set forth in the proposed regulations. The test assumes that conduct will be judged by a reasonable person having knowledge of the relevant facts and does not depend on the public's actual

(b) After concurrence and co-signature by the Office of Government Ethics, the agency shall submit its supplemental agency regulations to the Federal Register for publication and codification at the expense of the agency in title 5 of the Code of Federal Regulations. Supplemental agency regulations issued under this section are effective only after concurrence and co-signature by the Office of Government Ethics and publication in the Federal Register.

(c) This section applies to any supplemental agency regulations or amendments thereof issued under this part. It does not apply to:

(1) A handbook or other issuance intended merely as an explanation of the standards contained in this part or in supplemental agency regulations;

(2) An instruction or other issuance the purpose of which is to:

(i) Delegate to an agency designee authority to make any determination, give any approval or take any other action required or permitted by this part or by supplemental agency regulations; or

(ii) Establish internal agency procedures for documenting or processing any determination, approval or other action required or permitted by this part or by supplemental agency regulations, or for retaining any such documentation; or

(3) Regulations or instructions that an agency has authority, independent of this part, to issue, such as regulations implementing an agency's gift acceptance statute, protecting categories of nonpublic information or establishing standards for use of Government vehicles. Where the content of any such regulations or instructions was included in the agency's standards of conduct regulations issued pursuant to Executive Order 11222 and the Office of Government Ethics concurs that they need not be issued as part of an agency's supplemental agency regulations, those regulations or instructions may be promulgated separately from the agency's supplemental agency regulations.

§ 2635.106 Disciplinary and corrective action.

(a) Except as provided in § 2635.107, a violation of this part or of supplemental agency regulations may be cause for appropriate corrective or disciplinary action to be taken under applicable Governmentwide regulations or agency procedures. Such action may be in addition to any action or penalty prescribed by law.

(b) It is the responsibility of the employing agency to initiate appropriate

disciplinary or corrective action in individual cases. However, corrective action may be ordered or disciplinary action recommended by the Director of the Office of Government Ethics under the procedures at part 2638 of this chapter.

(c) A violation of this part or of supplemental agency regulations, as such, does not create any right or benefit, substantive or procedural, enforceable at law by any person against the United States, its agencies, its officers or employees, or any other person. Thus, for example, an individual who alleges that an employee has failed to adhere to laws and regulations that provide equal opportunity regardless of race, color, religion, sex, national origin, age, or handicap is required to follow applicable statutory and regulatory procedures, including those of the Equal Employment Opportunity Commission.

§ 2635.107 Ethics advice.

(a) As required by §§ 2638.201 and 2638.202(b) of this chapter, each agency has a designated agency ethics official who, on the agency's behalf, is responsible for coordinating and managing the agency's ethics program, as well as an alternate. The designated agency ethics official has authority under § 2638.204 of this chapter to delegate certain responsibilities, including that of providing ethics counseling regarding the application of this part, to one or more deputy ethics officials.

(b) Employees who have questions about the application of this part or any supplemental agency regulations to particular situations should seek advice from an agency ethics official. Disciplinary action for violating this part or any supplemental agency regulations will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances. Where the employee's conduct violates a criminal statute, reliance on the advice of an agency ethics official cannot ensure that the employee will not be prosecuted under that statute. However, good faith reliance on the advice of an agency ethics official is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. Disclosures made by an employee to an agency ethics official are not protected by an attorney-client privilege. An agency ethics official is required by 28 U.S.C. 535 to report any information he receives relating to a

violation of the criminal code, title 18 of the United States Code.

Subpart B—Gifts From Outside Sources

§ 2635.201 Overview.

This subpart contains standards that prohibit an employee from soliciting or accepting any gift from a prohibited source or 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.

§ 2635.202 General standards.

(a) *General prohibitions.* Except as provided in this subpart, an employee shall not, directly or indirectly, solicit or accept a gift:

- (1) From a prohibited source; or
- (2) Given because of the employee's official position.

(b) *Relationship to illegal gratuities statute.* Unless accepted in violation of paragraph (c)(1) of this section, a gift accepted under the standards set forth in this subpart shall not constitute an illegal gratuity otherwise prohibited by 18 U.S.C. 201(c)(1)(B).

(c) *Limitations on use of exceptions.* Notwithstanding any exception provided in this subpart, other than § 2635.204(j), an employee shall not:

- (1) Accept a gift in return for being influenced in the performance of an official act;
- (2) Solicit or coerce the offering of a gift;
- (3) 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 his public office for private gain;

Example 1: A purchasing agent for a Veterans Administration hospital 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 de minimis gifts of \$20 or less, the practice of accepting even these modest gifts on a recurring basis is improper.

(4) Accept a gift in violation of any statute. Relevant statutes applicable to all employees include:

- (i) 18 U.S.C. 201(b), which prohibits a public official from seeking, accepting,

or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or omit to take any action in violation of his 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;

(ii) 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; and

(iii) 41 U.S.C. 423(b)(2), which prohibits a procurement official from seeking, accepting, or agreeing to receive any money, gratuity, or other thing of value from any officer, employee, representative, agent, or consultant of a competing contractor during the conduct of a Federal agency procurement. Implementing regulations, including exceptions to the gift prohibition, are contained in the Federal Acquisition Regulation, 48 CFR 3.104.

(5) Accept vendor promotional training contrary to applicable regulations, policies or guidance relating to the procurement of supplies and services for the Government, except pursuant to § 2635.204(l).

§ 2635.203 Definitions.

For purposes of this subpart, the following definitions shall 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. It does not include:

(1) Modest items of food and 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 solely for presentation;

(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 his official duties;

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

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

Note: Some airlines encourage those purchasing tickets to join programs that award free flights and other benefits to frequent fliers. Any such benefit earned on the basis of Government-financed travel belongs to the agency rather than to the employee and may be accepted only insofar as provided under 41 CFR 301-1.6(b).

(8) 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 his official duties which takes place away from his duty station. The agency's acceptance must be in accordance with the implementing regulations at 41 CFR part 304-1; and

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

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

(c) *Market value* means the retail cost the employee would 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 shall be the face value of the ticket.

Example 1: An employee who has been given an acrylic paperweight embedded with

the corporate logo of a prohibited source may determine its market value based on her observation that a comparable acrylic paperweight, not embedded with a logo, generally sells for about \$20.

Example 2: A prohibited source has offered an 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.

(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) A gift is solicited or accepted because of the employee's official position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held his position as a Federal employee.

Note: Gifts between employees are subject to the limitations set forth in subpart C of this part.

Example 1: 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.

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

(1) Given with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative 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 as permitted for the disposition of perishable items by § 2635.205(a)(2) or for payments made to charitable organizations in lieu of honoraria under § 2636.204 of this chapter.

Example 1: 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) *Vendor promotional training* means training provided by any person

for the purpose of promoting its products or services. It does not include training provided under a Government contract or by a contractor to facilitate use of products or services it furnishes under a Government contract.

§ 2635.204 Exceptions.

The prohibitions set forth in § 2635.202(a) do not apply to a gift accepted under the circumstances described in paragraphs (a) through (l) of this section and a gift accepted in accordance with one of those paragraphs will not be deemed to violate the principles set forth in § 2635.101(b). Even though acceptance of a gift may be permitted by one of the exceptions contained in paragraphs (a) through (l) of this section, it is never inappropriate and frequently prudent for an employee to decline a gift offered by a prohibited source or because of his official position.

(a) *Gifts of \$20 or less.* An employee may accept unsolicited gifts having an aggregate market value of \$20 or less per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph shall 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: An employee of the Securities and Exchange Commission and his spouse have been invited by a representative of a regulated entity to a Broadway play, 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: An employee of the Defense Mapping Agency has been invited by an association of cartographers to speak about his agency's role in the evolution of missile technology. At the conclusion of his speech, the association presents the employee a framed map with a market value of \$18 and a book about the history of cartography with a market value of \$15. The employee may accept the map or the book, but not both, since the aggregate value of these two tangible items exceeds \$20.

Example 3: On four occasions during the calendar year, an employee of the Defense Logistics Agency 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: 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 has accepted an association's gift of travel expenses and conference fees for an employee of its Office of Radiation Programs to attend an international conference on "The Chernobyl Experience." 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 only authority under which an agency may accept gifts from certain non-Federal sources in connection with its employees' attendance at such functions, a gift of \$20 or less accepted under § 2635.204(a) is a gift to the employee rather than to his employing agency.

Example 5: A Navy contracting officer is participating in a procurement for environmental cleanup services at a Navy installation that has recently been closed. She is presently involved in negotiations with three competing contractors, one of whom has offered her a fancy ballpoint pen embossed with its corporate logo. Even though the pen has a market value of \$18 and could be accepted under the \$20 de minimis exception at § 2635.204(a), the contracting officer cannot accept the competing contractor's gift. Under the procurement integrity provisions at 41 U.S.C. 423, she is a "procurement official" for that contract and, except as specifically permitted by the regulations implementing that statute, she is prohibited prior to award from accepting a gift from a competing contractor for that contract. The Federal Acquisition Regulation at 48 CFR 3.104 contains an exception for gifts with a market value of \$10 or less.

(b) *Gifts based on a personal relationship.* An employee may accept a gift given 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 of the relationship and whether the family member or friend personally pays for the gift.

Example 1: An employee of the Federal Deposit Insurance Corporation has been

dating a secretary employed by a member bank. For Secretary's Week, the bank has given each secretary 2 tickets to an off-Broadway musical review 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 his girlfriend's invitation to the theater. Even though the tickets were initially purchased by the member bank, they were given without reservation to the secretary to use as she wished, and her invitation to the employee was motivated by their personal friendship.

Example 2: 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.

(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) Reduced membership or other 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 and commercial discounts 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; provided, however, that

(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.

Example 1: An employee of the Consumer Product Safety Commission 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 similar organizations to large segments of the public.

Example 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.

Example 3: The administrative officer for a district office of the Immigration and Naturalization Service has signed an INS 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 INS funds, the administrative officer cannot keep the briefcase which, if claimed and received, is Government property.

(d) *Awards and honorary degrees.* (1) An employee may accept gifts, other than cash or an investment interest, with an aggregate market value of \$200 or less if such gifts are a bona fide award or incident to a bona fide award that is given for meritorious public service or achievement by a person who does not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties or by an association or other organization the majority of whose members do not have such interests. Gifts with an aggregate market value in excess of \$200 and awards of cash or investment interests offered by such persons as awards or incidents of awards that are given for these purposes may be accepted upon a written determination by an agency ethics official that the award is made as part of an established program of recognition:

(i) Under which awards have been made on a regular basis or which is funded, wholly or in part, to ensure its continuation on a regular basis; and

(ii) Under which selection of award recipients is made pursuant to written standards.

(2) An employee may accept an honorary degree from an institution of higher education as defined at 20 U.S.C. 1141(a) 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.

(3) An employee who may accept an award or honorary degree pursuant to

paragraph (d)(1) or (2) of this section may also accept meals and entertainment given to him and to members of his family at the event at which the presentation takes place.

Example 1: Based on a determination by an agency ethics official that the prize meets the criteria set forth in § 2635.204(d)(1), 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: Prestigious University 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.

Example 3: An ambassador selected by a nonprofit organization as 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.

(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: A Department of Agriculture employee whose husband is a computer programmer employed by an Agriculture Department 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: 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 his outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of his official status; or

Example 1: The members of an Army Corps of Engineers environmental advisory committee that meets 6 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 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.

Example 1: 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) For purposes of paragraphs (e)(1) through (3) of this section, employment shall have the meaning set forth in § 2635.603(a).

(f) *Gifts from a political organization.* An employee who is exempt under 5 U.S.C. 7324(d) from the Hatch Act prohibitions against active participation in political management or political campaigns may accept meals, lodgings, transportation and other benefits, including free attendance at events, 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 to accompany an exempt employee to a political event may accept meals, free attendance and entertainment provided at the event by such a political organization.

