U.S. Department of Transportation
United States Coast Guard

Commandant
United States Coast Guard

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COMDTINST M5370.8B
March 1, 2002

COMMANDANT INSTRUCTION M5370.8B

Subj: STANDARDS OF ETHICAL CONDUCT

1. PURPOSE. This Manual describes the Coast Guard Ethics Program, identifies and explains the Coast Guard standards of ethical conduct, and describes the ethics training requirements.

2. ACTION. Area and district commanders, commanders of maintenance and logistics commands, commanding officers of headquarters units, assistant commandants for directorates, Chief Counsel, and chiefs of special staff offices at Headquarters shall ensure compliance with the provisions of this Manual.

3. DIRECTIVES AFFECTED. Standards of Conduct, COMDTINST M5370.8A is canceled.

4. OVERVIEW. Chapter 1 of this Manual identifies the various ethics officials throughout the Coast Guard, describes their responsibilities, and explains the legal effect of their opinions. Chapter 2 identifies and discusses the standards of ethical conduct applicable to all Coast Guard personnel. Chapter 3 describes the initial ethics orientation requirements for all new personnel, and the required annual ethics training for certain categories of personnel. Should a provision of this Manual conflict with any other internal Coast Guard regulation, this Manual is controlling.

5. APPLICABILITY. This Manual applies to all Coast Guard personnel. For the purposes of this Manual, Coast Guard personnel includes all civilian employees, including civil service employees, special Government employees and non-appropriated fund employees; all officers (commissioned and warrant) and enlisted members on active duty, including active duty for training; all Reserve officers (commissioned and warrant) and Reserve enlisted members while on inactive duty for training; all Public Health Service and Department of Defense personnel assigned to the Coast Guard for greater than 30 days;

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and faculty, staff, and cadets at the CG Academy. This Manual does not apply to members of the Coast Guard Auxiliary. Members of the Auxiliary shall follow the standards set forth in the Auxiliary Manual, COMDTINST M16790.1(series).

6. APPLICATION OF OGE REGULATIONS TO ENLISTED MEMBERS. 5 CFR Part 2635 contains the Office of Government Ethic's (OGE's) Standards of Ethical Conduct, which are directly applicable to all Executive Branch Officers and employees. 5 C.F.R. § 2635.103 states that the provisions of 5 CFR Part 2635 are not applicable to enlisted members of the uniformed services, and each agency with jurisdiction over enlisted members shall issue regulations defining the ethical conduct obligations of enlisted members under its jurisdiction. The provisions of 5 C.F.R. Part 2635 (notwithstanding § 2635.103) are hereby determined to be appropriate for, and are made applicable to, enlisted members of the Coast Guard to the same extent that those regulations apply to officers and civilian employees of the Coast Guard.

7. DISCIPLINARY ACTION. The provisions of 5 CFR Part 2635 are contained in enclosure (1) of this Manual. **The prohibitions and requirements of 5 CFR Part 2635 that are printed in *bold italics* in enclosure (1) are general orders within the meaning of Article 92, Uniform Code of Military Justice, and apply to all military members without further implementation.** Violations may result in prosecution under the UCMJ, as well as adverse administrative action and other adverse action authorized by the United States Code or Federal regulations. Penalties for violation of the standards of ethical conduct contained in 5 CFR Part 2635 include the full range of statutory and regulatory sanctions for Coast Guard civilian employees.

8. REQUESTS FOR CHANGES. Units and individuals may recommend changes by writing via the chain of command to Commandant (G-LGL), U.S. Coast Guard Headquarters, Washington, DC 20593-0001.

9. REPORTING REQUIREMENTS. Ethics training reports must be submitted in accordance with the guidance contained in paragraph F of Chapter 3.

J.M. LOY
Admiral, U.S. Coast Guard
COMMANDANT

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Enclosures: (1) 5 C.F.R. Part 2635
(2) Widely Attended Gathering Template Memo

RECORD OF CHANGES

CHANGE NUMBER	DATE OF CHANGE	DATE ENTERED	BY WHOM ENTERED

CHAPTER 1 - COAST GUARD ETHICS PROGRAM

1.A. ETHICS PROGRAM RESPONSIBILITIES.

1.A.1. Designated Agency Ethics Official.

The Designated Agency Ethics Official (DAEO) for the Department of Transportation (DOT) is the DOT Deputy General Counsel (C-1). The DAEO is responsible overall for the coordination and management of the Department of Transportation's ethics program, and liaisons with the Office of Government Ethics with regard to all aspects of the ethics program. The DAEO may delegate to one or more Deputy Ethics Officials various program duties and responsibilities.

1.A.2. Deputy Ethics Official.

The Department of Transportation DAEO has designated the Chief Counsel of the Coast Guard as the Deputy Ethics Official for the Coast Guard, and the final authority in the Coast Guard for all ethics issues.

1.A.3. Chief, Office of General Law.

The Chief Counsel, as a Deputy Ethics Official, has delegated the authority and responsibility for administering the Coast Guard's Ethics Program to the Chief, Office of General Law, Commandant (G-LGL). Commandant (G-LGL) shall provide policy guidance on ethics training and ethics-related legal matters to Assistant Ethics Officials. Note that ethics issues relating to specific acquisitions that are addressed by Federal Acquisition Regulation Part 3 are not part of this ethics program and are handled by procurement counsel.

1.A.4. Assistant Ethics Officials.

a. The Chief Counsel has designated District legal officers; chiefs of legal divisions in maintenance and logistics commands (MLCs); legal officers or attorney-advisors assigned to Headquarters units and MLC units; and the Chief, Office of General Law as Assistant Ethics Officials. Assistant Ethics Officials are "agency designees" and "agency ethics officials" as those terms are used by the Office of Government Ethics (OGE).

5 C.F.R. §§ 2635.102(b), (c).

b. Assistant Ethics Officials shall provide ethics advice and annual ethics training for their commands and for subordinate commands that do not have legal officers or attorney-advisors assigned. Training shall be conducted in accordance with the

provisions of Chapter 3 of this Manual. Assistant Ethics Officials shall also provide advice on post-employment ethics matters to former employees whose last assignment with the Coast Guard was at their command or a subordinate command that does not have a legal officer or attorney-advisor assigned.

c. Except as provided below, MLC Assistant Ethics Officials shall serve as the Assistant Ethics Official for all Headquarters units within their geographic area that do not have an assigned legal officer/attorney-advisor. They shall provide ethics advice and annual ethics training for those units.

(1) The Coast Guard Yard Legal Officer shall serve as the Assistant Ethics Official for the Engineering Logistics Center.

(2) Commandant (G-LGL) shall serve as the Assistant Ethics Official for Coast Guard Headquarters, the Coast Guard Personnel Command, CGIS Headquarters, and the Coast Guard Exchange Service/MWR.

d. Assistant Ethics Officials may delegate some or all of their ethics official responsibilities to military or civilian attorneys on their staff with the appropriate degree of knowledge and experience.

1.B. ETHICS ADVICE.

1.B.1. Source of Advice.

Coast Guard personnel who have questions about the application of this Manual (or any of the statutes or regulations referenced in this Manual) to particular situations should seek advice from an Assistant Ethics Official. A former employee may request post-employment ethics advice from the Assistant Ethics Official servicing the command to which he or she was last assigned before leaving government service.

1.B.2. Safe Harbor from Disciplinary Action for Regulatory (non-criminal) Violations.

Disciplinary action will not be taken against an individual who obtains advice from a Coast Guard ethics official (after fully disclosing all relevant facts), and acts in good faith reliance on that advice, even if that action is later found to constitute a violation of this Manual, the OGE Standards of Ethical Conduct, or applicable DOT Standards of Conduct regulations. If the individual has knowledge or reason to believe that the advice he or she received was based upon fraudulent, misleading, or otherwise incorrect information, that individual's reliance upon the advice is not deemed to be in good faith, and disciplinary action may be appropriate.

1.B.3. Limited Protections From Disciplinary Action for Criminal Violations.

Where an individual's actions violate a criminal statute, reliance on the advice of a Coast Guard ethics official cannot ensure that the individual will not be prosecuted. However, good faith reliance on the advice of a Coast Guard ethics official is a factor that is taken into account by the Government in the selection of cases for prosecution.

1.B.4. Communications with Ethics Officials.

Disclosures made by an individual to a Coast Guard ethics official are **not** protected by an attorney-client privilege. Coast Guard ethics officials are required by 28 U.S.C. § 535 to report any information they receive relating to a violation of the criminal code, Title 18 of the U.S. Code.

CHAPTER 2 - STANDARDS OF ETHICAL CONDUCT

2.A. OVERVIEW OF CHAPTER.

This chapter summarizes the key provisions of the Standards of Conduct, 5 C.F.R. Part 2635, using a question and answer format. These provisions, which apply to all Coast Guard personnel, are broken down into seven subparts of activity. Personnel covered by this Manual should refer to 5 CFR Part 2635, a copy of which is in enclosure (1), for a complete discussion of the requirements, definitions, exclusions, and exceptions associated with each subpart. The prohibitions and requirements printed in bold italics in enclosure (1) are general orders and apply to all military members without further implementation. This chapter also establishes Coast Guard-specific policy on the various subjects covered by the Standards of Ethical Conduct, and makes reference to related statutes or regulations**. Questions regarding the application of the Standards of Ethical Conduct and this Manual should be directed to the appropriate Coast Guard Assistant Ethics Official**.

2.B. GENERAL PRINCIPLES.

The following general principles apply to all Coast Guard personnel, and form the basis for the standards contained in 5 C.F.R. Part 2635. Where a situation is not covered directly by the standards, you shall apply these principles to determine whether your conduct is proper.

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

2. You shall not hold financial interests that conflict with the conscientious performance of duty.

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

4. You shall not, except as permitted by subpart B of 5 CFR Part 2635, 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 Coast Guard, or whose interests may be substantially affected by the performance or nonperformance of the your duties.

5. You shall put forth honest effort in the performance of your duties.

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

7. You shall not use public office for private gain.

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

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

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

11. You shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

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

13. You 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. You shall endeavor to avoid any actions creating the appearance that you are violating the law or the ethical standards set forth in 5 C.F.R. Part 2635. Whether particular circumstances create an appearance that the law or those standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

2.C. GIFTS TO INDIVIDUALS FROM OUTSIDE SOURCES.

5 C.F.R. Part 2635, Subpart B contains standards on gifts to individuals from outside sources. The rules governing the acceptance of gifts offered to the Coast Guard are found in the Financial Resource Management Manual, COMDTINST M7100.3(series).

2.C.1. What is the Basic Rule?

As a general rule, you cannot solicit or accept a gift that is given to you because of your official position, or that is given to you by a prohibited source.

5 C.F.R. § 2635.202.

2.C.2. What is a Gift?

As a general rule, a gift is anything that has monetary value. A gift can be tangible or intangible. For example, an automobile or forgiveness of debt owed on a car can each be a gift. Free hotel lodging can be a gift.

5 C.F.R. § 2635.203(b)

2.C.3. What is Not Considered to be a Gift?

A gift does not includes items such as publicly available discounts and prizes, commercial loans, food not part of a meal such as coffee and donuts, and greeting cards or other items with little intrinsic value, such as plaques, certificates and trophies. It also doesn't include anything paid for by the Government, accepted by the Government in accordance with a statute, secured by the Government under a Government contract, or anything for which you have paid market value.

5 C.F.R. § 2635.203(b)

2.C.4. When is a Gift Deemed to be Given Because of My Official Position?

A gift is given to you because of your official position if it is from a person other than a Federal employee and would not have been given to you if you had not held the status, authority or duties associated with your Federal position.

5 C.F.R. § 2635.203(e)

2.C.5. What is a Prohibited Source?

A prohibited source is defined as any person or entity that is seeking official action by the Coast Guard; does or seeks to do business with the Coast Guard; conducts activities regulated by the Coast Guard; or has interests that may be substantially affected by the performance or nonperformance of your official duties. An organization is a prohibited source if a majority of its members would individually be considered a prohibited source.