Example 1: The Secretary of the Department of Health and Human Services is exempt from the noted Hatch Act restrictions. He 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) *Widely attended gatherings and other events—*(1) *Speaking and similar engagements.* When an employee is assigned to participate as a speaker or panel participant or otherwise to present

information on behalf of the agency at a conference or other event, his acceptance of an offer of free attendance at the event on the day of his presentation is permissible when provided by the sponsor of the event. The employee's participation in the event on that day is viewed as a customary and necessary part of his performance of the assignment and does not involve a gift to him or to the agency.

(2) *Widely attended gatherings.* When there has been a determination that his attendance is in the interest of the agency because it will further agency programs or operations, an employee may accept a sponsor's unsolicited gift of free attendance at all or appropriate parts of a widely attended gathering of mutual interest to a number of parties. A gathering is widely attended if, for example, it is open to members from throughout a given industry or profession or if those in attendance represent a range of persons interested in a given matter. For employees subject to a leave system, attendance at the event shall 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.

(3) *Determination of agency interest.* The determination of agency interest required by paragraph (g)(2) of this section shall be made orally or in writing by the agency designee.

(i) If the sponsor is a person who has interests that may be substantially affected by the performance or nonperformance of an employee's official duties or an association or organization the majority of whose members have such interests, the employee's participation may be determined to be in the interest of the agency only where there is a written finding by the agency designee that the agency's interest in the employee's participation in the event outweighs concern that acceptance of the gift of free attendance may or may appear to improperly influence the employee in the performance of his official duties. Relevant factors that should be considered by the agency designee include the importance of the event to the agency, the nature and sensitivity of any pending matter affecting the interests of the sponsor of the event, the significance of the employee's role in any such matter, the purpose of the event, the identity of other expected participants and the monetary value of the gift of free attendance.

(ii) A blanket determination of agency interest may be issued to cover all or

any category of invitees other than those as to whom a finding is required by paragraph (g)(3)(i) of this section. Where a finding under paragraph (g)(3)(i) of this section is required, a written determination of agency interest, including the necessary finding, may be issued to cover two or more employees whose duties similarly affect the interests of the sponsor or its members.

(4) *Free attendance.* For purposes of paragraphs (g) (1) and (2) of this section, free attendance may include waiver of all or part of a conference or other fee or the provision of food, refreshments, entertainment, instruction and materials furnished to all attendees as an integral part of the event. It does not include travel expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees.

Note: There are statutory authorities implemented other than by part 2635 under which an agency or an employee may be able to accept free attendance or other items not included in the definition of free attendance, such as travel expenses.

(5) *Cost provided by sponsor of event.* The cost of the employee's attendance will not be considered to be provided by the sponsor where a person other than the sponsor designates the employee to be invited and bears the cost of the employee's attendance through a contribution or other payment intended to facilitate that 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.* When others in attendance will generally be accompanied by spouses, the agency designee may authorize an employee to accept a sponsor's invitation to an accompanying spouse to participate in all or a portion of the event at which the employee's free attendance is permitted under paragraph (g)(1) or (2) of this section. The authorization required by this paragraph may be provided orally or in writing.

Example 1: An aerospace industry association that is a prohibited source sponsors a seminar for which it charges a fee of \$100. An Air Force contractor pays \$500 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 the contractor specified the invitees and bore the cost of their attendance, the gift of free attendance is considered to be provided by the company and not by the sponsoring association. Had the contractor paid \$500 to the association in order that it might invite any five Federal employees, an Air Force official to whom the

sponsoring association extended one of the five invitations could attend if his participation were determined to be in the interest of the agency.

Example 2: An employee of the Department of the Treasury authorized 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), he may accept a token of appreciation for his speech having a market value of \$20 or less.

Example 3: 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 de minimis exception at § 2635.204(a).

Example 4: 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. If the conference is widely attended, he may be authorized, based on a determination that his attendance is in the agency's interest, to accept the sponsor's offer to waive the attendance fee for the remainder of the conference.

(h) *Social invitations from persons other than prohibited sources.* An employee may accept food, refreshments and entertainment, not including travel or lodgings, at a social event attended by several persons where:

- (1) The invitation is from a person who is not a prohibited source; and
- (2) No fee is charged to any person in attendance.

Example 1: Along with several other Government officials and a number of individuals from the private sector, the Administrator of the Environmental Protection Agency has been invited to the premier showing of a new adventure movie about industrial espionage. The producer is paying all costs of the showing. The Administrator may accept the invitation since the producer is not a prohibited source and no attendance fee is being charged to anyone who has been invited.

Example 2: An employee of the White House Press Office has been invited to a cocktail party given by a noted Washington hostess who is not a prohibited source. The employee may attend even though he has only recently been introduced to the hostess and suspects that he may have been invited because of his 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 301-7.3(c) may accept 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 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(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: A number of local businessmen in a developing country are anxious 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 businessmen 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 own behalf or on behalf of any family member, provided that such acceptance does not violate § 2635.202(c) (1) or (2), 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 the acceptance of which is specifically authorized by a supplemental agency regulation.

(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, receipt of which is specifically authorized by statute. Gifts which may be received 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 § 410.701 through § 410.706 of this title; or

Note: 26 U.S.C. 501(c)(3) is authority for tax-exempt treatment of a limited class of nonprofit organizations, including those organized and operated for charitable, religious or educational purposes. Many nonprofit organizations are not exempt from taxation under this section.

(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.

§ 2635.205 Proper disposition of prohibited gifts.

(a) An employee who has received a gift that cannot be accepted under this subpart shall, unless the gift is accepted by an agency acting under specific statutory authority:

(1) Return any tangible item to the donor or pay the donor its market value. 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 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. The employee must either return the barometer or promptly reimburse the sponsor \$200.

(2) When it is not practical to return a tangible item because it is perishable, the item may, at the discretion of the employee's supervisor or an agency ethics official, be given to an appropriate charity, shared within the recipient's office, or destroyed.

Example 1: 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) For any entertainment, favor, service, benefit or other intangible, reimburse the donor the market value. Subsequent reciprocation by the

employee does not constitute reimbursement.

Example 1: A Department of Defense employee wishes to attend a charitable event to which he has been offered a \$300 ticket by a prohibited source. Although his attendance is not in the interest of the agency under § 2635.204(g), he may attend if he reimburses the donor the \$300 face value of the ticket.

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

(b) An agency may authorize disposition or return of gifts at Government expense. Employees may use penalty mail to forward reimbursements required or permitted by this section.

(c) An employee who, on his own initiative, promptly complies with the requirements of this section will not be deemed to have improperly accepted an unsolicited gift. An employee who promptly consults his agency ethics official to determine whether acceptance of an unsolicited gift is proper and who, upon the advice of the ethics official, returns the gift or otherwise disposes of the gift in accordance with this section, will be considered to have complied with the requirements of this section on his own initiative.

Subpart C—Gifts Between Employees

§ 2635.301 Overview.

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

§ 2635.302 General standards.

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

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

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

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

receiving less pay than himself has contributed.

Example 1: To mark the occasion of his retirement, members of the immediate staff of the Under Secretary of the Army would like to give him a party and provide him with a gift certificate. They may distribute an announcement of the party and include a nominal amount for a retirement gift in the fee for the party.

Example 2: The General Counsel of the National Endowment for the Arts may not collect contributions for a Christmas gift for the Chairman. Christmas occurs annually and is not an occasion of personal significance.

Example 3: Subordinates may not take up a collection for a gift to an official superior on the occasion of the superior's swearing in or promotion to a higher grade position within the supervisory chain of that organization. These are not events that mark the termination of the subordinate-official superior relationship, nor are they events of personal significance within the meaning of § 2635.304(b). However, subordinates may take up a collection and employees may contribute \$3 each to buy refreshments to be consumed by everyone in the immediate office to mark either such occasion.

Example 4: Subordinates may each contribute a nominal amount to a fund to give a gift to an official superior upon the occasion of that superior's transfer or promotion to a position outside the organization.

Example 5: An Assistant Secretary at the Department of the Interior is getting married. His secretary has decided that a microwave oven would be a nice gift from his staff and has informed each of the Assistant Secretary's subordinates that they should contribute \$5 for the gift. Her method of collection is improper. Although she may recommend a \$5 contribution, the recommendation must be coupled with a statement that the employee whose contribution is solicited is free to contribute less or nothing at all.

Subpart D—Conflicting Financial Interests

§ 2635.401 Overview.

This subpart contains two provisions relating to financial interests. One is a disqualification requirement and the other is a prohibition on acquiring or continuing to hold specific financial interests. An employee may acquire or hold any financial interest not prohibited by § 2635.403.

Notwithstanding that his acquisition or holding of a particular interest is proper, an employee is prohibited in accordance with § 2635.402 of this subpart from participating in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

§ 2635.402 Disqualifying financial interests.

(a) *Statutory prohibition.* An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

Note: Standards applicable when seeking non-Federal employment are contained in subpart F of this part and, if followed, will ensure that an employee does not violate 18 U.S.C. 208(a) or this section when he is negotiating for or has an arrangement concerning future employment. In all other cases where the employee's participation would violate 18 U.S.C. 208(a), an employee shall disqualify himself from participation in the matter in accordance with paragraph (c) of this section or obtain a waiver, as described in paragraph (d) of this section.

(b) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) *Direct and predictable effect.* (i) A particular matter will have a *direct* effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect on a financial interest, however, if the chain of causation is attenuated or is contingent upon the occurrence of events that are speculative or that are independent of, and unrelated to, the matter. A particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy does not have a direct effect within the meaning of this subpart.

(ii) A particular matter will have a predictable effect if there is a real, as opposed to a speculative possibility that the matter will affect the financial interest. It is not necessary, however, that the magnitude of the gain or loss be known, and the dollar amount of the gain or loss is immaterial.

Note: If a particular matter involves a specific party or parties, generally the matter will at most only have a direct and predictable effect, for purposes of this subpart, on a financial interest of the employee in or with a party, such as the employee's interest by virtue of owning stock. There may, however, be some situations in which, under the above standards, a particular matter will have a direct and predictable effect on an employee's financial interests in or with a nonparty. For example, if a party is a corporation, a particular matter

may also have a direct and predictable effect on an employee's financial interests through ownership of stock in an affiliate, parent, or subsidiary of that party. Similarly, the disposition of a protest against the award of a contract to a particular company may also have a direct and predictable effect on an employee's financial interest in another company listed as a subcontractor in the proposal of one of the competing offerors.

Example 1: An employee of the National Library of Medicine at the National Institutes of Health has just been asked to serve on the technical evaluation panel to review proposals for a new library computer search system. DEF Computer Corporation, a closely held company in which he and his wife own a majority of the stock, has submitted a proposal. Because award of the systems contract to DEF or to any other offeror will have a direct and predictable effect on both his and his wife's financial interests, the employee cannot participate on the technical evaluation team unless his disqualification has been waived.

Example 2: Upon assignment to the technical evaluation panel, the employee in the preceding example finds that DEF Computer Corporation has not submitted a proposal. Rather, LMN Corp., with which DEF competes for private sector business, is one of the six offerors. The employee is not disqualified from serving on the technical evaluation panel. Any effect on the employee's financial interests as a result of the agency's decision to award or not award the systems contract to LMN would be at most indirect and speculative.

(2) *Imputed interests.* For purposes of 18 U.S.C. 208(a) and this subpart, the financial interests of the following persons will serve to disqualify an employee to the same extent as if they were the employee's own interests:

- (i) The employee's spouse;
- (ii) The employee's minor child;
- (iii) The employee's general partner;
- (iv) An organization or entity which the employee serves as officer, director, trustee, general partner or employee; and
- (v) A person with whom the employee is negotiating for or has an arrangement concerning prospective employment. (Employees who are seeking other employment should refer to and comply with the standards in subpart F of this part).