5 C.F.R. § 2635.203(d)

2.C.6. What are the Exceptions to the General Rule?

There are exceptions that permit you to accept:

a. Unsolicited gifts with a market value of $20 or less per occasion, aggregating no more than $50 in a calendar year from any one source (this exception does not permit gifts of cash or investment interests);

b. Gifts when clearly motivated by a family relationship or personal friendship;

c. Commercial discounts and similar benefits offered to groups in which membership is not related to Government employment or, if membership is related to Government employment, where the same offer is broadly available to the public through similar groups, and certain benefits offered by professional associations or by persons who are not prohibited sources;

d. Certain awards and honorary degrees;

e. Gifts resulting from the outside business activities of you or your spouse;

f. "Free attendance" (but not transportation or lodging) at a "widely attended gathering" or speaking engagement where the agency has determined its interest in the event;

g. Food, refreshments, and entertainment at certain social events where the invitation is not from a prohibited source, and no one is charged a fee to attend the event;

h. Certain gifts of food and entertainment in foreign areas; and

i. Gifts accepted by the employee under a specific statutory authority (such as 5 U.S.C. § 7342, which authorizes the acceptance of gifts from foreign governments, under certain circumstances).

See a detailed discussion of the exceptions, with examples, in 5 C.F.R. § 2635.204.

Keep in mind that even though you may be able to accept a gift under one of the exceptions, you are never required to accept a personal gift, and it is often prudent to decline a gift that is offered by a prohibited source or is offered to you because of your official position.

2.C.7. What is the Widely Attended Gathering Exception?

This is a commonly used exception that permits you to accept "free attendance" at an event if all of the following criteria are met:

a. It is expected that <u>a large number of persons</u> will attend the event.

(1) Spouses and guests *may* be counted in determining whether a large number of persons is expected to attend.

(2) The rules don't specify how many people would be considered a "large" number of persons. As a rule of thumb, 20 or more individuals is considered a "large" number of persons.

b. It is expected that persons with a <u>diversity of views or interests</u> will be present at the event. This requirement can be satisfied:

(1) If the event is open to members from throughout the interested industry or profession, OR

(2) If those in attendance represent a range of persons interested in a given matter, OR

(3) If there is *otherwise* a diversity of views or interests present.

c. Your attendance is in the interest of the Coast Guard because it will further Coast Guard programs or operations. Examples include promoting community relations, recruiting, and providing an opportunity for the exchange of views and information between leaders within the Coast Guard and leaders within the maritime industry or profession. Existence of a Coast Guard interest shall be determined by your Assistant Ethics Official.

d. The cost of your attendance at the event (and that for your spouse/guest) will be paid for:

(1) By the sponsor of the event, OR

(2) By someone other than the sponsor (for example, by a contractor where the event is sponsored by an association), if more than 100 people are expected to attend the event, and the gift of free attendance has a market value of $260 or less (or $130 or less per person if your spouse/guest will also receive free attendance). Spouses and guests *may* be counted in determining whether 100 people are expected to attend.

e. (If Applicable): If your official duties can substantially affect the interests of the person or company who is paying for your attendance, (or the interests of a **majority** of the members of an **association** that is paying for your attendance), then you may not accept free attendance unless there is a written finding by your Assistant Ethics Official that the Coast Guard's interest in your participation outweighs the concern that the gift of free attendance may (or may appear to) improperly influence you in the performance of your official duties. Enclosure (2) is a template that Assistant Ethics Officials may follow for this written finding.

See a complete discussion of the rule with examples in 5 C.F.R. § 2635.204(g).

2.C.8. What if the Invitation Permits Me to Bring a Guest?

Under the widely attended gathering and speaking engagement exception, you may accept free attendance for your spouse or guest if: (1) others in attendance at the event will generally be accompanied by a spouse or guest, and (2) the invitation to the spouse/guest is from the same person who invited you.

2.C.9. Does it Matter if the Widely Attended Gathering or Speaking Engagement is a Social Event or a Fundraiser?

The exception applies to social events and fundraisers, as well as non-fundraising business events. However, you must be careful to adhere to the rules governing fundraising in an official capacity, which are discussed in section I.4 of this chapter.

2.C.10. Under the Widely Attended Gathering and Speaking Engagement Exception, I Can Accept "Free Attendance" at an Event. What Does that Include?

Free attendance includes: (1) food, refreshments, entertainment, instruction and materials furnished to all attendees as an integral part of the event, and (2) the waiver of all or part of a conference or other fee.

Free attendance does not include: (1) transportation expenses, (2) lodging, (3) entertainment collateral to the event, or (4) meals taken other than in a group setting with all other attendees.

5 C.F.R. § 2635.204(g)(4)

2.C.11. What if the Sponsor has Offered to Pay for My Official Transportation Expenses and Lodging?

You cannot accept these types of gifts. If a source outside the Government offers to pay your transportation and lodging expenses for a meeting or similar function, the Coast Guard can accept the offer under the authority of 31 U.S.C. § 1353 and 41 C.F.R. Part 304-1. If the event does not qualify as a meeting or similar function, the Coast Guard can accept the travel gift under its general gift acceptance authority, 49 U.S.C. § 326. Gifts accepted under these authorities are considered gifts to the Coast Guard, not to the individual. Procedures for accepting gifts of transportation expenses are found in Chapter 5-W of the Financial Resource Management Manual, COMDTINST M7100.3(series).

2.C.12. If I receive a prohibited gift, what am I expected to do?

When you can't accept a gift, you must ordinarily return it, or pay the donor its market value. If it is not practical to return a gift because it is perishable (such as a fruit basket or flowers) you should seek your supervisor's permission to share it within the office, pass it to an appropriate charity, or discard it.

5 C.F.R. § 2635.205

2.D. GIFTS BETWEEN EMPLOYEES.

5 C.F.R. Part 2635, Subpart C contains standards concerning gifts between employees.

2.D.1. What is the basic rule?

You may not give, solicit a contribution for, or contribute a donation for, a gift to an official superior. Also, you cannot accept a gift from a lower-paid employee, unless you and the donor are personal friends who are not in a superior-subordinate relationship.

5 C.F.R. § 2635.302.

2.D.2. What is a gift?

Use the same definition found in paragraph 2.C.2 of this chapter on "gifts from outside sources."

5 C.F.R. § 2635.203(b)

2.D.3. Are there any exceptions?

Yes, there are two classes of exceptions.

First, gifts may be given to an official superior (and accepted by that superior) on an occasional basis, including any occasion on which gifts are traditionally given or exchanged (e.g., birthday, holiday, Bosses Day). Specifically:

a. Items (not cash) with a total value of $10 or less per occasion;

b. Food and refreshments to be shared in the office amongst several individuals;

c. Personal hospitality provided at a residence;

d. Appropriate items given in connection with the receipt of personal hospitality (i.e., a housewarming gift);

e. Leave transferred under applicable regulations (other than to an immediate supervisor).

Second, gifts may be given to an official superior, or accepted from a subordinate or other employee receiving less pay, in recognition of infrequently occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer. These gifts must be appropriate to the occasion. The aggregate value of gifts per occasion must be reasonable; however, there is no dollar limit placed on the aggregate value.

5 C.F.R. § 2635.304(b)

2.D.4. Can I solicit contributions for a gift that may be given under one of the above exceptions?

The rules allow you to solicit voluntary (no pressure or coercion) contributions of "nominal" amounts from fellow Coast Guard personnel for a special, infrequent occasion gift (marriage, birth of a child, illness, retirement, transfer, resignation), or for shared food and refreshments. As a rule of thumb, Coast Guard personnel soliciting voluntary contributions for a gift should generally not ask for more than $10.00 per person, though they may accept an unsolicited contribution exceeding that amount. Members of the donor pool are free to give more or less than the requested amount, or may give nothing at all.

2.E. CONFLICTING FINANCIAL INTERESTS.

5 C.F.R. Part 2635, Subpart D contains the standards concerning conflicting financial interests.

2.E.1. What is the basic rule?

If you are an Officer or a civilian employee, you are 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 your knowledge, you or any person or entity whose interests are imputed to you by this statute has a financial interest, if the particular matter will have direct and predictable effect on that interest.

5 C.F.R. § 2635.402

2.E.2. Whose financial interests are imputed to me?

The financial interests of the following persons will disqualify you to the same extent as if they were your own interests:

a. Your spouse

b. Your minor child

c. Your general partner

d. Any organization or entity for which you serve as an officer, director, trustee, general partner or employee.

e. A person or entity with whom you are negotiating for or have an arrangement concerning future employment.

2.E.3. Are all types of participation prohibited?

The statute specifically prohibits only personal and substantial participation.

a. Personal participation is direct participation by you.

b. Substantial participation occurs when your involvement is of significance to the matter. It requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue.

5 C.F.R. § 2635.402(b)(4)

2.E.4. What about Enlisted Personnel? Are they subject to the law?

The criminal statute only applies to officers and civilian employees. However, it is just as important for enlisted members to avoid official involvement in matters that could affect their financial interest, or the financial interest of their family or outside business associates. Therefore, the following prohibition, based upon the language in 18 U.S.C. § 208(a), applies to all enlisted members subject to this Manual, and is a general order within the meaning of Article 92, UCMJ:

Except as approved by a Coast Guard ethics official, an enlisted member shall not participate personally and substantially as part of his official duties, in any particular matter in which he, his spouse, minor child, partner, entity in which he is serving as officer, director, trustee, partner, or employee, or any entity with which he is negotiating or has an arrangement concerning prospective employment, has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

2.E.5. What do I do if I think I have a conflict of interest?

If your participation in a matter will have a direct and predictable effect on your financial interest, or that of another whose interests are imputed to you, you must seek to disqualify (recuse) yourself from participation in the matter, unless a conflict of interest waiver is given or an exemption applies. There is no absolute right of recusal. If the conflict caused by your financial interest materially affects your ability to fulfill your official duties, and no exemption applies, you may need to divest yourself of the financial interest, or seek a waiver, as discussed further below.

2.E.6. Do I need to notify anyone?

If you need to disqualify yourself from participation in a particular matter, you should notify the person who is responsible for your assignment to that matter. You are not required to make your notification in writing, unless you are asked to do so by your ethics official or the person responsible for your assignment. If you are responsible for your own assignment, you must take whatever steps are necessary to make sure that you don't participate in the matter. For instance, you could let your coworkers know about the disqualification, so that they can help shield you from participation.

5 C.F.R. §§ 2635.402(c)(1) & (2)

2.E.7. What waivers or exemptions are available?

You can see 5 C.F.R. § 2635.402(d) for more information on exemptions and waivers. However, you should consult with your ethics advisor for specific advice in this area.

2.E.8. Who can grant a waiver to the general prohibition?

Coast Guard Assistant Ethics Officials are hereby authorized to grant waivers, in accordance with the provisions of 5 C.F.R. § 2635.402(d), and subpart C of 5 C.F.R. Part 2640.

2.E.9. How are conflicting financial interests discovered?

Certain Coast Guard personnel are required to file either Public or Confidential Financial Disclosure Reports. These reports are one method used to identify actual and potential conflicts of interest.

See Financial Disclosure Reports, COMDTINST M5370.9(series), and 5 C.F.R. § 2634.

2.E.10. Are there any types of financial interests that I, as a Coast Guard employee, am prohibited from owning, regardless of my official responsibilities within the Coast Guard?

The Department of Transportation has not prohibited or restricted the acquisition or holding of any financial interests or class of financial interests by Coast Guard personnel.

2.E.11. Do I have a conflicting financial interest if I serve as a director or officer (a part of management) of a non-Federal entity in my official capacity?

A conflict of interest can exist when you owe a fiduciary duty to a non-Federal entity that you are involved with in an official capacity. Therefore, you are prohibited from holding any management position (officer, director, trustee, etc.) with a non-Federal organization in your official capacity unless specifically authorized by statute.

Personnel Manual, COMDTINST M1000.6(series), Article 16.E.

2.E.12. 10 U.S.C. § 1033 and 10 U.S.C. § 1589 authorize participation in an official capacity in the management of certain non-Federal entities. What is the authorization process that must be followed?

Commandant (G-W), with the concurrence of the Chief Counsel, may authorize, on a case-by-case basis, a Coast Guard member or civilian employee to serve in his or her official capacity without compensation as a director, officer, or trustee, or otherwise to

participate in the management of a non-federal entity designated by Commandant (G-W) in accordance with the procedure discussed below. Any such authorization shall be in writing, and shall identify the particular member or employee to participate, specify the capacity in which that member or employee shall participate, and identify the non-federal entity.

2.E.13. What entities are eligible for designation under 10 U.S.C. § 1033 and 10 U.S.C. § 1589?

a. Coast Guard Mutual Assistance, and other military welfare societies.

b. Commandant (G-W) may also designate, no more frequently than semiannually, non-Federal entities that are not operated for profit and are any of the following:

(1) An entity that regulates and supports the athletic programs of the service academies (including athletic conferences).

(2) An entity that regulates international athletic competitions.

(3) An entity that accredits service academies and other schools of the armed forces (including regional accrediting agencies).

(4) An entity that (i) regulates the performance, standards, and policies of military health care (including health care associations and professional societies), and (ii) has designated the position or capacity in that entity in which a member of the Armed Forces may serve if authorized as discussed above.

c. Requests for designation of an entity shall be submitted in writing to Commandant (G-W). Commandant (G-W) shall ensure that designations of entities and employee authorizations are published in the Federal Register.

2.E.14. What may I do if I receive authorization to participate in the management of one of these entities in my official capacity?

You may only provide oversight and advice to, and coordination with, the designated entity. This authorization may not extend to participation in the day-to-day operations of the entity. Participation in the management of the non-Federal entity may not constitute your primary duty.

2.E.15. What if there isn't statutory authority permitting participation in the management of a non-Federal entity, but the Coast Guard has an interest in the non-Federal entity's activities?

You are permitted to maintain a relationship with such non-Federal entities in a **non-voting, official liaison** capacity, when it is determined that there is a significant and continuing Coast Guard interest to be served by such representation. However, you

may not be designated as an "ex officio" board member absent specific statutory authority. As an official liaison, you serve as a part of your official duties, acting as an intermediary between the Coast Guard and the non-Federal organization, and informing the organization of Coast Guard views and policies on subjects of interest to the organization. As a liaison, you may not be involved in matters of management or control of the non-Federal entity.

You can also serve on the board of a standard-setting organization, where such participation is in the public interest and is compatible with Coast Guard and Department of Transportation missions and authorities.

Public Law 104-113, § 12(d)(1) & (2), 15 U.S.C. § 272 note.

2.F. IMPARTIALITY IN PERFORMING OFFICIAL DUTIES.

5 C.F.R. Part 2635, Subpart E contains two provisions intended to insure that you take appropriate steps to avoid an appearance of loss of impartiality in the performance of your official duties.

2.F.1. What are the basic rules?

a. IF you know that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of your household,

b. OR you know that a person with whom you have a covered relationship is a party to such matter (or represents a party in such a matter),

c. AND you think that a reasonable person with knowledge of the relevant facts would question your impartiality in the matter,

d. THEN you shouldn't participate in the matter unless you've received authorization from your ethics official.

5 C.F.R. § 2635.502

e. Also, you are generally disqualified for a two year period from participating in a matter in which a former employer is a party (or represents a party) if you received an extraordinary payment (greater than $10,000, but not part your employer's established pay or benefits program) from your former employer prior to entering Government service.

5 C.F.R. § 2635.503

2.F.2. With whom do I have a covered relationship?

a. A person with whom you have or seek a business, contractual or other financial relationship (not including routine consumer transactions). However, if you are seeking employment, you must follow the provisions of 5 U.S.C. § 2635 subpart F, which are discussed in section 2.G of this chapter.

b. Members of your household, or any relatives with whom you have a close personal relationship.

c. Anyone for whom your spouse, parent or dependent child is serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.

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

e. Any organization in which you are an "active" participant.

5 C.F.R. § 2635.502(b)(1)

2.F.3. If I think my impartiality might be questioned, what should I do?

You should disqualify yourself from participation in the matter, unless your ethics official has authorized you to participate in the matter, in accordance with the provisions in 5 C.F.R. § 2635.502(d).

2.G. SEEKING OTHER EMPLOYMENT.

5 C.F.R. Part 2635, Subpart F contains a disqualification requirement that applies to you if you are seeking employment with persons or entities that would typically be affected by the performance or nonperformance of your official duties.

2.G.1. What is the basic rule?

Unless you receive specific authorization, you are prohibited from participating personally and substantially, in an official capacity, in a government contract, application, claim, or other particular matter in which a company with whom you are seeking employment has a financial interest.

5 C.F.R. § 2635.604

2.G.2. When am I considered to be "seeking employment?"

The term "seeking employment" includes **negotiations** with another regarding possible employment, i.e., discussion or communications with another with the intent of reaching agreement concerning employment.

It can also include sending an unsolicited resume or contacts by or through an agent or intermediary. However, it **does not** include simply:

- Rejecting an unsolicited employment overture;
- Requesting a job application; or
- Sending an unsolicited resume or other employment proposal to a person affected by performance of the employee's duties only as a member of an industry or other discrete class.

5 C.F.R. § 2635.603(b)(1)

2.G.3. When am I no longer considered to be "seeking employment?"

Having once begun, you generally continue to be seeking employment until you or the prospective employer rejects the possibility of employment and all discussions end.

However, you are no longer seeking employment with the recipient of an unsolicited resume or other employment proposal after two months have passed with no indication of interest in employment discussions from the prospective employer.

5 C.F.R. § 2635.603(b)(2)

2.G.4. I'm about to start seeking employment. Can I just stop work on the project involving my prospective employer to avoid a problem?

You can't withdraw from working on an assignment without the approval of your supervisor. Therefore, before you begin to seek employment, and the circumstances are such that you will need to seek to disqualify yourself from a particular matter involving that potential employer, you should notify your supervisor of your intentions, so that appropriate adjustments in your work assignments can be made, or a waiver may be issued.

If the Coast Guard determines that your action in seeking employment with a particular person or entity will require your disqualification from matters so central or critical to the performance of your official duties that your ability to perform the duties of your position would be materially impaired, the Coast Guard may allow you to take annual leave, or leave without pay (for civilian employees), while seeking employment, or may take other appropriate administrative action.

5 C.F.R.§ 2635.604(d)

2.G.5. I'm already seeking employment. What do I do?

If you become aware of the need to disqualify yourself from participation in a particular matter to which you have been assigned, you should notify the person responsible for your assignment. If you are responsible for your own assignment you should take whatever steps are necessary to ensure that you don't participate in the matter from which you are disqualified. You don't need to file a written disqualification statement unless specifically asked to do so by your ethics official or by the person responsible for your assignment.

2.G.6. Are there any solutions other than disqualification?

If your conduct in seeking employment amounts to "negotiations" as that term is used in 18 U.S.C. § 208, you can only participate in the matter affecting your prospective employer if you are granted an individual waiver. This is the waiver process discussed in section 2.E of this chapter (conflicting financial interests).

If your conduct in seeking employment does not amount to "negotiations," but a reasonable person would be likely to question your impartiality, you may only participate in the matter affecting your prospective employer if your participation is authorized by your Assistant Ethics Official. This is the authorization process discussed in section 2.F of this chapter (impartiality in performing official duties).

5 C.F.R.§ 2635.605

2.G.7. What rules apply once I have made an arrangement with my future employer?

You are disqualified from participating personally and substantially in a particular matter that has a direct and predictable effect on the financial interests of the person or entity with whom you have an arrangement concerning future employment, unless authorized to participate in the matter by a written waiver issued by your Assistant Ethics Official.

5 C.F.R. § 2635.606

2.G.8. Are there any rules that apply once I leave the Federal Government?

Although the Standards of Conduct discussed in this chapter will no longer apply to you, there are several statutes that may affect your post-Government service employment. Therefore, it is very important that you seek guidance from your Assistant Ethics Official early on in the job-seeking process, to avoid any inadvertent violations. The primary rules are briefly summarized below:

<u>Representation Ban</u> If you are a former officer or civilian employee, you are prohibited from trying to influence (in person or in writing) any Federal department, agency, or court on behalf of anyone else (including a new employer) concerning certain kinds of matters –like contracts, grants, or lawsuits – if you were involved with those same matters while you worked for the Federal Government. The length of the restriction

depends upon how you were involved in the matter. If you were personally and substantially involved in the matter, then the restriction is permanent. If you merely supervised others who did the actual work, and such supervision took place during your last year of Federal service, then there is a two year restriction, starting from the date you leave Government service.

18 U.S.C. § 207(a)

Senior Employee Restrictions If you are a flag officer or an SES at level ES-5 or above, you are prohibited for one year from the date you leave your position from trying to influence your former agency on behalf of anyone else, concerning any official matter—even if you were never involved with the matter as a Government employee. You are also prohibited for one year from representing a foreign entity before the Federal Government, or assisting a foreign entity in its attempt to influence a decision by any part of the Federal Government.

18 U.S.C. § 207(c) & (f)

The Procurement Integrity Act (PIA) You may not accept compensation from a contractor if, while working for the Government, you had certain responsibilities or took certain actions relating to a large procurement involving that contractor. This prohibition runs for one year after you were last involved on behalf of the Government in the specified activity. Involvement in the following capacities in a contract in excess of $10,000,000 invokes this prohibition: service as source selection authority, member of the source selection evaluation board, or chief of a financial or technical evaluation team; service as a program manager, deputy program manager, or administrative contracting officer. In addition, the prohibition applies to former officials who personally make: a decision to award a contract, subcontract, modification of a contract or subcontract, or a task or delivery order in excess of $10,000,000; a decision to establish overhead or other rates applicable to a contract or contracts that are valued in excess of $10,000,000; a decision to approve the issuance of a contract payment or payments in excess of $10,000,000; or, a decision to pay or settle a claim in excess of $10,000,000.

41 U.S.C. § 423(d)

Employment by Foreign Governments The U. S. Constitution restricts the extent to which retired military officers may accept any office, title, or employment from any foreign government without the consent of Congress. By statute, Congress has consented to the employment by a foreign government of retired members of the uniformed services. However, all retired members of the uniformed services who desire to accept employment with or compensation from a foreign government must obtain the approval of the Secretary of their department and the Secretary of State. Commandant (G-WPM-2) processes these requests from retired Coast Guard personnel.

2.H. MISUSE OF POSITION.

5 C.F.R. Part 2635, Subpart G sets forth standards relating to: (1) Use of public office for private gain; (2) Use of nonpublic information; (3) Use of Government property; and (4) Use of official time.

2.H.1. USE OF PUBLIC OFFICE FOR PRIVATE GAIN.

2.H.1.a. What is the basic rule?

You cannot use your public office 1) for your own private gain, 2) for the endorsement of any product, service or enterprise, or 3) for the private gain of friends, relatives, or persons with whom you are affiliated in a nongovernmental capacity, including nonprofit organizations of which you are an officer or member, and prospective employers or business associates.

5 C.F.R.§ 2635.702

2.H.1.b. Can't I use my official position to help out a friend having trouble with the Coast Guard?

No. You can't use (or permit someone else to use) your official position, title, or authority to coerce or induce someone else (including your subordinates) to provide a benefit to yourself, or your friends, family, or associates.

5 C.F.R.§ 2635.702(a)

2.H.1.c. Can I lend my official support to an outside cause?

Generally, you can't use or permit the use of your official position, title or authority in a way that could imply that the Coast Guard or the Government sanctions or endorses the personal activities of another.

5 C.F.R.§ 2635.702(b)

2.H.1.d. Can I sign a letter of recommendation using my official title and letterhead?