Example 1: An employee of the Department of Education serves without compensation on the board of directors of Kinder World, Inc., a nonprofit corporation that engages in good works. Even though her personal financial interests will not be affected, the employee must disqualify herself from participating in the review of a grant application submitted by Kinder World. Award or denial of the grant will affect the financial interests of Kinder World and its financial interests are imputed to her as a member of its board of directors.

Example 2: The spouse of an employee of the Food and Drug Administration has obtained a position with a well established biomedical research company. The company has developed an artificial limb for which it is seeking FDA approval and the employee would ordinarily be asked to participate in the FDA's review and approval process. The spouse is a salaried employee of the company and has no direct ownership interest in the company. Nor does she have an indirect ownership interest, as would be the case, for example, if she were participating in a pension plan that held stock in the company. Her position with the company is such that the granting or withholding of FDA approval will not have a direct and predictable effect on her salary or on her continued employment with the company. Since the FDA approval process will not affect his spouse's financial interests, the employee is not disqualified under § 2635.402 from participating in that process. Nevertheless, the financial interests of the spouse's employer may be disqualifying under the impartiality principle, as implemented at § 2635.502.

(3) **Particular matter.** The term *particular matter* encompasses only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. Such a matter is covered by this subpart even if it does not involve formal parties and may include governmental action such as legislation or policy-making that is narrowly focused on the interests of such a discrete and identifiable class of persons. The term *particular matter*, however, does not extend to the consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons. The particular matters covered by this subpart include a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation or arrest.

Example 1: The Internal Revenue Service's amendment of its regulations to change the manner in which depreciation is calculated is not a particular matter, nor is the Social Security Administration's consideration of changes to its appeal procedures for disability claimants.

Example 2: Consideration by the Interstate Commerce Commission of regulations establishing safety standards for trucks on interstate highways involves a particular matter.

(4) **Personal and substantial.** To participate *personally* means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate *substantially* means that the employee's involvement is of significance to the matter.

Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

(c) **Disqualification.** Unless the employee is authorized to participate in the particular matter by virtue of a waiver described in paragraph (d) of this section or because the interest has been divested in accordance with paragraph (e) of this section, an employee shall disqualify himself from participating in a particular matter in which, to his knowledge, he or a person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest. Disqualification is accomplished by not participating in the particular matter.

(1) **Notification.** An employee who becomes aware of the need to disqualify himself from participation in a particular matter to which he has been assigned should notify the person responsible for his assignment. An employee who is responsible for his own assignment should take whatever steps are necessary to ensure that he does not participate in the matter from which he is disqualified. Appropriate oral or written notification of the employee's disqualification may be made to coworkers by the employee or a supervisor to ensure that the employee is not involved in a matter from which he is disqualified.

(2) **Documentation.** An employee need not file a written disqualification statement unless he is required by part 2634 of this chapter to file written evidence of compliance with an ethics agreement with the Office of Government Ethics or is asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement. However, an employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

Example 1: An Assistant Secretary of the Department of the Interior owns recreational

property that borders on land which is being considered for annexation to a national park. Annexation would directly and predictably increase the value of her vacation property and, thus, she is disqualified from participating in any way in the Department's deliberations or decisions regarding the annexation. Because she is responsible for determining which matters she will work on, she may accomplish her disqualification merely by ensuring that she does not participate in the matter. Because of the level of her position, however, the Assistant Secretary might be wise to establish a record that she has acted properly by providing a written disqualification statement to an official superior and by providing written notification of the disqualification to subordinates to ensure that they do not raise or discuss with her any issues related to the annexation.

(d) **Waiver of disqualification.** An employee who would otherwise be disqualified by 18 U.S.C. 208(a) may be permitted to participate in a particular matter where the otherwise disqualifying financial interest is the subject of a regulatory or individual waiver described in this paragraph, or results from certain Indian birthrights as described in 18 U.S.C. 208(b)(4).

(1) **Regulatory waivers.** Under 18 U.S.C. 208(b)(2), regulatory waivers of general applicability may be issued by the Office of Government Ethics based on its determination that particular interests are too remote or too inconsequential to affect the integrity of the services of the employees to whom the waivers apply. Pending issuance of superseding regulatory waivers under this authority, agency regulatory waivers issued under 18 U.S.C. 208(b)(2) as in effect prior to November 30, 1989 continue to apply.

(2) **Individual waivers.** An individual waiver enabling the employee to participate in one or more particular matters may be issued under 18 U.S.C. 208(b)(1) if, in advance of the employee's participation:

(i) The employee:

(A) Advises the Government official responsible for the employee's appointment (or other Government official to whom authority to issue such a waiver for the employee has been delegated) about the nature and circumstances of the particular matter or matters; and

(B) Makes full disclosure to such official of the nature and extent of the disqualifying financial interest; and

(ii) Such official determines, in writing, that the employee's financial interest in the particular matter or matters is not so substantial as to be deemed likely to affect the integrity of

the services which the Government may expect from such employee.

(3) *Federal advisory committee member waivers.* An individual waiver may be issued under 18 U.S.C. 208(b)(3) to a special Government employee serving on, or under consideration for appointment to, an advisory committee within the meaning of the Federal Advisory Committee Act if the Government official responsible for the employee's appointment (or other Government official to whom authority to issue such a waiver for the employee has been delegated):

(i) Reviews the financial disclosure report filed by the special Government employee pursuant to the Ethics in Government Act of 1978; and

(ii) Certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the otherwise disqualifying financial interest.

(4) *Consultation and notification regarding waivers.* When practicable, an official is required to consult formally or informally with the Office of Government Ethics prior to granting a waiver referred to in paragraph (d)(2) or (3) of this section. A copy of each such waiver is to be forwarded to the Director of the Office of Government Ethics.

(e) *Divestiture of a disqualifying financial interest.* Upon sale or other divestiture of the asset or other interest that causes his disqualification from participation in a particular matter, 18 U.S.C. 208(a) and paragraph (c) of this section will no longer prohibit the employee's participation in the matter.

(1) *Voluntary divestiture.* An employee who would otherwise be disqualified from participation in a particular matter may voluntarily sell or otherwise divest himself of the interest that causes the disqualification.

(2) *Directed divestiture.* An employee may be required to sell or otherwise divest himself of the disqualifying financial interest if his continued holding of that interest is prohibited by statute or by agency supplemental regulation issued in accordance with § 2635.403(a), or if the agency determines in accordance with § 2635.403(b) that a substantial conflict exists between the financial interest and the employee's duties or accomplishment of the agency's mission.

(3) *Eligibility for special tax treatment.* An employee who is directed to divest an interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this chapter. An employee who divests before obtaining a certificate of

divestiture will not be eligible for this special tax treatment.

(f) *Official duties that give rise to potential conflicts.* Where an employee's official duties create a substantial likelihood that the employee may be assigned to a particular matter from which he is disqualified, the employee should advise his supervisor or other person responsible for his assignments of that potential so that conflicting assignments can be avoided, consistent with the agency's needs.

§ 2635.403 Prohibited financial interests.

An employee shall not acquire or hold any financial interest that he is prohibited from acquiring or holding by statute, by agency regulation issued in accordance with paragraph (a) of this section or by reason of an agency determination of substantial conflict under paragraph (b) of this section.

Note: There is no statute of Governmentwide applicability prohibiting employees from holding or acquiring any financial interest. Statutory restrictions, if any, are contained in agency statutes which, in some cases, may be implemented by agency regulations issued independent of this part.

(a) *Agency regulation prohibiting certain financial interests.* An agency may, by supplemental agency regulation, prohibit or restrict the acquisition or holding of a financial interest or a class of financial interests by agency employees, or any category of agency employees, and the spouses and minor children of those employees, based on the agency's determination that the acquisition or holding of such financial interests would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered. Where the agency restricts or prohibits the holding of certain financial interests by its employees' spouses or minor children, any such prohibition or restriction shall be based on a determination that there is a direct and appropriate nexus between the prohibition or restriction as applied to spouses and minor children and the efficiency of the service.

Note: Any prohibition on acquiring or holding a specific financial interest contained in an agency regulation, instruction or other issuance in effect prior to the effective date of this part shall, for employees of that agency, constitute a prohibited financial interest for purposes of this paragraph for one year after the effective date of this part or until issuance of an agency supplemental regulation, whichever occurs first.

(b) *Agency determination of substantial conflict.* An agency may prohibit or restrict an individual employee from acquiring or holding a

financial interest or a class of financial interests based upon the agency designee's determination that the holding of such interest or interests will:

(1) Require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired; or

(2) Adversely affect the efficient accomplishment of the agency's mission because another employee cannot be readily assigned to perform work from which the employee would be disqualified by reason of the financial interest.

Example 1: An Air Force employee who owns stock in a major aircraft engine manufacturer is being considered for promotion to a position that involves responsibility for development of a new fighter airplane. If the agency determined that engineering and other decisions about the Air Force's requirements for the fighter would directly and predictably affect his financial interests, the employee could not, by virtue of 18 U.S.C. 208(a), perform these significant duties of the position while retaining his stock in the company. The agency can require the employee to sell his stock as a condition of being selected for the position rather than allowing him to disqualify himself in particular matters.

(c) *Definition of financial interest.* For purposes of this section:

(1) Except as provided in paragraph (c)(2) of this section, the term financial interest is limited to financial interests that are owned by the employee or by the employee's spouse or minor children. However, the term is not limited to only those financial interests that would be disqualifying under 18 U.S.C. 208(a) and § 2635.402. The term includes any current or contingent ownership, equity, or security interest in real or personal property or a business and may include an indebtedness or compensated employment relationship. It thus includes, for example, interests in the nature of stocks, bonds, partnership interests, fee and leasehold interests, mineral and other property rights, deeds of trust, and liens, and extends to any right to purchase or acquire any such interest, such as a stock option or commodity future. It does not include a future interest created by someone other than the employee, his spouse, or dependent child or any right as a beneficiary of an estate that has not been settled.

Example 1: A regulatory agency has concluded that ownership by its employees of stock in entities regulated by the agency would significantly diminish public confidence in the agency's performance of its regulatory functions and thereby interfere

less than that for GS-9, step 1 of the General Schedule;

(ii) A position, within a White House operating unit, that is designated as not normally subject to change as a result of a Presidential transition;

(iii) A position within the uniformed services; or

(iv) A position in which a member of the foreign service is serving that does not require advice and consent of the Senate.

Example 1: A career Department of Justice employee who is detailed to a policy-making position in the White House Office that is ordinarily filled by a noncareer employee is not a Presidential appointee to a full-time noncareer position.

Example 2: A Department of Energy employee appointed under § 213.3301 of this title to a Schedule C position is appointed by the agency and, thus, is not a Presidential appointee to a full-time noncareer position.

§ 2635.805 Service as an expert witness.

(a) *Restriction.* An employee shall not serve, other than on behalf of the United States, as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest, unless the employee's participation is authorized by the agency under paragraph (c) of this section. Except as provided in paragraph (b) of this section, this restriction shall apply to a special Government employee only if he has participated as an employee or special Government employee in the particular proceeding or in the particular matter that is the subject of the proceeding.

(b) *Additional restriction applicable to certain special Government employees.* (1) In addition to the restriction described in paragraph (a) of this section, a special Government employee described in paragraph (b)(2) of this section shall not serve, other than on behalf of the United States, as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which his employing agency is a party or has a direct and substantial interest, unless the employee's participation is authorized by the agency under paragraph (c) of this section.

(2) The restriction in paragraph (b)(1) of this section shall apply to a special Government employee who:

- (i) Is appointed by the President;
- (ii) Serves on a commission established by statute; or
- (iii) Has served or is expected to serve for more than 60 days in a period of 365 consecutive days.