Only if you receive a request for an employment recommendation or character reference that is based upon your personal knowledge of the ability or character of someone you have dealt with in the course of Federal employment, or that you are recommending for Federal employment.

5 C.F.R.§ 2635.702(b)

2.H.1.e. Is it ever appropriate to use my official position to endorse a product, service or enterprise?

Only if you are doing so 1) in furtherance of statutory authority to promote products, services or enterprises; or 2) as a result of documentation of compliance with Coast Guard requirements or standards or 3) as the result of recognition for achievement given under a Coast Guard program of recognition for accomplishment in support of the Coast Guard's mission.

5 C.F.R.§ 2635.702(c)

2.H.1.f. But what about groups such as the military associations, which provide support to the Coast Guard and its members?

Military Associations include such groups as the Coast Guard Officers Association, the Retired Officer Association, The Reserve Officer's Association, the National Naval Officers Association, and other similar organizations that exist to promote the development of military professionals. Many of these organizations have a long history of supporting the Coast Guard and the other military services. However, the same general rules apply. Neither you nor the Coast Guard may endorse or sanction these private organizations or their events. Generally, Coast Guard personnel may use official channels (e.g. letter, fliers, email) to notify other personnel of events of common interest that are sponsored by non-Federal organizations. However, you must avoid using wording that tends to imply Coast Guard endorsement of the entity or event. Also, you must avoid using your official position to urge others to join these organizations.

2.H.2. USE OF NONPUBLIC INFORMATION.

2.H.2.a. What is the basic rule?

You cannot engage in a financial transaction using nonpublic information, or allow the improper use of nonpublic information to further your own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.

5 C.F.R.§ 2635.703(a)

2.H.2.b. What is nonpublic information?

Nonpublic information is information that you gain through your Federal employment and that you know or reasonably should know has not been made available to the general public. This includes information that: (1) is routinely exempt from disclosure under the Freedom of Information Act; (2) is classified; or (3) has not actually been disseminated to the general public and is not authorized to be made available to the public on request.

5 C.F.R.§ 2635.703(b)

2.H.3. USE OF GOVERNMENT PROPERTY.

2.H.3.a. What is the basic rule?

You have a duty to protect and conserve Government property and you shall not use such property, or allow its use, for other than authorized purposes.

5 C.F.R.§ 2635.704(a)

2.H.3.b. What is Government property?

Government property includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest. This includes computers, internet access, office supplies, the Government mails, telephones, fax machines, printing and reproduction facilities, Government records, Government vehicles, Government vessels, and Government aircraft. It also includes any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel.

5 C.F.R. § 2635.704(b)(1).

2.H.3.c. What are authorized purposes?

Those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation.

5 C.F.R.§ 2635.704(b)(2)

2.H.3.d. Is personal use of Government property ever "authorized?"

The Coast Guard's instruction entitled "Personal Use of Government Office Equipment," COMDTINST 5375.1(series) provides policy on limited personal use of government office equipment by Coast Guard personnel. Under that instruction, certain limited personal use of government office equipment by Coast Guard personnel is considered to be an "authorized use" of Government property. Exceeding the authorized personal use of government office equipment is prohibited. Personal use of all other Government property is prohibited, unless specifically authorized by law or regulation.

2.H.3.e. Are any organizations authorized to use Government property as a raffle or fundraiser "prize?"

No organization is permitted to offer access to or use of Coast Guard facilities or equipment as a prize for fundraising or other purposes. For example, it would be impermissible for a unit's MWR committee or for the local Spouses Association to offer up a ride on a Coast Guard small boat or aircraft as a raffle prize.

2.H.3.f. Are promotional items received in connection with official travel (such as frequent flyer mileage credits) "Government Property"?

No. If you receive a promotional item (including frequent flyer miles, upgrade, or access to carrier clubs or facilities) as a result of using travel or transportation services obtained at Federal Government expense or accepted by the Coast Guard under section 1353 of title 31, United States Code, you may retain the promotional item for personal use if the promotional item is obtained under the same terms as those offered to the general public and at no additional cost to the Federal Government.

National Defense Authorization Act of FY 2002, P.L. 107-107, section 1116

2.H.3.g. When is it appropriate to use government resources and personnel to support community events?

The Public Affairs Manual, COMDTINST M5728.2(series), chapter 3 provides general policy on conditions and limits to consider before committing a unit, personnel, or equipment to participation in public events and other activities in the civil domain.

2.H.4. USE OF OFFICIAL TIME.

2.H.4.a. What are the basic rules?

You shall use official time in an honest effort to perform official duties, unless law or regulation authorizes you to use such time for other purposes.

5 C.F.R.§ 2635.705(a)

You shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

5 C.F.R.§ 2635.705(b)

2.I. OUTSIDE ACTIVITIES.

5 C.F.R. Part 2635, Subpart H contains provisions relating to outside employment, outside activities and personal financial obligations of employees.

2.I.1. CONFLICTING OUTSIDE EMPLOYMENT AND ACTIVITIES.

2.I.1.a. What is the basic rule?

You shall not engage in outside employment or any other outside activity that conflicts with your official duties.

5 C.F.R.§ 2635.802

2.I.1.b. When does an activity conflict with my official duties?

When:

(1) It is prohibited by statute or by an agency supplemental regulation; or

(2) Under the standards discussed in sections 2.E and 2.F of this chapter, it would require your disqualification from matters so central or critical to the performance of your official duties that your ability to perform the duties of your position would be materially impaired.

5 C.F.R.§§ 2635.802(a) & (b)

2.I.1.c. Does the Coast Guard have any supplemental regulations that prohibit certain types of employment?

There are not any supplemental regulations that apply to all civilian personnel. Administrative Law Judges are bound by the Code of Judicial Conduct, which may serve to limit their outside employment & activities. The Personnel Manual (PERSMAN), COMDTINST M1000.6(series), chapter 16.E, governs off-duty employment of active duty Coast Guard personnel. The PERSMAN permits personnel to engage in legitimate and ethical enterprise or employment during their off-duty hours, but prohibits certain types of off-duty employment or enterprises. It also requires all Coast Guard active duty personnel to notify their commanding officer in writing of their off-duty employment activities and obligations.

2.I.1.d. Are there other statutes or regulations that I should be aware of?

Yes there are. For instance:

(1) Compensation Related to Matters Pending Government Decision.

Officers and civilian employees are prohibited from seeking, accepting, or agreeing to receive or accept compensation for any representational services, rendered personally or by another, in relation to any particular matter in which the United States is a party or has a direct and substantial interest, before an department, agency, or other specified entity.

18 U.S.C.§ 203

(2) Representation of Others.

Officers and civilian employees are prohibited from personally acting as an agent or attorney for anyone else before a department, agency, or court in connection with any covered matter (judicial proceeding, application, contract, claim, investigation, charge, or other particular matter) in which the United States is a party or has a direct and substantial interest or from prosecuting any claim against the Federal Government. It doesn't matter whether or not they are employed for compensation.

They are also prohibited from receiving any gratuity or interest in such claim for assistance in prosecuting such a claim.

There are several exceptions to this law. For instance, you may, with certain limitations, represent without compensation any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings; or any cooperative, voluntary, professional, recreational, or similar non-profit organization or group if a majority of the organization's or group's members are current officers or employees of the United States, or their spouses or dependent children.

18 U.S.C. § 205

(3) Compensation From Other Sources.

Officers and civilian employees are prohibited from receiving pay or allowances or supplements of pay or benefits from any source other than the United States for the performance of official service or duties unless specifically authorized by law. Note that a task or job that is performed outside normal working hours does not necessarily allow acceptance of payment for performing it. If the undertaking is part of one's official duties, pay for its performance may not be accepted from any source other than the United States regardless of when it was performed.

18 U.S.C. § 209

(4) Dual employment by Federal government.

You are prohibited from receiving extra pay from the Federal Government for the performance of official duties. Subject to certain limitations, civilian Coast Guard employees may hold two distinctly different Federal Government positions and receive the salaries of both if the duties of each are performed. Absent specific authority, however, military members may not do so because any arrangement by a military member for rendering services to the Federal Government in another position is incompatible with the military member's actual or potential military duties.

5 U.S.C. § 5536

2.I.2. SERVICE AS AN EXPERT WITNESS.

2.I.2.a. What is the basic rule?

You shall not serve, other than on behalf of the United States, as an expert witness 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 Coast Guard has authorized your participation. It doesn't matter whether you are receiving compensation or not.

5 C.F.R. § 2635.805

2.I.2.b. What do I do if I've been subpoenaed?

If you have been asked or subpoenaed to serve as a witness, or to produce documents, in any legal proceeding, you are required to contact your servicing legal office as soon as possible, unless you are subpoenaed to testify about facts or events that are in no way related to your official duties or Coast Guard missions. Former Coast Guard employees who are subpoenaed for information or testimony relating to their past employment with the Coast Guard must also notify and coordinate with the local Coast Guard legal office.

49 C.F.R. Part 9

2.I.3. TEACHING, SPEAKING AND WRITING.

2.I.3.a. What is the basic rule regarding compensation for teaching, speaking or writing?

You cannot accept compensation from any source other than the Government for teaching, speaking or writing that relates to your official duties.

5 C.F.R. § 2635.807

2.I.3.b. When does teaching, speaking or writing relates to my official duties?

(1) The activity is part of your official duties;

(2) You are invited to teach, speak or write primarily because of your official position and not because of your expertise on the subject matter;

(3) The compensation is to be paid by a party with interests that could be affected substantially by the performance of the your official duties;

(4) The information conveyed draws upon nonpublic information; or

(5) The subject of the activity deals significantly with a matter to which you have been assigned during the past year; or involves any ongoing or announced policy, program or operation of the Coast Guard.

5 C.F.R. § 2635.807(2)(i)

2.I.3.c. Are there any exceptions?

You may accept compensation for teaching a course that relates to your official duties if the course requires multiple presentations and is offered as part of the regularly established curriculum of an institution of higher learning; an elementary school; a secondary school; or is a program of education or training sponsored and funded by the Federal Government or by a State or local government.

5 C.F.R. § 2635.807(a)(3)

2.I.4. FUNDRAISING ACTIVITIES.

2.I.4.a. What is the basic rule on fundraising in an official capacity?

You may participate in fundraising in an official capacity if, in accordance with a statute, Executive order, regulation or otherwise as determined by the Coast Guard, you are authorized to engage in the fundraising activity as part of your official duties. When authorized to participate in an official capacity, you may use your official title, position and authority.

5 C.F.R. § 2635.808(b)

2.I.4.b. When may Coast Guard personnel fundraise in an official capacity?

In accordance with the applicable statutes, regulations, and Executive orders, you may fundraise in an official capacity for:

(1) The Combined Federal Campaign (CFC);

(2) Emergency and disaster appeals approved by the Office of Personnel Management;

(3) Coast Guard Mutual Assistance and other military relief societies; and

(4) As approved by the Commandant or the Secretary of Transportation.

2.I.4.c. What is considered "fundraising" for purposes of these rules?

Fundraising means the raising of funds for a nonprofit organization through the solicitation of funds or sale of items, or participation in the conduct of a fundraising event (an event where the cost of attendance or participation may be taken as a charitable tax deduction). Participation means active and visible participation in the promotion, production, or presentation of the event (e.g., honorary chairperson, sitting at the head table, standing in a reception line, name and position used in literature to promote the event).

5 C.F.R. § 2635.808(a)(1)

2.I.4.d. Does that mean I can't give a speech in my official capacity at a fundraising event that doesn't benefit one of the groups listed above?

Generally "participation" would include any public speaking during the event. However, it doesn't include the delivery of an official speech (given in your official capacity on a subject relating to your official duties), or any seating or other participation appropriate to the delivery of such a speech.

5 C.F.R. § 2635.808(a)(2)

2.I.4.e. Are there any restrictions on my ability to fundraise in a personal capacity?