(c) *Authorization to serve as an expert witness.* Provided that the employee's

testimony will not result in compensation for an appearance in violation of § 2636.201 of this chapter or violate any of the principles or standards set forth in this part, authorization to provide expert witness service otherwise prohibited by paragraphs (a) and (b) of this section may be given by the designated agency ethics official of the agency in which the employee serves when:

(1) After consultation with the agency representing the Government in the proceeding or, if the Government is not a party, with the Department of Justice and the agency with the most direct and substantial interest in the matter, the designated agency ethics official determines that the employee's service as an expert witness is in the interest of the Government; or

(2) The designated agency ethics official determines that the subject matter of the testimony does not relate to the employee's official duties within the meaning of § 2635.807(a)(2)(i).

(d) Nothing in this section prohibits an employee from serving as a fact witness when subpoenaed by an appropriate authority.

§ 2635.806 Participation in professional associations. [Reserved]

§ 2635.807 Teaching, speaking and writing.

(a) *Compensation for teaching, speaking or writing.* Except as permitted by paragraph (a)(3) of the section, an employee, including a special Government employee, shall not receive compensation from any source other than the Government for teaching, speaking or writing that relates to the employee's official duties.

(1) *Relationship to other limitations on receipt of compensation.* The compensation prohibition contained in this section is in addition to any other limitation on receipt of compensation set forth in this chapter, including:

(i) The honorarium prohibition on receipt of compensation for an appearance, speech or article, which is implemented in §§ 2636.201 through 2636.205 of this chapter;

(ii) The requirement contained in § 2636.307 of this chapter that covered noncareer employees obtain advance authorization before engaging in teaching for compensation; and

(iii) The prohibitions and limitations in § 2635.804 and in § 2636.304 of this chapter on receipt of outside earned income applicable to certain Presidential appointees and to other covered noncareer employees.

Example 1. A personnel specialist employed by the Department of Labor has

been asked by the publisher of a magazine to write an article on his hobby of collecting arrowheads. Even though the subject matter is unrelated to his official duties, he may not accept the publisher's offer of \$200 for the article. Because the compensation offered is for an article, its receipt would violate the honorarium prohibition contained in §§ 2636.201 through 2636.205 of this chapter.

(2) *Definitions.* For purposes of this paragraph:

(i) Teaching, speaking or writing relates to the employee's official duties if:

(A) The activity is undertaken as part of the employee's official duties;

(B) The circumstances indicate that the invitation to engage in the activity was extended to the employee primarily because of his official position rather than his expertise on the particular subject matter;

(C) The invitation to engage in the activity or the offer of compensation for the activity was extended to the employee, directly or indirectly, by a person who has interests that may be affected substantially by performance or nonperformance of the employee's official duties;

(D) The information conveyed through the activity draws substantially on ideas or official data that are nonpublic information as defined in § 2635.703(b); or

(E) Except as provided in paragraph (a)(2)(i)(E)(4) of this section, the subject of the activity deals in significant part with:

(1) Any matter to which the employee presently is assigned or to which the employee had been assigned during the previous one-year period;

(2) Any ongoing or announced policy, program or operation of the agency; or

(3) In the case of a noncareer employee as defined in § 2636.303(a) of this chapter, the general subject matter area, industry, or economic sector primarily affected by the programs and operations of his agency.

(4) The restrictions in paragraphs (a)(2)(i)(E)(2) and (3) of this section do not apply to a special Government employee. The restriction in paragraph (a)(2)(i)(E)(1) of this section applies only during the current appointment of a special Government employee; except that if the special Government employee has not served or is not expected to serve for more than 60 days during the first year or any subsequent one year period of that appointment, the restriction applies only to particular matters involving specific parties in which the special Government employee has participated or is participating personally and substantially.

with the accomplishment of its mission. In its supplemental agency regulations, the agency may prohibit its employees from acquiring or continuing to hold stock in regulated entities.

Example 2: An agency that insures bank deposits may, by supplemental agency regulation, prohibit its employees who are bank examiners from obtaining loans from banks they examine. Examination of a member bank could have no effect on an employee's fixed obligation to repay a loan from that bank and, thus, would not affect an employee's financial interests so as to require disqualification under § 2635.402. Nevertheless, a loan from a member bank is a discrete financial interest within the meaning of § 2635.403(c) that may, when appropriate, be prohibited by supplemental agency regulation.

(2) The term financial interest includes service, with or without compensation, as an officer, director, trustee, general partner or employee of any person, including a nonprofit entity, whose financial interests are imputed to the employee under § 2635.402(b)(2)(iii) or (iv).

Example 1. The Foundation for the Preservation of Wild Horses maintains herds of horses that graze on public and private lands. Because its costs are affected by Federal policies regarding grazing permits, the Foundation routinely comments on all proposed rules governing use of Federal grasslands issued by the Bureau of Land Management. BLM may require an employee to resign his uncompensated position as Vice President of the Foundation as a condition of his promotion to a policy-level position within the Bureau rather than allowing him to rely on disqualification in particular cases.

(d) *Reasonable period to divest or terminate.* Whenever an agency directs divestiture of a financial interest under paragraph (a) or (b) of this section, the employee shall be given a reasonable period of time, considering the nature of his particular duties and the nature and marketability of the interest, within which to comply with the agency's direction. Except in cases of unusual hardship, as determined by the agency, a reasonable period shall not exceed 90 days from the date divestiture is first directed. However, as long as the employee continues to hold the financial interest, he remains subject to any restrictions imposed by this subpart.

(e) *Eligibility for special tax treatment.* An employee required to sell or otherwise divest a financial interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this chapter.

Subpart E—Impartiality in Performing Official Duties

2635.501 Overview.

(a) This subpart contains two provisions intended to ensure that an

employee takes appropriate steps to avoid an appearance of loss of impartiality in the performance of his official duties. Under § 2635.502, unless he receives prior authorization, an employee should not participate in a particular matter involving specific parties which he knows is likely to affect the financial interests of a member of his household, or in which he knows a person with whom he has a covered relationship is or represents a party, if he determines that a reasonable person with knowledge of the relevant facts would question his impartiality in the matter. An employee who is concerned that other circumstances would raise a question regarding his impartiality should use the process described in § 2635.502 to determine whether he should or should not participate in a particular matter.

(b) Under § 2635.503, an employee who has received an extraordinary severance or other payment from a former employer prior to entering Government service is subject, in the absence of a waiver, to a two-year period of disqualification from participation in particular matters in which that former employer is or represents a party.

Note: Questions regarding impartiality necessarily arise when an employee's official duties impact upon the employee's own financial interests or those of certain other persons, such as the employee's spouse or minor child. An employee is prohibited by criminal statute, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he, his spouse, general partner or minor child has a financial interest, if the particular matter will have a direct and predictable effect on that interest. The statutory prohibition also extends to an employee's participation in a particular matter in which, to his knowledge, an organization in which the employee is serving as officer, director, trustee, general partner or employee, or with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest. Where the employee's participation in a particular matter would affect any one of these financial interests, the standards set forth in subparts D or F of this part apply and only a statutory waiver, as described respectively in §§ 2635.402(d) and 2635.605(a), will enable the employee to participate in that matter. The authorization procedures in § 2635.502(d) may not be used to authorize an employee's participation in any such matter. Where the employee complies with all terms of the waiver, the granting of a statutory waiver will be deemed to constitute a determination that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of agency programs and operations.

§ 2635.502 Personal and business relationships.

(a) *Consideration of appearances by the employee.* Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee in accordance with paragraph (d) of this section.

(1) In considering whether a relationship would cause a reasonable person to question his impartiality, an employee may seek the assistance of his supervisor, an agency ethics official or the agency designee.

(2) An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.

(b) *Definitions.* For purposes of this section:

(1) An employee has a *covered relationship* with:

(i) A person, other than a prospective employer described in § 2635.603(c), with whom the employee has or seeks a business, contractual or other financial relationship that involves other than a routine consumer transaction;

Note: An employee who is seeking employment within the meaning of § 2635.603 shall comply with subpart F of this part rather than with this section.

(ii) A person who is a member of the employee's household, or who is a relative with whom the employee has a close personal relationship;

(iii) A person for whom the employee's spouse, parent or dependent child is, to the employee's knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;

(iv) Any person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or

APPENDIX F

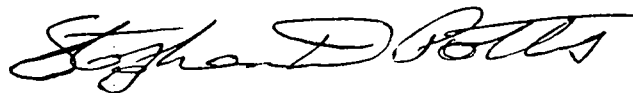


An Ethics Pamphlet for
Executive Branch Employees
February 1995

A Brief Wrap on Ethics

Introduction

This pamphlet provides a brief overview of the rules of ethical conduct that all employees should know and follow in order to recognize "ethics" questions when they come up and avoid problems before they occur. The pamphlet covers only the highlights of these rules which are called "ethics" rules. It answers everyday questions and provides examples of common situations that employees face. It does not describe each specific rule of conduct or cover unusual circumstances. If you have a question that is not answered here, you should discuss it with your supervisor or with an ethics official at your agency. Public service is a public trust. As Federal employees, each of us must always place loyalty to high ethical standards above private gain. Understanding and observing ethics rules is an essential element in fulfilling that trust.



Stephen D. Potts
Director
February 1995

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Gifts from Outside Sources

How do I know when I may not accept a gift?

With some exceptions mentioned later, you may not ask for or accept a gift from anyone who is giving the gift to you because of your Government job. Ask yourself if the gift would have been offered if you were not working for the Government. If the answer is no, then the gift is being offered because of your Government position and you cannot accept it.

Also, you may not ask for or accept a gift from people or organizations who do business with, or seek to do business with your agency, who seek some official action by your agency, or who have activities regulated by your agency. Gifts from these people or groups are prohibited whether or not you deal with them when doing your job. You must also turn down a gift from someone who has interests that may be significantly affected by you when you are doing your job.

What about accepting a cup of coffee?

A cup of coffee is alright. It is such a modest refreshment that it is not considered a gift. So

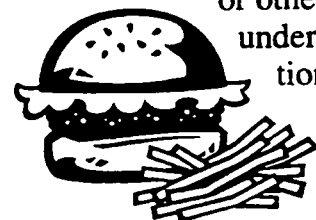
you may accept it without worrying about who is giving it or why. Other inexpensive food and refreshment items such as donuts or soda may also be accepted.



There are some other items as well that are not considered gifts, such as greeting cards and bank loans at commercial rates. But remember that the definition of a gift is very broad. Generally, anything that has monetary value is considered a gift. So if you have a question about a gift, ask your ethics official.

May I accept a lunch?

It depends. Meals are gifts. If the person who wants to pay for your lunch is regulated by, does business with, or seeks official action by your agency, or is affected by the job you do, or if the meal is offered because of your position, then the rule on gifts applies. However, you may be able to accept a lunch or other meal

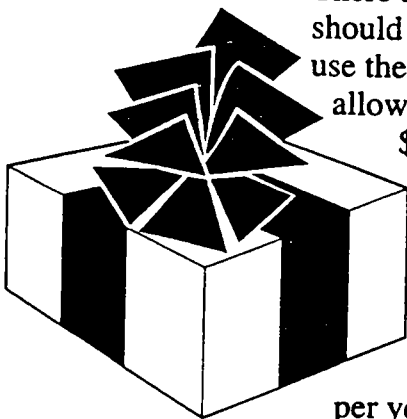


under an exception for gifts valued at \$20 or less. But

you may not go to lunch too many times as the guest of the same person because there is a \$50 per year limit on gifts from any one source. One other thing to remember: if you are a **procurement official**, you may not accept a lunch or any other gift from a competing contractor that is worth more than \$10.

Can the \$20 exception be used for any stuff other than lunch?

Yes, but no cash! The \$20 exception may be used to accept any gift that is not worth more than \$20. A pocket calculator, for example, could cost from \$5 to \$100 or more. So you have to be sure that the value of the gift is not greater than \$20.



There are some other things you should keep in mind before you use the \$20 exception. The rule allows you to accept gifts worth \$20 or less on a single occasion. That means if several gifts are given at the same time, their total value cannot exceed \$20. Again remember, there is a \$50 per year limit on gifts from the same source.