There are a few restrictions to keep in mind. You may not:

(1) personally solicit funds or other support from a subordinate or from any person/entity that you know is a prohibited source;

(2) use or permit the use of your official title, position or any authority associated with your office to further the fundraising effort (though you aren't prohibited from using your military grade as a general term of address);

(3) fundraise while on duty; or

(4) wear your uniform while fundraising in a personal capacity, since that implies Coast Guard endorsement of the fundraising activity.

5 C.F.R. § 2635.808(c)

2.I.4.f. Does that mean I can't engage in personal fundraising anywhere onboard a Coast Guard unit?

Purely personal, unofficial volunteer efforts to support charitable fundraising outside the Federal Government workplace are not prohibited where the efforts do not imply Coast Guard endorsement. Unit Commanding Officers may authorize Coast Guard personnel or their dependents to engage in charitable fundraising activities in designated public areas on Coast Guard units. Public areas may be any area of a command that is ordinarily open to members of the public, including but not limited to roadways, athletic fields, lobbies, courtyards, auditoriums, and entrances to Coast Guard Exchange System and Morale, Wellbeing, & Recreation (MWR) facilities. For example, the Commanding Officer could authorize you to sell Girl Scout cookies with your daughters outside the main entrance to the Coast Guard Exchange.

2.I.4.g. What constitutes charitable fundraising?

Fundraising is charitable if a contribution (or a portion of the contribution) to the fundraiser may be deducted as a charitable deduction for federal income tax purposes. Generally, charitable deductions are allowed for organizations such as nonprofit schools and hospitals; federal, state, and local governments; Boy Scouts, Red Cross, and the like. Charitable deductions are not allowed for fraternal order, lodges or other nonprofit groups such as civic leagues, social and sport clubs, labor unions, and chambers of commerce. Groups whose purposes are to lobby for changes in the laws are also not viewed as charitable organizations.

2.I.4.h. What about fundraising activities of groups made up of Coast Guard personnel or their dependents?

The restrictions on fundraising in the Federal Workplace do not apply to organizations composed primarily of Coast Guard employees or their dependents when fundraising

among their own members for the benefit of welfare funds for their own members or their dependents. These organizations include but are not limited to the Chief Petty Officers Association, the Coast Guard Officers Association, The Coast Guard Academy Alumni Association, and the Coast Guard Spouses Club.

Solicitations by these organizations in the Federal workplace shall be conducted in accordance with the following procedures:

(1) Fundraising by these organizations within the Federal workplace may only be conducted among their own members, for the benefit of welfare funds for their own members or dependents.

(2) Coast Guard personnel shall not personally solicit funds or other support from a subordinate, or use their official position or the authority of their position to further the fundraising efforts of these organizations.

(3) Fundraising shall be conducted in a personal capacity. However, the restrictions above limiting personal solicitation to off-duty and out of uniform do not apply to these solicitations. Any fundraising during business hours should be limited to incidental amounts of time (such as responding to email inquiries, accepting donations delivered in person by a member of the organization, or holding a brief meeting during a meal or coffee break).

2.I.4.i. What about collections that don't involve money?

These fundraising rules do not apply to the collection of gifts-in-kind, such as blood donations, food, clothing, books, and toys. However, such collections are still subject to the general provisions of 5 C.F.R. Part 2635, and any other applicable regulations. Commanding Officers may permit the placement of collection boxes in public parts of the command or installation to collect food, clothing, books, toys or other items for charitable purposes. Commanding Officers may grant limited periods of administrative leave to facilitate the collection and distribution of gifts-in-kind.

CHAPTER 3 - ETHICS TRAINING

3.A. OVERVIEW.

The Coast Guard is required to maintain a program of ethics training designed to ensure that all of its personnel are aware of: the Federal conflict of interest statutes (located at Chapter 11 of Title 18 of the United States Code); the Principles of Ethical Conduct (found in section 2.B. of this Manual); the Standards of Ethical Conduct for Employees of the Executive Branch (codified at 5 CFR Part 2635, and found in Enclosure (1) of this Manual); this Manual; and how to contact Coast Guard Assistant Ethics Officials when ethics advice is needed. The Coast Guard's ethics training program consists of an initial ethics orientation for all new Coast Guard personnel, and the annual ethics briefing required for certain categories of personnel.

5 C.F.R. § 2638.703, 5 C.F.R. § 2638.704

3.B. INITIAL ETHICS ORIENTATION.

3.B.1. General Requirement.

All new Coast Guard personnel must receive an initial ethics orientation within 90 days of their entrance on duty. New personnel must be provided at least one hour of official time in which to review the material listed below. This one-hour requirement may be reduced by any amount of time the employee receives verbal ethics training in the same 90-day period.

3.B.2. Content of Initial Ethics Orientation.

All new Coast Guard personnel shall be provided access to:

a. This Manual, to review or keep;

b. The OGE Standards of Ethical Conduct, 5 C.F.R. Part 2635, (the Standards) to keep or review; or a summary of the Standards & the General Principles to keep; and

c. A list of the names, titles, office addresses, and telephone numbers of the Assistant Ethics Official and Ethics Attorney(s) for the local command.

3.B.3. Initial Ethics Orientation at Training Commands.

Notwithstanding paragraph 3.B.2, cadets, officer candidates, and other officer accessions at the CG Academy, and recruits at CG TRACEN, Cape May may receive group "ethics training," as described below in lieu of reviewing the materials listed above. These personnel shall be told how they can access the materials via their Coast Guard workstation.

3.B.4. Online Orientation Materials.

Access to the materials in paragraph 2 may be provided via electronic means. There is no need to provide a hard copy of the materials if they can be accessed by personnel via their Coast Guard workstation. The initial ethics orientation materials are currently available at:

http://cgweb.uscg.mil/legal/practice_areas/Ethics_and_Standards_of_Conduct/Training/initial_ethics_training_form.htm

Check the Commandant (G-L) intranet website if the above link has changed.

3.C. PROCEDURES FOR INITIAL ETHICS ORIENTATION.

3.C.1. Civilian Employees.

Commandant (G-WPC) shall ensure that every new civilian employee is provided access to the materials listed in section 3.B.2 above within 90 days after he or she has begun employment with the Coast Guard. This responsibility may be delegated to the local civilian personnel command staff advisors. The responsible official may provide copies of the materials, or an information sheet describing how the materials may be accessed via electronic means. Commandant (G-WPC) or his/her designee shall advise each new civilian employee that he/she has one hour of official time in which to review these materials. Each new civilian employee shall certify completion of the orientation requirement by submitting an on-line report to Commandant (G-LGL) via the ethics orientation website.

3.C.2. Special Governmental Employees.

Commandant (G-CQM) shall ensure that each new public member of a Coast Guard Advisory Committee is provided access to a copy of the materials listed above within 90 days after he or she has been appointed to a committee.

3.C.3. CG Academy Cadets/Officer Candidates.

Superintendent, CG Academy shall ensure that every cadet at the CG Academy and that every officer candidate and other officer accession receive initial ethics training within 90 days after he or she has arrived at the CG Academy. Initial ethics training may

consist of providing each cadet or officer candidate with access to a copy of the materials listed above and at least one-hour in which to review the material, or a live presentation or lecture lasting at least one hour. Cadets shall also receive ethics training within one year prior to their graduation from the CG Academy.

3.C.4. Recruits.

Commanding Officer, CG TRACEN, Cape May shall ensure that new Coast Guard enlisted recruits receive initial ethics training within 90 days after reporting to CG TRACEN, Cape May. Initial ethics training may consist of providing each new enlisted recruit with access to a copy of the materials listed above and at least one-hour in which to review the material, or a live presentation or lecture lasting at least one hour.

3.D. ANNUAL ETHICS TRAINING.

3.D.1. Overview.

Assistant Ethics Officials are responsible for providing annual ethics training for personnel requiring such training at their commands and at subordinate commands that do not have legal officers or attorney-advisors assigned. Unit commanding officers shall ensure that all personnel who are required to receive annual ethics training comply with the requirements established by the Assistant Ethics Official for their unit.

3.D.2. Personnel Required to Receive Annual Ethics Training.

Annual ethics training must be provided to the following personnel:

a. **Personnel who are required to file public financial disclosure reports (PFDRs).** This includes all Administrative Law Judges, Flag Officers, and Senior Executive Service (SES) employees.

b. **Personnel who are required to file confidential financial disclosure reports (CFDRs).** Consult the provisions of Financial Disclosure Reports, COMDTINST M5370.9 (series) or your Assistant Ethics Official for more information on who is required to file a CFDR.

c. **Contracting Officers**. The term "contracting officer" means an individual who has received a certificate of appointment, standard form 1402. The term does not include non-warranted government purchase card holders.

d. **Other Coast Guard personnel** in addition to those listed above **if** the Assistant Commandant; Area, Maintenance & Logistics Command, or District Commander; or unit commanding officer determines that it is desirable based on the duties or responsibilities of the personnel concerned.

3.D.3. Format of Annual Ethics Training.

There are two categories of personnel for purposes of determining the type of training that must be conducted: (1) PFDR filers; and (2) CFDR filers, contracting officers, and others. As described in more detail below, PFDR filers must receive verbal ethics training each year. All other personnel who are required to receive annual training must receive verbal training only once every three years. Written training materials may be used during the other two years.

3.D.4. Annual Ethics Training for PFDR Filers.

3.D.4.a. General requirement.

Each calendar year, Assistant Ethics Officials shall ensure that verbal ethics training is provided to all Coast Guard personnel at their command who are required by 5 C.F.R. Part 2634 to file public financial disclosure reports. This includes all Flag Officers, SES Employees, and Administrative Law Judges. The verbal training should be at least one hour in length.

Definition of verbal training. "Verbal" training is training that is either (1) live training presented by a "qualified instructor"; or is (2) training that is prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape. A qualified instructor is an Assistant Ethics Official or other military or civilian attorney who an Assistant Ethics Official has determined is qualified to respond to ethics questions raised during the training.

3.D.4.b. Content of Training.

The content of the verbal training may vary year to year, but the training must include, at a minimum, a review of: (1) The Principles (see chapter 2 of this Manual); (2) The OGE Standards of Ethical Conduct (5 C.F.R. § 2635); (3) Any applicable DOT supplemental standards; (4) The Federal conflict of interest statutes; and (5) The name, title, office address and telephone number of the Assistant Ethics Official available to advise the employee on ethics issues.

3.D.4.c. Availability of qualified instructor is required.

A "qualified instructor" must be available during and immediately after the training to field and answer questions. Generally, Commandant (G-LGL) will provide a qualified instructor to conduct the training at the annual Flag Conference or Administrative Law Judge Conference. When that is not possible, the Assistant Ethics Official for the PFDR filer(s) will conduct the training, or provide an instructor from his or her staff who is qualified to respond to ethics questions raised during the training. Personal presence of the qualified instructor is not required. For instance, if a PFDR filer viewing a videotape is provided with a telephone at the training site and the telephone number of a qualified instructor who is standing by during and immediately after the training to answer any questions, this would satisfy the availability requirement.

3.D.4.d. Exception to qualified instructor requirement.

As stated above, normally verbal training must be provided, and a qualified instructor must be available during and immediately after the training. However, when an Assistant Ethics Official makes a written determination (memo to file) that it would be impractical to provide verbal training with a qualified instructor available, or when the PFDR filer is a special Government employee (*e.g.* a Reserve Flag Officer), the annual training requirement may be satisfied by providing verbal training without a qualified instructor available, or by providing written training prepared by a qualified instructor.

3.D.5. Annual Ethics Training for CFDR filers, Contracting Officers, and Other Personnel.

3.D.5.a. General requirement.

Assistant Ethics Officials shall ensure that annual ethics training is provided to all CFDR filers, contracting officers, and other personnel specifically required by their commanding officer to receive this training, at the commands within their area of responsibility.

3.D.5.b. Length and presentation of training.

The training for these personnel must consist of:

(1) A minimum of one hour of official duty time for verbal training at least once every three years.

(a) Verbal training must be presented in person by a qualified instructor, or prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape;

(b) Verbal training is required in 2002, and every third year thereafter.

(c) Assistant Ethics Officials are encouraged to cooperate with each other in providing qualified instructors for verbal ethics training, in order to ensure that this training is delivered in an economical manner. Commandant (G-LGL) will coordinate the development of computer-based methods of verbal training that can be used in lieu of in-person training.

(2) An amount of official duty time determined to be sufficient to complete the written training in the years in which verbal training is not conducted.

(a) A qualified instructor must prepare the written training. The employee's initial ethics orientation may satisfy the written training requirement for the same calendar year.

(b) Commandant (G-LGL) will coordinate the distribution of written training materials to Assistant Ethics Officials for further distribution to all personnel who require the training.

3.D.5.c. Content of training.

The content of the verbal and written training may vary, but the training must include, at a minimum, a review of: (1) The Principles (see chapter 2 of this Manual); (2) The OGE Standards of Ethical Conduct (5 C.F.R. Part 2635); (3) Any agency supplemental standards; (4) The Federal conflict of interest statutes; and (5) The names, titles, and office addresses and telephone numbers of the ethics officials available to advise the employee on ethics issues.

3.D.5.d. Availability of qualified instructor is not required.

When verbal training has been prepared and presented by telecommunications, computer, audiotape, or videotape, there is no requirement that a qualified instructor be available (in contrast to the requirement for PFDR filers).

3.D.5.e. Exceptions to verbal training requirement.

Written ethics training prepared by a qualified instructor will satisfy the verbal training requirement if sufficient official duty time is provided for the training and: (1) an Assistant Ethics Official makes a written determination that verbal training would be impractical; (2) The employee is a special Government employee expected to work 60 or fewer days in a calendar year; or (3) the employee is an officer or enlisted member on active duty for 30 or fewer consecutive days.

3.E. OPTIONAL TRAINING.

1. This chapter establishes the minimum ethics training standards for Coast Guard personnel. Units may request specialized training from their Assistant Ethics Official for presentation to the unit or a portion of the unit on particular matters of concern.

2. The Unit Leadership Program developed by the Leadership Development Center contains a training module on personal ethics, and provides a framework for solving ethical dilemmas. This is distinct from the standards of ethical conduct promulgated by the Office of Government Ethics. Rather, it focuses on the broader topic of ethics in general. Completion of this training module does not satisfy the annual ethics training requirement discussed above in section 3.D.

3.F. REPORTS.

3.F.1. Ethics Training Reports.

Assistant Ethics Officials shall obtain confirmation of annual ethics training for Coast Guard personnel at commands within their area of cognizance. Generally, the Assistant Ethics Official or his or her designee will distribute ethics training information via email, and will request an email response from each trainee upon completion of the training. Alternatively, the Assistant Ethics Official may seek a consolidated email report from each unit confirming that all members requiring training at that command have completed such training. The Assistant Ethics Official shall establish the deadline by which such reports are due.

3.F.2. Assistant Ethics Official Reports.

Each Assistant Ethics Official must complete and submit the specified portions of the Office of Government Ethics Ethics Program Questionnaire to Commandant (G-LGL) no later than 10 January of each year. The training figures obtained from each command or individual are incorporated into this questionnaire. This questionnaire will be distributed each year by Commandant(G-LGL) as soon as it is available, generally in November.

TITLE 5--ADMINISTRATIVE PERSONNEL
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Note: the prohibitions and requirements in ***bold italics*** are general orders and apply to all military members without further implementation. Violations may result in prosecution under the UCMJ, as well as adverse administrative action and other adverse action authorized by the United States Code or Federal Regulations.

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TITLE 5--ADMINISTRATIVE PERSONNEL
CHAPTER XVI--OFFICE OF GOVERNMENT ETHICS
PART 2635--STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

Subpart A--General Provisions

Sec. 2635.101 Basic obligation of public service.

(a) Public service is a public trust. Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.

(b) General principles. The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

(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 subpart B of this part, 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 just 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.

Note: the prohibitions and requirements in ***bold italics*** are general orders and apply to all military members without further implementation. Violations may result in prosecution under the UCMJ, as well as adverse administrative action and other adverse action authorized by the United States Code or Federal Regulations.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. 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.

(c) Related statutes. In addition to the standards of ethical conduct set forth in this part, there are conflict of interest statutes that prohibit certain conduct. Criminal conflict of interest statutes of general applicability to all employees, 18 U.S.C. 201, 203, 205, 208, and 209, are summarized in the appropriate subparts of this part and must be taken into consideration in determining whether conduct is proper. Citations to other generally applicable statutes relating to employee conduct are set forth in subpart I and employees are further cautioned that there may be additional statutory and regulatory restrictions applicable to them generally or as employees of their specific agencies. Because an employee is considered to be on notice of the requirements of any statute, an employee should not rely upon any description or synopsis of a statutory restriction, but should refer to the statute itself and obtain the advice of an agency ethics official as needed.

Sec. 2635.102 Definitions.

The definitions listed below are used throughout this part. Additional definitions appear in the subparts or sections of subparts to which they apply. For purposes of this part:

(a) Agency means an executive agency as defined in 5 U.S.C. 105 and the Postal Service and the Postal Rate Commission. It does not include the General Accounting Office or the Government of the District of Columbia.

(b) Agency designee refers to any employee who, by agency regulation, instruction, or other issuance, has been delegated authority to make any determination, give any approval, or take any other action required or permitted by this part with respect to another employee. An agency may delegate these authorities to any number of agency designees necessary to ensure that determinations are made, approvals are given, and other actions are taken in a timely and responsible manner. Any provision that requires a determination, approval, or other action by the agency designee shall, where the conduct in issue is that of the agency head, be deemed to require that such determination, approval or action be made or taken by the agency head in consultation with the designated agency ethics official.

(c) Agency ethics official refers to the designated agency ethics official or to the alternate designated agency ethics official, referred to in Sec. 2638.202(b) of this chapter, and to any deputy ethics official, described in Sec. 2638.204 of this chapter, who has been delegated authority to assist in carrying out the responsibilities of the designated agency ethics official.

(d) Agency programs or operations refers to any program or function carried out or performed by an agency, whether pursuant to statute, Executive order, or regulation.

(e) Corrective action includes any action necessary to remedy a past violation or prevent a continuing violation of this part, including but not limited to restitution, change of assignment, disqualification, divestiture, termination of an activity, waiver, the creation of a qualified diversified or blind trust, or counseling.

(f) Designated agency ethics official refers to the official designated under Sec. 2638.201 of this chapter.

(g) Disciplinary action includes those disciplinary actions referred to in Office of Personnel Management regulations and instructions implementing provisions of title 5 of the United States Code or provided for in comparable provisions applicable to employees not subject to title 5, including but not limited to reprimand, suspension, demotion, and removal. In the case of a military officer, comparable provisions may include those in the Uniform Code of Military Justice.

(h) Employee means any officer or employee of an agency, including a special Government employee. It includes officers but not enlisted members of the uniformed services. For purposes other than subparts B and C of this part, it does not include the President or Vice President. Status as an employee is unaffected by pay or

leave status or, in the case of a special Government employee, by the fact that the individual does not perform official duties on a given day.

(i) Head of an agency means, in the case of an agency headed by more than one person, the chair or comparable member of such agency.

(j) He, his, and him include she, hers and her.

(k) Person means an individual, corporation and subsidiaries it controls, company, association, firm, partnership, society, joint stock company, or any other organization or institution, including any officer, employee, or agent of such person or entity. For purposes of this part, a corporation will be deemed to control a subsidiary if it owns 50 percent or more of the subsidiary's voting securities. The term is all-inclusive and applies to commercial ventures and nonprofit organizations as well as to foreign, State, and local governments, including the Government of the District of Columbia. It does not include any agency or other entity of the Federal Government or any officer or employee thereof when acting in his official capacity on behalf of that agency or entity.

(l) Special Government employee means those executive branch officers or employees specified in 18 U.S.C. 202(a). A special Government employee is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period.

(m) Supplemental agency regulation means a regulation issued pursuant to Sec. 2635.105.

Sec. 2635.103 Applicability to members of the uniformed services.

The provisions of this part, except this section, are not applicable to enlisted members of the uniformed services. Each agency with jurisdiction over enlisted members of the uniformed services shall issue regulations defining the ethical conduct obligations of enlisted members under its jurisdiction. Those regulations shall be consistent with Executive Order 12674, April 12, 1989, as modified, and may prescribe the full range of statutory and regulatory sanctions, including those available under the Uniform Code of Military Justice, for failure to comply with such regulations.

Sec. 2635.104 Applicability to employees on detail.

(a) Details to other agencies. Except as provided in paragraph (d) of this section, an employee on detail, including a uniformed officer on assignment, from his employing agency to another agency for a period in excess of 30 calendar days shall be subject to any supplemental agency regulations of the agency to which he is detailed rather than to any supplemental agency regulations of his employing agency.

(b) Details to the legislative or judicial branch. An employee on detail, including a uniformed officer on assignment, from his employing agency to the legislative or judicial branch for a period in excess of 30 calendar days shall be subject to the ethical standards of the branch or entity to which detailed. For the duration of any such detail or assignment, the employee shall not be subject to the provisions of this part, except this section, or, except as provided in paragraph (d) of this section, to any supplemental agency regulations of his employing agency, but shall remain subject to the conflict of interest prohibitions in title 18 of the United States Code.

(c) Details to non-Federal entities. Except to the extent exempted in writing pursuant to this paragraph, an employee detailed to a non-Federal entity remains subject to this part and to any supplemental agency regulation of his employing agency. When an employee is detailed pursuant to statutory authority to an international organization or to a State or local government for a period in excess of six months, the designated agency ethics official may grant a written exemption from **s**ubpart B of this part based on his determination that the entity has adopted written ethical standards covering solicitation and acceptance of gifts which will apply to the employee during the detail and which will be appropriate given the purpose of the detail.

Note: the prohibitions and requirements in ***bold italics*** are general orders and apply to all military members without further implementation. Violations may result in prosecution under the UCMJ, as well as adverse administrative action and other adverse action authorized by the United States Code or Federal Regulations.

(d) Applicability of special agency statutes. Notwithstanding paragraphs (a) and (b) of this section, an employee who is subject to an agency statute which restricts his activities or financial holdings specifically because of his status as an employee of that agency shall continue to be subject to any provisions in the supplemental agency regulations of his employing agency that implement that statute.

Sec. 2635.105 Supplemental agency regulations.

In addition to the regulations set forth in this part, an employee shall comply with any supplemental agency regulations issued by his employing agency under this section.

(a) An agency that wishes to supplement this part shall prepare and submit to the Office of Government Ethics, for its concurrence and joint issuance, any agency regulations that supplement the regulations contained in this part. Supplemental agency regulations which the agency determines are necessary and appropriate, in view of its programs and operations, to fulfill the purposes of this part shall be:

(1) In the form of a supplement to the regulations in this part; and

(2) In addition to the substantive provisions of this part.

(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.

Sec. 2635.106 Disciplinary and corrective action.

(a) Except as provided in Sec. 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 Government wide 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.

Sec. 2635.107 Ethics advice.

(a) As required by Secs. 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 Sec. 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

Sec. 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.

Sec. 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 Sec. 2635.204(j), an employee shall not:

Note: the prohibitions and requirements in ***bold italics*** are general orders and apply to all military members without further implementation. Violations may result in prosecution under the UCMJ, as well as adverse administrative action and other adverse action authorized by the United States Code or Federal Regulations.

(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 Sec. 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; and

(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; or

(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 Sec. 2635.204(l).

Sec. 2635.203 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) Agency has the meaning set forth in Sec. 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 <u>not</u> 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;

Note: the prohibitions and requirements in ***bold italics*** are general orders and apply to all military members without further implementation. Violations may result in prosecution under the UCMJ, as well as adverse administrative action and other adverse action authorized by the United States Code or Federal Regulations.

(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 part 301-53.

(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.

Note: the prohibitions and requirements in ***bold italics*** are general orders and apply to all military members without further implementation. Violations may result in prosecution under the UCMJ, as well as adverse administrative action and other adverse action authorized by the United States Code or Federal Regulations.