There are other exceptions that would allow you to accept gifts, that would otherwise be prohibited, such as the "friends and family" exception for gifts based on personal relationships. Other

examples are special discounts available through your agency credit union and gifts that result from an outside job when they are not given because of your Government position. All of the exceptions are subject to certain limits and some have conditions that must be met. Before using an exception, the best course to follow is to ask your ethics official about it. Your ethics official can also tell you how you may properly dispose of a gift that you have received but are not allowed to keep.

Some Things That May Be Accepted

- *Alex may keep a pen worth \$15 that is given to him by a person whose license application he has processed.*
- *Janine may accept a tennis racket from her brother on her birthday even though he works for a company that does business with her agency, as long as he, not his company, paid for the gift.*
- *Louise may accept two \$8 tickets to a craft show that are offered to her by a company that has applied to her agency for a grant.*

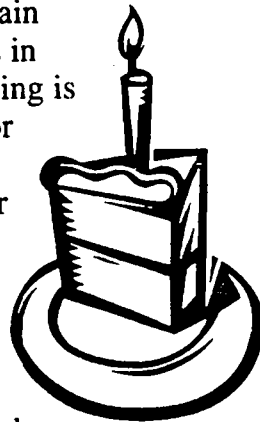
Gifts Between Employees

What about gifts to the boss?

With a few exceptions, the general rule is that you cannot give, make a donation to, or ask for contributions for, a gift to your official superior. An official superior includes your immediate boss and anyone above your boss in the chain of command in your agency. Also, an employee cannot accept a gift from another employee who earns less pay, unless the person giving the gift is not a subordinate and the gift is based on a strictly personal relationship.

When can I give my boss a gift?

There are certain circumstances in which gift giving is permitted. For example, you may give your boss a gift on an occasion when gifts are traditionally given or exchanged such as a birthday. At those times gifts valued at \$10 or less - but not cash - are permitted.



You may contribute a nominal amount for or bring food that will be shared in the office among several employees including your boss. You can also invite your boss to your home for a meal or a party. If your boss invites you to his or her home, you can take the same type of gift for your boss that you would normally take to anyone else's home for a similar occasion.

You may also give your boss a gift on a special, infrequent occasion of personal significance such as marriage, illness, birth or adoption. And you may give your boss a gift on an occasion that ends your employee-boss relationship, such as retirement, resignation or transfer.

For these special, infrequent occasions employees are also allowed to ask for contributions of nominal amounts from fellow employees on a strictly voluntary basis for a group gift.

And remember that gift giving is strictly up to you. A boss may never pressure you to give a gift or contribute to a group gift.

Some Gifts Permitted Between Employees

- *Nadia may collect small voluntary contributions from other persons in her office in order to buy a cake to celebrate the birthday of her supervisor or a co-worker.*
- *Clarissa may participate in the exchange of gifts in the office holiday grab bag by buying and contributing a tape cassette worth \$10.*
- *Kailash may collect contributions to purchase a fishing rod and tackle box for his boss when his boss returns and may suggest a specific, but nominal amount, provided that he tells his co-workers that they are free to contribute less or nothing at all.*
- *Ralph may bring a jar of macadamia nuts to his boss when he returns from his vacation in Hawaii.*

Conflicting Financial Interests

Suppose I don't own any shares of stock. Do I still have to think about financial conflicts of interest?

You might. A federal criminal law says that you cannot take official action in your job on matters that will have an effect on your own personal financial interests. Stock in a company



that would be affected by your job is only one example of something

that could give you such an interest. For instance, you could not act on something that would enable you personally to share in some grant or contract issued by the Government because you would have a financial interest in those matters.

You also must be concerned about the financial interests of your spouse, your minor children, and certain outside organizations like those that employ you. You should be concerned if anything you are asked to work on would affect them. If you are an officer or director in an outside organization, you may not act on a

particular matter that would affect that organization. If you think you do have a conflict, you should discuss it with your supervisor or your ethics official.

Some Conflicts to Avoid

Rachel's husband works for a contractor that does business with her agency and receives a bonus based on the success of the contract. Rachel may not participate in the evaluation of the contractor's performance under the contract.

Carlo is an officer in a neighborhood improvement organization that has applied to his agency for a rehab loan. Carlo may not work on his agency's review of the organization's application.

Helen's husband owns a janitorial service company that does business with the Government. Helen cannot act on a proposal by the company to provide services to her agency.

Impartiality in Performing Official Duties

People talk about “improper appearances” and “a lack of impartiality.” What exactly do they mean?

Think of it as a question of fairness. Suppose you went to a baseball game and you found out that the umpire was the uncle of a player on one of the teams. Most people would say that the umpire should not work that game because there would be a strong appearance that he might not make the calls fairly and impartially.

A similar rule applies to you when you are doing your job. You should not act on a matter if a reasonable person who knew the circumstances of the situation could legitimately question your fairness. For example, your fairness might reasonably be questioned if you were to work on a project that could directly benefit a relative. The rule lists a number of such “covered relationships” with people and



organizations that could pose a question of an “improper appearance.”

If you have a situation that you think might raise such a concern, then you should talk to an ethics official at your agency. He or she will be able to tell you whether or not there is an appearance problem and give you advice on how to deal with it.

Some Situations Where Fairness May Be Questioned

- *Marvin's handling of a consumer complaint that has been submitted to his agency by his brother-in-law would raise a question about his impartiality.*
- *After 20 years with the same company, Pam accepts a job with the Government. For one year, she should consider whether her fairness would be questioned if she were to act on matters that specifically involve her former employer.*
- *Roy's working on an investigation of a company that is being represented by his brother would raise a question about his impartiality.*

Seeking Other Employment

Suppose I'm looking for a part-time job to earn more money. Is there any problem with this?

No, but there are rules that may apply to you if you are looking for a job whether it is on a part-time basis or whether you are looking to leave the Government for a full-time position.

First, you need to know whether the person or company that you are thinking about working for could be affected by projects and other matters you work on for the Government. If the prospective employer could not be affected by the Government project, then the rules do not apply. If the project could affect your

prospective employer, then you may need to stop working on that project.

Another thing to keep in mind is that these rules may apply to you sooner than you think. Depending on the circumstances and who the prospective employer is, even sending out a letter and resume could trigger the requirement that you avoid working on any project that could affect that prospective employer.

Talk with an ethics official before you look for a job, whether full or part-time. He or she can advise you about the rules on seeking employment. If you are thinking of looking for a part-time job, your ethics official can also tell you whether or not your agency has specific rules that apply to certain kinds of outside employment or that require you to obtain permission before you take a part-time job. The ethics official can also tell you about those things you will not be able to do for your new employer.



Looking for a Job

• A company that is regulated by Todd's agency has asked him if he would like to talk about possible employment. Unless he responds by rejecting the invitation, Todd is seeking employment with that company and cannot work on matters that would affect it.

• Bernie has told a private company that he needs some more time to think about the company's job offer. As long as the offer is pending, Bernie cannot work on matters that will affect that company.

• Diane has written to the personnel office of a company

that her agency regulates requesting that they send her a job application form. She has not begun seeking employment by simply asking for an application and she may work on matters affecting that company until she submits the application.

• More than two months have passed without a response of any kind since Claudia sent an unsolicited letter and resume to a company that is a party to a proceeding before her agency. Because of this length of time, Claudia is no longer considered to be seeking employment with the company.

Misuse of Position

Suppose a friend asks me to help her with a complaint that she made to my agency about a problem that she is having with a finance company. Is it alright if I get the consumer affairs office to act more quickly on her problem?

The rule says that you cannot use your position with the Government for your own personal gain or for the benefit of others. This includes family, friends, neighbors or others. In this case, you would be using the access you have to the consumer affairs office because of your Government job to obtain special treatment for your friend. You may also be violating a criminal law if you act as a spokesperson on behalf of your friend to your agency. But you could find out if there is anyone who routinely takes calls from the public about the status of their complaints and provide that information to your friend.

At lunch some of my co-workers were talking about developing some specifications for a project that my agency will soon be putting out for bids. A friend of mine

works for a company that is in the business and it might help him if he knew about what's coming along. Is it alright to tell him about the project without discussing the specifications?

That depends on whether the project itself is public information. You cannot use (or allow someone else to use) non-public information to benefit yourself or some other person. If information about the project has not been made known to the public and is not authorized to be made known upon request, then it is nonpublic information and cannot be disclosed. It makes no difference that you heard about it at the lunch table and not as a result of your official duties. If the fact that the agency is going to pursue the project is public, you can certainly make sure your friend knows when the agency publishes or makes available information about the project.

May I use the photocopier at work to make copies of a flyer for a bake sale at my child's school?

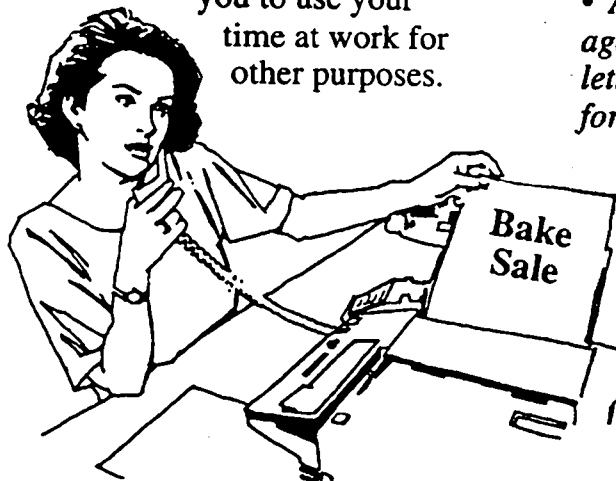
No. The rule says that you must conserve and protect Government property and that

you cannot use Government property or allow its use other than for authorized purposes. It makes no difference whether you gain personally or whether the group you are helping is non-profit. You may not use the photocopying machine, or any other Government property, including supplies, computers, telephones, mail, records or Government vehicles for purposes other than doing your job.

Suppose my boss asks me to help him do some work connected with some outside groups he belongs to. If I have free time during the day, is that something that I may do?

Official time at work is to be used for the performance of official duties. So the answer is no, unless there is some other specific authority which allows

you to use your time at work for other purposes.



Some Things That Cannot Be Done with Government Time, Information and Resources

- *Karen may not keep her personal directory of addresses of family and friends on her computer at work.*
- *Ken cannot tell his friend to sell his stock in a company that Ken knows is under investigation by his agency.*
- *Joyce, who works as a real estate broker in the evening and on weekends, may not make or take calls at her Government office to or from potential real estate clients.*
- *Ahmad cannot use agency letterhead for a letter of recommendation for his brother-in-law for a job with an office supply company.*

Outside Activities

What about activities off the job, on my own time?

It depends on what you do and who you do it for. The rule says that you cannot engage in outside employment or any outside activity if it conflicts with the official duties of your Government job. There could be a conflict because of a law or agency regulation or because doing the outside activity would disqualify you from performing a significant amount of your Government duties. Also, you should check with your agency ethics official to see whether or not you need agency approval before you engage in an outside activity.

Suppose I teach the course on beginner swimming in the physical education department at the community college. Is that alright?



There are restrictions that apply to outside teaching, speaking and writing.

Generally, if the activity relates to your official duties, the rule is that you cannot be paid for it. However, even if the course does relate to your work, there is an exception for teaching a course

in the regular program of certain educational institutions that would allow you to teach the community college course. If your Government job requires you to deal with the community college or in any way affects the college's financial interests, you should check with your ethics official first before you accept the teaching position.

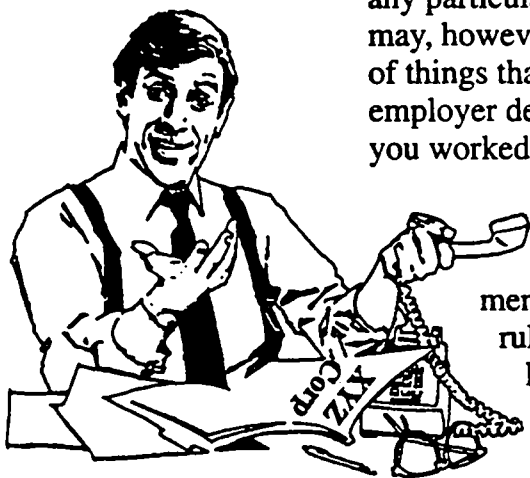
What about fundraising?