(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 the status, authority or duties associated with his Federal position.
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.

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

(f) 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 Sec. 2635.205(a)(2) or for payments made to charitable organizations in lieu of honoraria under Sec. 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.

Sec. 2635.204 Exceptions.

The prohibitions set forth in Sec. 2635.202(a) do not apply to a gift accepted under the circumstances described in paragraphs (a) through (l) of this section, and an employee's acceptance of a gift in accordance with one of those paragraphs will be deemed not to violate the principles set forth in Sec. 2635.101(b), including appearances. 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 source 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 <u>not</u> 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.

Note: the prohibitions and requirements in ***bold italics*** are general orders and apply to all military members without further implementation. Violations may result in prosecution under the UCMJ, as well as adverse administrative action and other adverse action authorized by the United States Code or Federal Regulations.

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 Sec. 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 Sec. 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 Sec. 2635.204(a) is a gift to the employee rather than to his employing agency.

Example 5: During off-duty time, an employee of the Department of Defense (DOD) attends a trade show involving companies that are DOD contractors. He is offered a $15 computer program disk at X Company's booth, a $12 appointments calendar at Y Company's booth, and a deli lunch worth $8 from Z Company. The employee may accept all three of these items because they do not exceed $20 per source, even though they total more than $20 at this single occasion.

(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 Sec. 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.

Note: the prohibitions and requirements in ***bold italics*** are general orders and apply to all military members without further implementation. Violations may result in prosecution under the UCMJ, as well as adverse administrative action and other adverse action authorized by the United States Code or Federal Regulations.

(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 Sec. 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 Sec. 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 Sec. 2635.603(a).

(f) Gifts in connection with political activities permitted by the Hatch Act Reform Amendments. An employee who, in accordance with the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323, may take an active part in political management or in political campaigns, may accept meals, lodgings, transportation and other benefits, including free attendance at events, 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 employee to a political event may accept meals, free attendance and entertainment provided at the event by such an organization.

Example 1: The Secretary of the Department of Health and Human Services may accept an airline ticket and hotel accommodations furnished by the campaign committee of a candidate for the United States Senate in order to give a speech in support of the candidate.

(g) 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 and operations, an employee may accept an unsolicited gift of free attendance at all or appropriate parts of a widely attended gathering of mutual interest to a number of parties from the sponsor of the event or, if more than 100 persons are expected to attend the event and the gift of free attendance has a market value of $260 or less, from a person other than the sponsor of the event. A gathering is widely attended if it is expected that a large number of persons will attend and that persons with a diversity of views or interests will be present, for example, if it is open to members from throughout the interested industry or profession or if those in attendance represent a range of persons interested in a given matter. 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 person who has extended the invitation has interests that may be substantially affected by the performance or nonperformance of an employee's official duties or is 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 the 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 person who has extended the invitation, the significance of the employee's role in any such matter, the purpose of the event, the identity of other expected participants and the market 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 the 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 person who has

extended the invitation or, where that person is an association or organization, of its members.

(4) Free attendance. For purposes of paragraphs (g)(1) and (g)(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. Where the invitation has been extended to an accompanying spouse or other guest (see paragraph (g)(6) of this section), the market value of the gift of free attendance includes the market value of free attendance by the spouse or other guest as well as the market value of the employee's own attendance.
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, and the invitation is not considered to be from the sponsor of the event, 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 or other guest. When others in attendance will generally be accompanied by a spouse or other guest, and where the invitation is from the same person who has invited the employee, the agency designee may authorize an employee to accept an unsolicited invitation of free attendance to an accompanying spouse or to another accompanying guest to participate in all or a portion of the event at which the employee's free attendance is permitted under paragraph (g)(1) or (g)(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 an industrywide, two-day seminar for which it charges a fee of $400 and anticipates attendance of approximately 400. An Air Force contractor pays $2,000 to the association so that the association can extend free invitations to five Air Force officials designated by the contractor. The Air Force officials may not accept the gifts of free attendance. Because 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 $2,000 to the association in order that the association 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. The Air Force official could not in any case accept an invitation directly from the nonsponsor contractor because the market value of the gift exceeds $260.

Example 2: An employee of the Department of Transportation is invited by a news organization to an annual press dinner sponsored by an association of press organizations. Tickets for the event cost $260 per person and attendance is limited to 400 representatives of press organizations and their guests. If the employee's attendance is determined to be in the interest of the agency, she may accept the invitation from the news organization because more than 100 persons will attend and the cost of the ticket does not exceed $260. However, if the invitation were extended to the employee and an accompanying guest, her guest could not be authorized to attend for free since the market value of the gift of free attendance would be $520 and the invitation is from a person other than the sponsor of the event.

Example 3: An employee of the Department of Energy (DOE) and his wife have been invited by a major utility executive to a small dinner party. A few other officials of the utility and their spouses or other guests are also invited, as is a representative of a consumer group concerned with utility rates and her husband. The DOE official believes the dinner party will provide him an opportunity to socialize with and get to know those in attendance. The employee may not accept the free invitation under this exception, even if his attendance could be determined to be in the interest of the agency. The small dinner party is not a widely attended gathering. Nor could the employee be authorized to accept even if the event were instead a corporate banquet to which forty company officials and their spouses or other guests were invited. In this second case, notwithstanding the larger

number of persons expected (as opposed to the small dinner party just noted) and despite the presence of the consumer group representative and her husband who are not officials of the utility, those in attendance would still not represent a diversity of views or interests. Thus, the company banquet would not qualify as a widely attended gathering under those circumstances either.

Example 4: 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 Sec. 2635.204(a), he may accept a token of appreciation for his speech having a market value of $20 or less.

Example 5: 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 Sec. 2635.204(a).

Example 6: 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 Sec. 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 part 410 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.

Sec. 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 Sec. 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 Sec. 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

Sec. 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.

Sec. 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:

(1) The two employees are not in a subordinate-official superior relationship; and

(2) There is a personal relationship between the two employees that would justify the gift.

(c) Limitation on use of exceptions. Notwithstanding any exception provided in this subpart, an official superior shall not coerce the offering of a gift from a subordinate.

Sec. 2635.303 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) Gift has the meaning set forth in Sec. 2635.203(b). For purposes of that definition an employee will be deemed to have paid market value for any benefit received as a result of his participation in any carpool or other such mutual arrangement involving another employee or other employees if he bears his fair proportion of the expense or effort involved.

Note: the prohibitions and requirements in ***bold italics*** are general orders and apply to all military members without further implementation. Violations may result in prosecution under the UCMJ, as well as adverse administrative action and other adverse action authorized by the United States Code or Federal Regulations.

(b) Indirectly, for purposes of Sec. 2635.302(b), has the meaning set forth in Sec. 2635.203(f). For purposes of Sec. 2635.302(a), it includes a gift:

(1) Given with the employee's knowledge and acquiescence by his parent, sibling, spouse, child, or dependent relative; or

(2) Given by a person other than the employee under circumstances where the employee has promised or agreed to reimburse that person or to give that person something of value in exchange for giving the gift.

(c) Subject to paragraph (a) of this section, market value has the meaning set forth in Sec. 2635.203(c).

(d) Official superior means any other employee, other than the President and the Vice President, including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating the performance of the employee's official duties or those of any other official superior of the employee. For purposes of this subpart, an employee is considered to be the subordinate of any of his official superiors.

(e) Solicit means to request contributions by personal communication or by general announcement.

(f) Voluntary contribution means a contribution given freely, without pressure or coercion. A contribution is not voluntary unless it is made in an amount determined by the contributing employee, except that where an amount for a gift is included in the cost for a luncheon, reception or similar event, an employee who freely chooses to pay a proportionate share of the total cost in order to attend will be deemed to have made a voluntary contribution. Except in the case of contributions for a gift included in the cost of a luncheon, reception or similar event, a statement that an employee may choose to contribute less or not at all shall accompany any recommendation of an amount to be contributed for a gift to an official superior.

Example 1: A supervisory employee of the Agency for International Development has just been reassigned from Washington, DC to Kabul, Afghanistan. As a farewell party, 12 of her subordinates have decided to take her out to lunch at the Khyber Repast. It is understood that each will pay for his own meal and that the cost of the supervisor's lunch will be divided equally among the twelve. Even though the amount they will contribute is not determined until the supervisor orders lunch, the contribution made by those who choose to participate in the farewell lunch is voluntary.

Sec. 2635.304 Exceptions.

The prohibitions set forth in Sec. 2635.302(a) and (b) do not apply to a gift given or accepted under the circumstances described in paragraph (a) or (b) of this section. A contribution or the solicitation of a contribution that would otherwise violate the prohibitions set forth in Sec. 2635.302(a) and (b) may only be made in accordance with paragraph (c) of this section.

(a) General exceptions. On an occasional basis, including any occasion on which gifts are traditionally given or exchanged, the following may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

(1) Items, other than cash, with an aggregate market value of $10 or less per occasion;

(2) Items such as food and refreshments to be shared in the office among several employees;

(3) Personal hospitality provided at a residence which is of a type and value customarily provided by the employee to personal friends;

(4) Items given in connection with the receipt of personal hospitality if of a type and value customarily given on such occasions; and

(5) Leave transferred under subpart I of part 630 of this title to an employee who is not an immediate supervisor, unless obtained in violation of Sec. 630.912 of this title.

Example 1: Upon returning to work following a vacation at the beach, a claims examiner with the Department of Veterans Affairs may give his supervisor, and his supervisor may accept, a bag of saltwater taffy purchased on the boardwalk for $8.

Example 2: An employee of the Federal Deposit Insurance Corporation whose bank examination responsibilities require frequent travel may not bring her supervisor, and her supervisor may not accept, souvenir coffee mugs from each of the cities she visits in the course of performing her duties, even though each of the mugs costs less than $5. Gifts given on this basis are not occasional.

Example 3: The Secretary of Labor has invited the agency's General Counsel to a dinner party at his home. The General Counsel may bring a $15 bottle of wine to the dinner party and the Secretary may accept this customary hostess gift from his subordinate, even though its cost is in excess of $10.

Example 4: For Christmas, a secretary may give his supervisor, and the supervisor may accept, a poinsettia plant purchased for $10 or less. The secretary may also invite his supervisor to a Christmas party in his home and the supervisor may attend.

(b) Special, infrequent occasions. A gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or other employee receiving less pay:

(1) In recognition of infrequently occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or

(2) Upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer.

Example 1: The administrative assistant to the personnel director of the Tennessee Valley Authority may send a $30 floral arrangement to the personnel director who is in the hospital recovering from surgery. The personnel director may accept the gift.

Example 2: A chemist employed by the Food and Drug Administration has been invited to the wedding of the lab director who is his official superior. He may give the lab director and his bride, and they may accept, a place setting in the couple's selected china pattern purchased for $70.

Example 3: Upon the occasion of the supervisor's retirement from Federal service, an employee of the Fish and Wildlife Service may give her supervisor a book of wildlife photographs which she purchased for $19. The retiring supervisor may accept the book.

(c) Voluntary contributions. An employee may solicit voluntary contributions of nominal amounts from fellow employees for an appropriate gift to an official superior and an employee may make a voluntary contribution of a nominal amount to an appropriate gift to an official superior:

(1) On a special, infrequent occasion as described in paragraph (b) of this section; or

(2) On an occasional basis, for items such as food and refreshments to be shared in the office among several employees.

An employee may accept such gifts to which a subordinate or other employee 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 Sec. 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

Sec. 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 Sec. 2635.403. Notwithstanding that his acquisition or holding of a particular interest is proper, an employee is prohibited in accordance with Sec. 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. See also part 2640 of this chapter, for additional guidance amplifying Sec. 2635.402.

Sec. 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 or determine that an exemption applies, 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

Note: the prohibitions and requirements in ***bold italics*** are general orders and apply to all military members without further implementation. Violations may result in prosecution under the UCMJ, as well as adverse administrative action and other adverse action authorized by the United States Code or Federal Regulations.