There are rules that apply to fundraising as a private individual. Basically you can engage in private fundraising outside the workplace as long as you do not ask for a contribution from a subordinate or from someone who is regulated by, does business with, or seeks official action by your agency, or has interests that may be substantially affected by you when you do your job. Also, you cannot use your title, position, or authority, or Government time or equipment, to further the fundraising effort. And you must avoid any action that would violate any of the other conduct rules. Fundraising in your official capacity is highly restricted by other laws and rules so you should always ask your ethics official first before engaging in that activity.

Restrictions on Former Employees

Suppose I take a job in the private sector. Am I subject to any rules after I leave the Government?

There is a Federal law known as the post-employment law that applies to all former employees after they leave the Government. This law does not prohibit you from working for any particular employer. It may, however, restrict the kinds of things that you do for that employer depending on what you worked on or were



responsible for when you were with the Government. Some additional rules apply to high level officials and procurement officials.

The ethics official of your former Government agency is available to answer any specific questions that might come up in your new employment and you should contact him or her in order to be sure that you perform the duties of your new employment in a lawful manner. It is a good idea to ask about these rules when you are asking about seeking employment. You will want to know if

you are permitted to do the work your prospective new employer wants you to do before you take that job.

Some Things That Can and Can't Be Done After Leaving a Government Job

• *Walter may accept a job as a compliance officer with a company that is regulated by his former agency. Walter may have some limitations in communicating with his former agency on his company's behalf.*

• *Rudolf may not represent his new private employer in a dispute with the Government over a security services contract that he reviewed while working for the Government.*

• *For two years, Zema may not represent her new employer before her former agency regarding investigations conducted by her subordinates during her last year of Government service.*

Some Things That Can and Can't Be Done off the Job

- *Carter's agency requires prior approval of outside activities including service as an officer or director of an organization. With his agency's approval, Carter may serve as an officer of his condominium association.*
- *Victoria may work as a part-time salesperson with a clothing store in the local shopping center so long as her official duties do not affect the company that owns the chain of clothing stores.*
- *Yolanda may not use her job title or position with a Federal law enforcement agency to raise funds for the police officers' association in her county.*
- *George, who processes Medicare claims, may not be paid for teaching a one-day seminar for a senior citizens' group on the Medicare program and how to fill out Medicare claims.*

APPENDIX G



An Ethics Booklet for
Executive Branch Employees
August 1993

Take the High Road

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Gifts from Outside Sources

I understand that there is a rule that limits acceptance of gifts by Federal employees. Now that I work for the Government, will this rule prevent me from accepting the gifts I'm used to receiving?

That depends, but most of the gifts you've been accepting probably are not covered by the rule and your right to accept them will not be affected.

What is the rule on accepting gifts?

The rule on acceptance of gifts from outside sources prohibits you, as a Federal employee, from accepting gifts from persons or organizations that --

- Seek action by your agency;
- Do business or seek to do business with your agency;
- Conduct activities regulated by your agency;
- Have interests that may be substantially affected by performance or nonperformance of your official duties;
- Are organizations most of whose members are described above; or
- Give the gift because of your official position.

Examples: prohibited gifts from outside sources

A representative from a company that is applying for a grant from your agency offers to give you an expensive present.

A salesman that sells software to your agency invites you to lunch at a fancy restaurant.

A company subject to regulations that your agency administers sends you a gourmet food basket.

A local theater company sends free season tickets to you and all other high-ranking employees in your section just because you work there.

As you can see, the prohibition is fairly limited. Probably most of your friends and relatives -- the people who usually give you gifts -- have no connection to your agency and do not give you gifts because of your official position. Your right to accept gifts from them is not affected by the gift rules.

What is a "gift" for purposes of the gift rule?

Almost anything having monetary value will be considered a gift. And gifts aren't just those things that come wrapped in boxes. Money,

meals, tickets to spectator events (a baseball game, the ballet), and services (car-washing, investment-counseling) are all gifts.

Is there anything that is not considered a gift?

Yes. There are a number of items that are not considered gifts and that you can, therefore, accept no matter who gives them and even if they are given to you because of your official position. Three of the more common of these gift "exclusions" are--

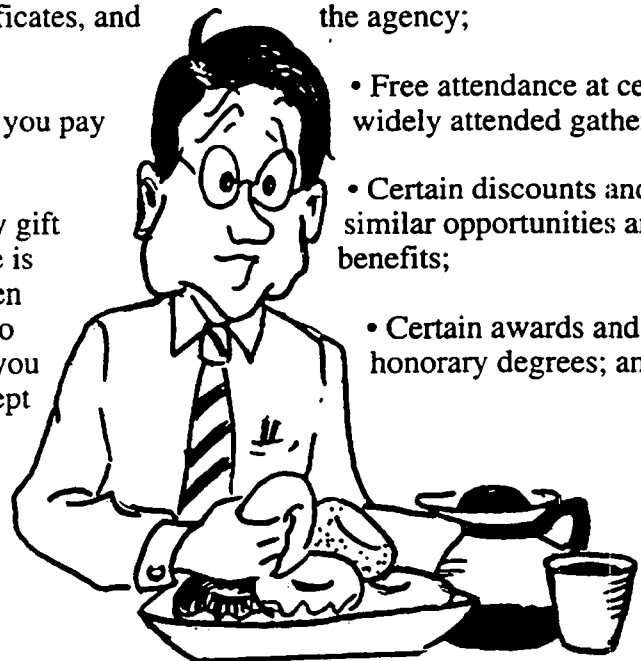
- Soft drinks, coffee, donuts, and other modest items of food and refreshment when not offered as part of a meal;
- Items of little inherent value that are intended solely for presentation, such as plaques, certificates, and trophies; and
- Anything for which you pay market value.

These are not the only gift "exclusions." If there is something you've been offered and it seems to you that, in fairness, you should be able to accept it, ask your agency ethics official if there is an exclusion that would allow you to accept.

So if it's a "gift" and it's covered by the general gift rule, then I can't accept it?

Not so fast. That's generally right, but there are a number of exceptions to the gift rule that permit employees to accept gifts that would not otherwise be allowed. Some more frequently used exceptions allow employees to accept--

- Certain unsolicited gifts with a value of \$20 or less per occasion (but not cash gifts and not gifts that add up to over \$50 in value in any year from any single source);
- Gifts clearly given because of a family relationship or personal friendship;
- Free attendance at certain events on the day an employee is speaking or presenting information on behalf of the agency;
- Free attendance at certain widely attended gatherings;
- Certain discounts and similar opportunities and benefits;
- Certain awards and honorary degrees; and



Gifts Between Employees

I like to give and receive presents and I frequently exchanged gifts with co-workers when I worked in the private sector. Is the Federal Government going to cramp my style?

That depends. The rules on gifts between employees generally prohibit you from--

- Giving gifts to your superiors;

- Accepting gifts from your subordinates; and

- Accepting gifts from non-subordinates who receive less pay than you unless you have a personal relationship that justifies the gift.

For purposes of these rules, "superiors" and "subordinates" are people in your supervisory chain of command. As you can see, the rules leave a sizable group of people with whom you are free to exchange gifts.

Examples: general rules on gifts between employees

You share an office with affable Al whose position in the agency is the same as yours. Al makes more money than you, however, because he's been at the agency longer. Over time, you and Al have become close friends. Is your gift to Al covered by the rules?

No. You are free to give Al a gift because he is not your official superior. He is free to accept because you are not his

subordinate and because, even though you make less money, there is a personal relationship between you that justifies the gift.

You think your boss is a good guy and have decided to show your appreciation with an expensive gift. Would the gift violate the rules on gifts between employees?

Yes. This gift is prohibited by the rule barring gifts to superiors.

What is a "gift" for purposes of the rules against gifts between employees?

"Gift" has the same meaning for these rules as it has for the rule prohibiting certain gifts from outside sources. The "exclusions" (those items that won't be considered gifts) are the same too. But **BEWARE:** the exceptions are

different. For example, there is no "\$20 rule" allowing acceptance when the gift is one between employees!

But surely there are some exceptions to the rules prohibiting certain gifts between employees. For example, I've seen employees give gifts to their superiors. If you'll excuse the pun, what gives?

- Certain gifts based on outside business or employment relationships.

Again, there are more exceptions than those listed here. And there

are, in addition, restrictions that limit your use of the exceptions. Don't hesitate to talk to your agency ethics officials about any gift issues that arise. Providing advice on such matters is part of their job.

Examples: gift exclusions and exceptions

A salesman who works for a company that does business with your agency has offered you two \$10 tickets to the county fair. Can you accept?

Probably. This gift is allowed under the \$20 exception, provided that you did not ask for the tickets and that gifts you receive from this company and its employees, when added together, do not exceed \$50 in a calendar year.

You have a second job as a beekeeper with a honey producer and you are a member of the Stinging Society, aka Association of Beekeepers, which has invited you and all the other members of the Association to a subsidized weekend retreat. Most of the members of the Association conduct activities regulated by the agency where you work. Can you accept the invitation?

Yes. The invitation clearly resulted from your outside employment and was not extended or enhanced because of your

Federal job, so the gift falls within the exception for gifts based on outside business or employment relationships.

Your long-time friend and neighbor brought a very generous gift to your 50th birthday party. Trouble is, he works for a company that is seeking a permit from your agency. Do you have to return the gift?

No. If your neighbor clearly gave you the gift because of your friendship and if he (and not his employer) paid for the gift, you may accept it because of the exception for gifts given because of a personal friendship.

You have a weekly 4:00 P.M. meeting with an agency contractor at the contractor's office. The contractor always offers you coffee and donuts or muffins and you enjoy the hospitality. Can you continue to do so?

Yes. Remember we said that some things (the gift "exclusions") won't be considered gifts? A snack like this, not offered as part of a meal, is one of those things.

There are three important exceptions that, under certain circumstances, allow gifts between employees that would not otherwise be permitted. The first is the exception for certain *gifts given on an occasional basis*. This exception would allow gifts given, for example, on Christmas, on a birthday, or upon returning from vacation, provided that the gifts consist of--

- Items other than cash which, considered together, are worth no more than \$10 on each occasion;
- Personal hospitality provided at a residence;
- Gifts to a host or hostess given in connection with the receipt of personal hospitality, even if the cost of these customary gifts is in excess of \$10;

- Food and refreshments shared in the office; or

- Leave sharing as permitted by Office of Personnel Management regulations.

The second exception permits the giving and accepting of appropriate *gifts recognizing special, infrequent events* provided that the events are--

- Occasions of personal significance (such as marriage, illness, or the birth or adoption of a child); or
- Occasions that terminate a subordinate-official relationship (such as retirement, resignation or transfer).

The third exception is for group gifts. It permits *voluntary contributions of nominal amounts* and solicitation of voluntary contributions of nominal amounts for gifts to official superiors provided that the gifts--

- Recognize "special infrequent events" as described above; or
- Consist of food and refreshments to be shared in the office.



Examples: exceptions to rules on gifts between employees

Your supervisor has invited you to her home for dinner and you'd like to bring her a box of chocolates worth about \$15. Can you do it? Can she accept?

Yes. The chocolates are a permissible hostess-type gift given in connection with the receipt of personal hospitality under the first exception.

Your section chief is moving on to greener pastures outside the agency. You are asked if you would like to contribute a small amount toward a ceramic cookie jar in the shape of a cow to be presented to him by the section in recognition of his departure and new job. Is the gift permissible?

Yes. The gift is allowed, under the second and third exceptions, as a voluntary contribution of a nominal amount toward a gift recognizing a special infrequent event -- the section chief's

resignation. However, it must be made clear to those solicited that they are free to contribute nothing at all.

You and your spouse are expecting a baby! Your subordinate brings you a box of baby clothes that his baby has outgrown. Can you accept them?

Yes. The impending birth of your child is an occasion of personal significance under the second exception and the gift is appropriate to the occasion.

You are heading home to Heartlandville for the holidays and would like to bring a genuine Heartlandville souvenir to your supervisor. Can you do it? Can he accept?

If the value of the souvenir is \$10 or less, giving and accepting it are permissible under the \$10 rule in the first exception.

Conflicting Financial Interests

I have stock in a corporation that is involved in a matter for which I have some job responsibility. Would my official participation in this matter be a problem?

It might be. A criminal law prohibits you, as an employee, from participating personally and substantially in certain matters in which you have a financial interest. The prohibition on participating also applies when you know that any of the following individuals or organizations have a financial interest in the matter--

- Your spouse;
- Your minor child;

- Your general partner;
- An organization which you serve as officer, director, trustee, general partner or employee; and
- A person or organization with which you are negotiating for or have an arrangement concerning prospective employment.

Depending on the agency or department for which you work, there also may be financial interests which you are prohibited from holding regardless of your personal participation on a particular matter.

Examples: conflicting financial interests

Your spouse owns the controlling interest in a firm that wants to sell telephone equipment to your agency. Your job at the agency is to recommend a firm from which the agency should buy telephone equipment.

You are the treasurer of a public interest organization that has pushed hard for regulations that

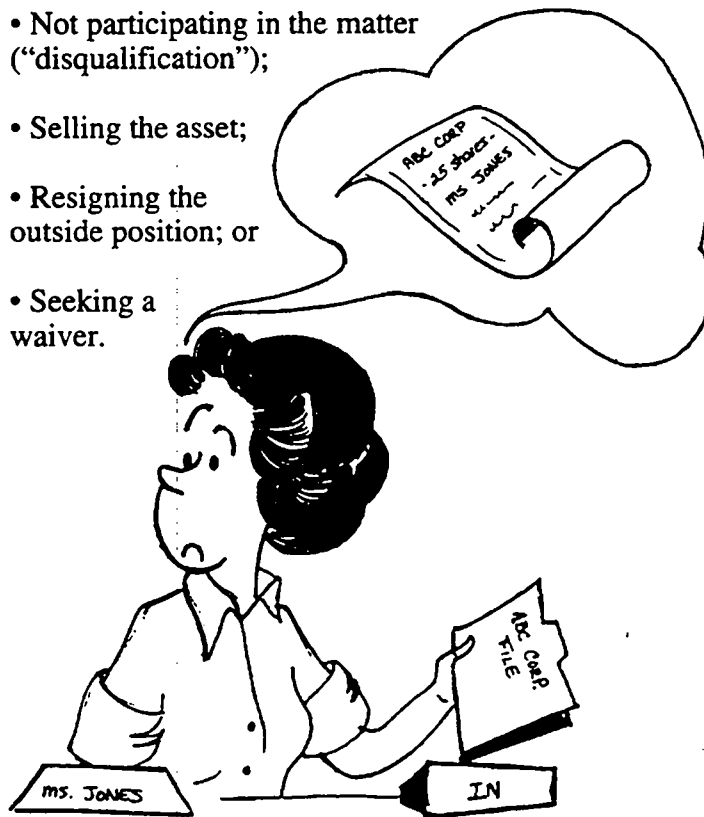
your boss has asked you to work on as part of your Government job.

Your uncle recently died, leaving you stock in Trouble, Inc. Your job at the agency does not involve Trouble, but agency regulations prohibit all employees of the agency from holding Trouble stock because it is so heavily regulated by the agency.

What should I do if I think I have a conflicting financial interest?

Talk to your supervisor and your agency ethics official right away. The official will advise you on your options, which may include--

- Not participating in the matter (“disqualification”);
- Selling the asset;
- Resigning the outside position; or
- Seeking a waiver.



Impartiality in Performing Public Duties

Do the relationships described in the criminal statute governing conflicting financial interests cover all the conflicts situations about which I need to be concerned?

No. There are many more such situations than could possibly be described. Those addressed in the statute are the most troublesome. The Standards of Conduct regulations go further. They describe situations that may give the "appearance" of a loss of impartiality and spell out steps to be taken by employees when those situations arise.

What are the situations recognized by the Standards of Conduct as raising "appearance" concerns?

These are situations where you are called upon to participate as a Federal employee in a particular matter involving specific parties and you know that--

The matter is likely to affect the financial interests of a member of your household; or

One or more of the parties to the matter is or is represented by--

- A person or organization with whom you have or seek a business relationship that involves something more than a routine consumer purchase;
- A person who is a member of your household, or who is a relative with whom you have a close personal relationship;

- A person or organization for whom your spouse, parent or dependent child is, to your knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;

- Any person or organization for whom you have, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or

- An organization, other than certain political organizations, in which you are an active participant.

Examples: situations raising appearance concerns

Until eight months ago you worked at Board Room Construction Company. Now Board Room has bid on a contract at your agency and your boss has asked you to work on the award of the contract.

Your son has a summer job in the accounting department at Dredge and Fill, Inc., a firm that has applied for a permit from your agency. One of your responsibilities is providing input on permit applications.

Your father is a part owner of Bits and Pieces Manufacturing Company. Bits and Pieces has a manufacturing plant which you have been assigned to inspect as part of your Government job.

What should I do if I find myself in one of these situations?

The first step is to ask yourself whether a reasonable person with knowledge of the relevant facts would question your impartiality if you participated in the matter. Your supervisor, your agency ethics official, and anyone designated by your agency to deal with "appearance" problems can help you decide and can guide you through the steps necessary to resolve any perceived problem. The general rule is that if your participation is going to raise eyebrows, you will need to stop working on the matter unless your agency specifically authorizes you to participate.

I've been asked to work on a matter that could affect the financial interests of a close friend. I suppose my involvement might "look bad" but friendship is not a relationship specifically mentioned in the applicable statute or the Standards. Am I free to work on the matter?

Not necessarily. Any circumstance raising a question about your impartiality should be handled by following the steps outlined above.

Seeking Other Employment

I'm thinking about looking for a job in the private sector. Does changing a job raise conflict-of-interest concerns?

It may. If you're considering employment with a person or organization that has financial interests that may be affected by the way you perform your job for the Government, then you may need to stop working on matters that could affect that prospective employer.

Examples: employment activities raising conflicts problems

You are a member of a team of people assigned to investigate possible wrongdoing by Walk the Narrow Line, Inc. Walk the Narrow Line indicates an interest in hiring you and you, in turn, indicate that you might be interested.

You mail your resume to Let It Be & Co., an organization seeking Government approval on a matter for which you bear some responsibility.

How can I avoid problems while seeking other employment?

See your supervisor or your ethics official. The ethics official can advise you on whether it is necessary to cease your participation on

matters that could affect your prospective or future employer. The official can also advise you whether a waiver might be appropriate.

But I may not even be offered the job! Can't I wait to discuss this with others if and when I do get the offer?

No. You should talk to your supervisor or ethics official before you begin your job search or as soon as possible after someone approaches you about a job. Even without a job offer, if you get involved in even preliminary employment negotiations, your work on matters affecting a prospective employer could subject you to criminal penalties. And under some circumstances, you could be disciplined even if you have done no more than send a resume.



Restrictions on Former Employees

Once I leave my Government job, the Government can no longer restrict my activities, right?

Wrong. Most employees may take any jobs they wish, but there are some restrictions on the activities in which they may engage on behalf of their new employers. We call these "post-employment" restrictions.

What are these restrictions?

There are two very broadly applicable restrictions that subject violators to criminal penalties. The first is a permanent ban. It deals with certain matters in which former employees participated personally

and substantially while working for the Government. As to such matters, former employees are forever barred from representing another person or organization before a Federal department, agency, or court. In other words, you can't "switch sides" on the same matter.

The second restriction is a two-year ban. It concerns certain matters which were pending under former employees' supervision during the last year of their Government service. As to such matters, former employees are barred, for a period of two years after terminating Government service, from representing another person or organization before a Federal department, agency, or court.

Examples: post-employment restrictions

Before leaving Government service, you administered the Government's contract with Fly by Night, Inc., to develop a new radar system for Navy aircraft. Because of your earlier participation on the contract, you are now permanently barred from representing Fly by Night back to the Government concerning this contract.

During your last year of Government service, you supervised an employee who worked on a false advertising case against Fountain of Youth, Inc. Even though you did not participate in the case, because it was under your responsibility you are barred for two years from representing Fountain of Youth back to the Government concerning this case.

Are there any other post-employment restrictions I should know about?

There are more restrictions that may apply to you if you held a senior or very senior position while working for the Government or if your post-employment activities involve--

- Trade or treaty negotiations;
- Foreign businesses;
- Foreign governments; or
- Foreign political parties.

There are also some restrictions specific to employees who worked at particular agencies or who performed particular functions.

How can I be sure to do the right thing?

Talk to your agency ethics official. The best time to do this is *before* you begin your new job. But even after you've left Government service, don't hesitate to call the ethics official of your former agency whenever you have "post-employment" concerns. An important part of the official's job is helping you to understand the law and conform your activities to it.

Misuse of Position

I know it would be wrong to use my position with the Government to further my own interests, but if I can do some good for deserving friends, relatives, or nonprofit organizations I'm involved with, is there any harm in doing so?

Yes. And the ethics rules forbid you to do so. Employees may not use their public offices for private gain, either their own gain or the gain of others.

Examples: misuse of public office for private gain

You may not write a character reference on agency stationery for a childhood friend applying for a private sector job.

You may not identify yourself as an employee of the Justice Department or give your formal title when calling a local merchant, in your private capacity, to complain about how you were treated when shopping in the merchant's store.

On behalf of "We Love Flipper," an environmental organization of which you are a member, you do a radio spot endorsing certain fishing techniques. On the spot you may not introduce yourself by giving your official position at the Fish and Wildlife Service of the Interior Department.

On occasion I get wind of information on the job that could really be a boon to me and anyone with whom I might share the information. Is it okay to use that information?

No, it's not. Employees may not use or allow the use of nonpublic information to further their own private interests or the private interests of others.

Examples: misuse of nonpublic information

You may not call your Cousin Ed, who plays the stock market, to advise him that the Defense Department is about to sign a \$50,000,000 contract with Aloft and Away, Inc.

You may not give confidential agency planning documents to The Green Jumpers, a conservation group that shares your interest in

preserving the habitat of the spotted green frog.

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Every now and then, when I get all my work done and have time on my hands, I like to catch up on my outside responsibilities, like drafting and typing the newsletter for my neighborhood civic association. If the guys in my agency's copy room are not busy, they're always happy to do the reproduction work for me. Any problem with this?

Yes, there is a problem. Except as otherwise authorized, employees must use official time in an honest effort to perform official duties and may not ask or direct subordinates to perform activities other than those required in the performance of official duties. Furthermore, employees have a duty to protect and conserve Government property (including equipment and facilities) and may not use Government property, or allow its use, for other than authorized purposes.

Examples: misuse of official time and Government property

You may not use the telephone at work to make calls for your second job.

You may not use the copy machine at work to reproduce the game schedule for the little league team you are coaching.

Outside Activities

I have hobbies and civic and charitable interests that I enjoy away from the office.

I'm also thinking about doing some outside part-time work to supplement my income. Is it permissible to engage in these outside activities while working for the Government?

Most employees may engage in outside activities, whether for compensation or not. But there are a number of restrictions on outside activities of which employees should be aware. Some apply to all employees and some just to employees at particular agencies. A few agencies require that you obtain approval before engaging in outside activities. Even if your agency does not require advance approval, you would be wise to get advice from your agency ethics official before getting involved in the activities.

The outside work I'm thinking of doing would involve representing clients on matters unrelated to my Government work. Would this sort of work present a problem?

It might. Criminal laws prohibit employees from representing others before departments, agencies, and courts if the United States has a substantial interest in the matters involved, regardless of whether those matters relate to the work the employees perform for the Government. The laws also prohibit taking compensation for certain representational services provided by others and receiving consideration for assisting in the prosecution of a claim against the United States.

Examples: improper representations and related activities

As a part of your outside accounting practice, you argue for a particular interpretation of the tax code in a dispute between your client and the IRS.

One of your partners in your outside law practice wins a case before a Federal administrative agency and you receive a share of the fees generated by the case.

Suppose I don't take anything in exchange for representing others to the Government; in other words, assume I'm acting out of the goodness of my heart. Will my generosity of spirit make any difference?

No. Representation is prohibited whether you receive compensation or not.

Examples: improper representations without compensation

You provide free representation in court to a nonprofit organization on a matter to which the United States is a party.

Aunt Bertha asks you, her "big shot nephew," to pick up the phone and handle her dispute with the Government over her social security benefits.

Suppose I need to represent *myself* before a department, agency, or court. Surely I can argue on my own behalf, can't I?

You're right. You can always represent yourself. And, in addition, there is an important exception that allows employees, under certain circumstances and with agency approval, to represent their parents, their spouses and children, and certain others with whom they have a fiduciary relationship.

I'd like to do some outside teaching, speaking, and writing. These activities should keep my skills honed and supplement my income at the same time. Is there any problem with my doing so?

If you are planning to accept compensation (including travel expenses for transportation and lodging) for these activities, you'll want to proceed carefully. Teaching, speaking, and writing by employees are subject to restrictions which vary depending on a great many factors. Before engaging in any outside teaching, speaking, or writing for compensation, you are strongly advised to consult with your agency ethics official.

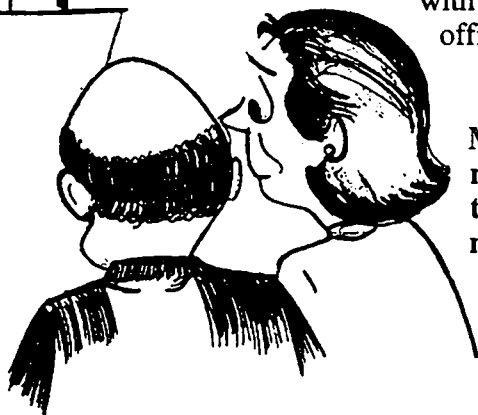
My new Government job requires that I work on matters in which a private organization of which I

am an officer has a financial interest. My work on these matters would present a clear conflict. Will disqualifying myself from participating on these matters resolve the problem so that I can continue my outside work?

Not necessarily. If you want to keep your Government job, it's the outside relationship that may be in jeopardy. Employees may not engage in outside activities if the rules dealing with conflicting financial interests or the appearance of a loss of impartiality would require their disqualification from matters so central or critical to the performance of their official duties that their ability to perform the duties of their position would be materially impaired.

Are there any other restrictions on outside activities that I should know about?

Yes. There are restrictions on fundraising activities, political activities, and activities involving provision of services as an expert witness. There is a law that, with some limitations, prohibits employees from receiving anything other than their Federal salary as compensation for services as a Government employee. There are also outside income limitations and other special rules applicable to high-ranking noncareer employees and Presidential appointees. There are too many rules to include in this booklet! That's why it is so important that you consult with your agency ethics official before engaging in outside activities.



APPENDIX H

Public Citizen



Buyers Up • Congress Watch • Critical Mass • Health Research Group • Litigation Group

Ralph Nader, Founder

April 27, 1995

HAND DELIVERED

The Honorable Mitch McConnell, Chairman
The Honorable Richard Bryan, Vice-Chairman
Senate Select Committee on Ethics
SH-220
Washington, D.C. 20510

Re: Possible Violation of Law and Senate Rules

Dear Chairman McConnell and Vice-Chairman Bryan:

In accordance with Rule 3(a) of the Rules of Procedure of the Senate Select Committee on Ethics, I hereby report information to the Committee that indicates that Senator Slade Gorton may have violated Rule 38 of Senate Code of Official Conduct and 2 U.S.C. § 59e(d). I request that you direct your staff to conduct a preliminary inquiry into this matter or present this information to the Select Committee on Ethics for determination whether an initial review should be undertaken.

Rule 38 of the Senate Code of Official Conduct and 2 U.S.C. § 59e(d) prohibit the use of "unofficial office accounts." They require both Members and Committees to pay official expenses only with funds appropriated for that purpose. See Interpretative Ruling No. 409. The Select Committee has repeatedly ruled that in-kind contributions of goods and services contravene this requirement. See, e.g., Interpretative Ruling Nos. 16, 17, 442.

The attached memorandum dated February 28, 1995 to Senator Gorton from his aide Julie Kays, and subsequent press reports strongly suggest that employees of the Endangered Species Reform Coalition, a coalition of timber, mining, ranching, and utility interests, drafted legislation to amend the Endangered Species Act at Senator Gorton's direction. Ms. Kays's memo begins: "The coalitions delivered your ESA bill to me on Friday." The memo goes on to indicate that the Senator and his staff relied on the private authors of the bill for explanation and analysis, as well as for drafting of the legislation:

I know that you are anxious to get the bill introduced, however, it is important that we have a better than adequate understanding of the bill prior to introduction.

The coalitions should have a section by section general summary of the draft bill together later today.

Senator Mitch McConnell
Senator Richard Bryan
April 27, 1995
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The memo suggests Senator Gorton or his staff requested that the Coalition prepare the legislation:

The bill takes some getting used to, however, I think that the coalitions did a tremendous job of adopting your ideas and putting them into the bill.

It would clearly violate Rule 38 for the National Endangered Species Act Reform Coalition or any other private organization to pay the salary of an aide to Senator Gorton or to detail a lawyer from its law firm to his staff. By requesting that the Coalition produce a bill reflecting his views, the Senator essentially created such an arrangement. Regardless of the Coalition's self-interest in the bill, as drafted, the solicitation of assistance in the form of highly-compensated staff time by a U.S. Senator or staff member would appear to cross the line between being lobbied and seeking a contribution toward an unofficial office account.

When questioned by *The New York Times* about the propriety of legislation being drafted by interests that have an economic stake in the outcome, Sen. Gorton said: "I don't think that's how good public policy should be made, but I'm perfectly willing to get the free services of good lawyers in drafting my views." "Industries Affected by Endangered Species Act Help a Senator Rewrite Its Provisions," *N.Y. Times*, Apr. 13, 1995, at A20 (emphasis supplied).¹ According to the *Times*, Robert Szabo, a lawyer for the Endangered Species Reform Coalition, confirmed that the Coalition acted at Senator Gorton's direction: "Senator Gorton laid out his thoughts to us, he asked for help and we gave it to him." *Id.* These statements strongly suggest that the drafting of legislation and other materials by lawyers working for the National Endangered Species Act Reform Coalition constitute an in-kind contribution of their services to Senator Gorton in violation of 2 U.S.C. § 59e(d) and Rule 38.

We are aware that lobbyists provide a legitimate and essential source of information and advice to Members of Congress. Indeed, there is nothing improper about lobbyists proposing language for bills, amendments, or committee reports. In this case, however, Sen. Gorton appears to have asked outside attorneys to draft legislation for him. He candidly admitted that he accepted free legal services from these attorneys. And rather than submitting a proposal of its views for his consideration, the memo from Ms. Kays confirms that "the coalitions" had been assigned the task of writing Sen. Gorton's legislation and that their product was immediately understood to be Sen. Gorton's bill.

Ms. Kays's memo and the attached news reports raise a number of questions that the Committee should explore including the following:

¹ In response to an earlier inquiry from the *Seattle Post-Intelligencer* about the authorship of the bill, "Senator Gorton replied that the outside groups were consulted for their opinions, not to write the bill. . . ." "Dispute on Gorton memo," *Seattle Post-Intelligencer*, Apr. 7, 1995, at A13. His comments to the *Times* contradict that original assertion.

Senator Mitch McConnell
Senator Richard Bryan
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Page 3

1. What precise services did the National Endangered Species Act Reform Coalition or other private individuals or organizations provide to Sen. Gorton?
2. What exactly were the circumstances under which the outside lawyer were requested or agreed to draft a bill for Sen. Gorton?
3. Who paid for the work provided by the Coalition or other private entities to Sen. Gorton?
4. Who directed the work of the outside lawyers and what control did Sen. Gorton have over their work product?
5. What individuals or entities with a financial interest in legislation to amend the Endangered Species Act were involved in drafting this legislation and other related staff work?

As you know, Public Citizen filed information on April 4, 1995, suggesting that a violation of Rule 38 and 2 U.S.C. § 59e(d) may have occurred in connection with a pre-markup staff briefing in the Senate Judiciary Committee. In light of the increasing number of these incidents, the Ethics Committee should give this matter priority attention.

We will provide additional information on this incident to the Committee as it becomes available. Please feel free to contact us if you have any questions. Thank you for your attention.

Sincerely,



Michael Calabrese
Director
Congress Watch

APPENDIX I

A PUBLIC PLEDGE

TO REFUSE GIFTS & FINANCIAL FAVORS FROM LOBBYISTS

Congressional rules currently allow lobbyists and special interests to provide Members of Congress and their staffs with free vacations and recreational trips, tickets to the Super Bowl and Broadway shows and other entertainment, and unlimited meals at Washington's most expensive restaurants. In providing these benefits and favors, lobbyists and other special interests are financing the lifestyles of Members of Congress whose decisions they are trying to influence.

It is time to end the financial ties between Washington lobbyists and Members of Congress.

In 1994, gift ban legislation which would have prohibited Members of Congress from accepting gifts and financial favors from lobbyists and other special interests passed the Senate 95-to-4 and the House 306-to-112. The final legislation, S. 349, was killed in the closing days of the 103rd Congress by a filibuster.

As a Member of the 104th Congress, I publicly pledge to live by and comply with the gift ban provisions contained in S. 349 and will refuse to accept, from lobbyists and other special interests, gifts, recreational trips, entertainment, meals and other financial favors as prohibited by the gift ban. (See description on reverse side.)

Name: _____ State/CD: _____

Signature: _____ Date: _____

Summary of Key Gift Ban Provisions

Bans Members of Congress and Staff from Accepting Gifts Subject to Certain Exemptions

- Members of Congress are prohibited from accepting gifts from lobbyists and "any other person." Gifts given to a spouse or dependent are considered to be given to a Member if they are given with the knowledge and acquiescence of the Member and the Member has reason to believe a gift has been given because of the Member's official position.

- Exceptions to this ban for non-lobbyists include: food and refreshments valued at less than \$20 (the same value as current executive branch rules); food, refreshments and entertainment in the Member's home state, subject to reasonable limits set by congressional ethics committees; attendance at a charity function or widely attended event; gifts based on a personal or family relationship, unless the Member has reason to believe the gift was provided because of the Member's official position; contributions to legal defense funds; home state products of minimal value for display or free distribution; informational materials sent to a Member's office; items of little intrinsic value; and a plaque, trophy or other memento of modest value.

Places New Restrictions on Privately Financed Travel Reimbursements

- Reimbursements for travel for Members and staff that is "substantially recreational" are banned. Members and staff may accept reimbursements from private interests for "necessary expenses" for transportation, lodging and related expenses for speaking engagements, meetings or similar events in connection with their official duties. This cannot include reimbursements for recreational activities or for entertainment, other than that provided to all attendees as an integral part of the event.

- Within 30 days of such travel, the Member must publicly disclose the reimbursed expenses. Political organizations are allowed to provide travel for campaign and fundraising events.



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FOR
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AFFAIRS

*1717 Massachusetts Avenue, NW
Fifth Floor
Washington, DC
20036*

202.328.3136

FAX 202.939.3166