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 Sec. 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 Sec. 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 or exemption 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. Disqualificaton 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 or exemptions from 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 exemption 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 exemptions. Under 18 U.S.C. 208(b)(2), regulatory exemptions of general applicability have been 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 employees to whom those exemptions apply. See the regulations in subpart B of part 2640 of this chapter, which supersede any preexisting agency regulatory exemptions.

(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. See also subpart C of part 2640 of this chapter, for additional guidance.

(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. See also subpart C of part 2640 of this chapter, for additional guidance.

(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 Sec. 2635.403(a), or if the agency determines in accordance with Sec. 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.

Sec. 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 issued after February 3, 1993, 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.

(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 Sec. 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 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 Sec. 2635.402. Nevertheless, a loan from a member bank is a discrete financial interest within the meaning of Sec. 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 Sec. 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

Note: the prohibitions and requirements in bold italics are general orders and apply to all military members without further implementation. Violations may result in prosecution under the UCMJ, as well as adverse administrative action and other adverse action authorized by the United States Code or Federal Regulations.

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Sec. 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 Sec. 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 Sec. 2635.502 to determine whether he should or should not participate in a particular matter.

(b) Under Sec. 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 or exemption, as described in Secs. 2635.402(d) and 2635.605(a), will enable the employee to participate in that matter. The authorization procedures in Sec. 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. Similarly, where the employee meets all prerequisites for the application of one of the exemptions set forth in subpart B of part 2640 of this chapter, that also constitutes 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.

Sec. 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:

Note: the prohibitions and requirements in ***bold italics*** are general orders and apply to all military members without further implementation. Violations may result in prosecution under the UCMJ, as well as adverse administrative action and other adverse action authorized by the United States Code or Federal Regulations.

(1) An employee has a covered relationship with:

(i) A person, other than a prospective employer described in Sec. 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 Sec. 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

(v) An organization, other than a political party described in 26 U.S.C. 527(e), in which the employee is an active participant. Participation is active if, for example, it involves service as an official of the organization or in a capacity similar to that of a committee or subcommittee chairperson or spokesperson, or participation in directing the activities of the organization. In other cases, significant time devoted to promoting specific programs of the organization, including coordination of fundraising efforts, is an indication of active participation. Payment of dues or the donation or solicitation of financial support does not, in itself, constitute active participation.
Note: Nothing in this section shall be construed to suggest that an employee should not participate in a matter because of his political, religious or moral views.

(2) Direct and predictable effect has the meaning set forth in Sec. 2635.402(b)(1).

(3) Particular matter involving specific parties has the meaning set forth in Sec. 2637.102(a)(7) of this chapter.

Example 1: An employee of the General Services Administration has made an offer to purchase a restaurant owned by a local developer. The developer has submitted an offer in response to a GSA solicitation for lease of office space. Under the circumstances, she would be correct in concluding that a reasonable person would be likely to question her impartiality if she were to participate in evaluating that developer's or its competitor's lease proposal.

Example 2: An employee of the Department of Labor is providing technical assistance in drafting occupational safety and health legislation that will affect all employers of five or more persons. His wife is employed as an administrative assistant by a large corporation that will incur additional costs if the proposed legislation is enacted. Because the legislation is not a particular matter involving specific parties, the employee may continue to work on the legislation and need not be concerned that his wife's employment with an affected corporation would raise a question concerning his impartiality.

Example 3: An employee of the Defense Logistics Agency who has responsibilities for testing avionics being produced by an Air Force contractor has just learned that his sister-in-law has accepted employment as an engineer with the contractor's parent corporation. Where the parent corporation is a conglomerate, the employee could reasonably conclude that, under the circumstances, a reasonable person would not be likely to question his impartiality if he were to continue to perform his test and evaluation responsibilities.

Example 4: An engineer has just resigned from her position as vice president of an electronics company in order to accept employment with the Federal Aviation Administration in a position involving procurement responsibilities. Although the employee did not receive an extraordinary payment in connection with her resignation and has severed all financial ties with the firm, under the circumstances she would be correct in

concluding that her former service as an officer of the company would be likely to cause a reasonable person to question her impartiality if she were to participate in the administration of a DOT contract for which the firm is a first-tier subcontractor.

Example 5: An employee of the Internal Revenue Service is a member of a private organization whose purpose is to restore a Victorian-era railroad station and she chairs its annual fundraising drive. Under the circumstances, the employee would be correct in concluding that her active membership in the organization would be likely to cause a reasonable person to question her impartiality if she were to participate in an IRS determination regarding the tax-exempt status of the organization.

(c) Determination by agency designee. Where he has information concerning a potential appearance problem arising from the financial interest of a member of the employee's household in a particular matter involving specific parties, or from the role in such matter of a person with whom the employee has a covered relationship, the agency designee may make an independent determination as to whether a reasonable person with knowledge of the relevant facts would be likely to question the employee's impartiality in the matter. Ordinarily, the agency designee's determination will be initiated by information provided by the employee pursuant to paragraph (a) of this section. However, at any time, including after the employee has disqualified himself from participation in a matter pursuant to paragraph (e) of this section, the agency designee may make this determination on his own initiative or when requested by the employee's supervisor or any other person responsible for the employee's assignment.
(1) If the agency designee determines that the employee's impartiality is likely to be questioned, he shall then determine, in accordance with paragraph (d) of this section, whether the employee should be authorized to participate in the matter. Where the agency designee determines that the employee's participation should not be authorized, the employee will be disqualified from participation in the matter in accordance with paragraph (e) of this section.

(2) If the agency designee determines that the employee's impartiality is not likely to be questioned, he may advise the employee, including an employee who has reached a contrary conclusion under paragraph (a) of this section, that the employee's participation in the matter would be proper.

(d) Authorization by agency designee. Where an employee's participation in a particular matter involving specific parties would not violate 18 U.S.C. 208(a), but would raise a question in the mind of a reasonable person about his impartiality, the agency designee may authorize the employee to participate in the matter based on a determination, made in light of all relevant circumstances, that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of the agency's programs and operations. Factors which may be taken into consideration include:

(1) The nature of the relationship involved;

(2) The effect that resolution of the matter would have upon the financial interests of the person involved in the relationship;

(3) The nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;

(4) The sensitivity of the matter;

(5) The difficulty of reassigning the matter to another employee; and

(6) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.
Authorization by the agency designee shall be documented in writing at the agency designee's discretion or when requested by the employee. An employee who has been authorized to participate in a particular matter involving specific parties may not thereafter disqualify himself from participation in the matter on the basis of an appearance problem involving the same circumstances that have been considered by the agency designee.

Example 1: The Deputy Director of Personnel for the Department of the Treasury and an attorney with the Department's Office of General Counsel are general partners in a real estate partnership. The Deputy Director advises his supervisor, the Director of Personnel, of the relationship upon being assigned to a selection panel for a position for which his partner has applied. If selected, the partner would receive a substantial increase in salary. The agency designee cannot authorize the Deputy Director to participate on the panel under the authority of this section since the Deputy Director is prohibited by criminal statute, 18 U.S.C. 208(a), from participating in a particular matter affecting the financial interest of a person who is his general partner. See Sec. 2635.402.

Example 2: A new employee of the Securities and Exchange Commission is assigned to an investigation of insider trading by the brokerage house where she had recently been employed. Because of the sensitivity of the investigation, the agency designee may be unable to conclude that the Government's interest in the employee's participation in the investigation outweighs the concern that a reasonable person may question the integrity of the investigation, even though the employee has severed all financial ties with the company. Based on consideration of all relevant circumstances, the agency designee might determine, however, that it is in the interest of the Government for the employee to pass on a routine filing by the particular brokerage house.

Example 3: An Internal Revenue Service employee involved in a long and complex tax audit is advised by her son that he has just accepted an entry-level management position with a corporation whose taxes are the subject of the audit. Because the audit is essentially complete and because the employee is the only one with an intimate knowledge of the case, the agency designee might determine, after considering all relevant circumstances, that it is in the Government's interest for the employee to complete the audit, which is subject to additional levels of review.

(e) Disqualification. Unless the employee is authorized to participate in the matter under paragraph (d) of this section, an employee shall not participate in a particular matter involving specific parties when he or the agency designee has concluded, in accordance with paragraph (a) or (c) of this section, that the financial interest of a member of the employee's household, or the role of a person with whom he has a covered relationship, is likely to raise a question in the mind of a reasonable person about his impartiality. Disqualification is accomplished by not participating in the matter.

(1) Notification. An employee who becomes aware of the need to disqualify himself from participation in a particular matter involving specific parties 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 particular matter involving specific parties 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 specifically 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.

(f) Relevant considerations. An employee's reputation for honesty and integrity is not a relevant consideration for purposes of any determination required by this section.

Sec. 2635.503 Extraordinary payments from former employers.
(a) Disqualification requirement. Except as provided in paragraph (c) of this section, an employee shall be disqualified for two years from participating in any particular matter in which a former employer is a party or represents a party if he received an extraordinary payment from that person prior to entering Government service. The two-year period of disqualification begins to run on the date that the extraordinary payment is received.

Note: the prohibitions and requirements in ***bold italics*** are general orders and apply to all military members without further implementation. Violations may result in prosecution under the UCMJ, as well as adverse administrative action and other adverse action authorized by the United States Code or Federal Regulations.

Example 1: Following his confirmation hearings and one month before his scheduled swearing in, a nominee to the position of Assistant Secretary of a department received an extraordinary payment from his employer. For one year and 11 months after his swearing in, the Assistant Secretary may not participate in any particular matter to which his former employer is a party.

Example 2: An employee received an extraordinary payment from her former employer, a coal mine operator, prior to entering on duty with the Department of the Interior. For two years thereafter, she may not participate in a determination regarding her former employer's obligation to reclaim a particular mining site, because her former employer is a party to the matter. However, she may help to draft reclamation legislation affecting all coal mining operations because this legislation does not involve any parties.

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

(1) Extraordinary payment means any item, including cash or an investment interest, with a value in excess of $10,000, which is paid:

(i) On the basis of a determination made after it became known to the former employer that the individual was being considered for or had accepted a Government position; and

(ii) Other than pursuant to the former employer's established compensation, partnership, or benefits program. A compensation, partnership, or benefits program will be deemed an established program if it is contained in bylaws, a contract or other written form, or if there is a history of similar payments made to others not entering into Federal service.

Example 1: The vice president of a small corporation is nominated to be an ambassador. In recognition of his service to the corporation, the board of directors votes to pay him $50,000 upon his confirmation in addition to the regular severance payment provided for by the corporate bylaws. The regular severance payment is not an extraordinary payment. The gratuitous payment of $50,000 is an extraordinary payment, since the corporation had not made similar payments to other departing officers.

(2) Former employer includes any person which the employee served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.

(c) Waiver of disqualification. The disqualification requirement of this section may be waived based on a finding that the amount of the payment was not so substantial as to cause a reasonable person to question the employee's ability to act impartially in a matter in which the former employer is or represents a party. The waiver shall be in writing and may be given only by the head of the agency or, where the recipient of the payment is the head of the agency, by the President or his designee. Waiver authority may be delegated by agency heads to any person who has been delegated authority to issue individual waivers under 18 U.S.C. 208(b) for the employee who is the recipient of the extraordinary payment.

Subpart F--Seeking Other Employment

Sec. 2635.601 Overview.

This subpart contains a disqualification requirement that applies to employees when seeking employment with persons whose financial interests would be directly and predictably affected by particular matters in which the employees participate personally and substantially. Specifically, it addresses the requirement of 18 U.S.C. 208(a) that an employee disqualify himself from participation in any particular matter that will have a direct and predictable effect on the financial interests of a person "with whom he is negotiating or has any arrangement concerning prospective employment. See § 2635.402 and § 2640.103 of this chapter." Beyond this statutory requirement, it also addresses the issues of lack of impartiality that require disqualification from particular

matters affecting the financial interests of a prospective employer when an employee's actions in seeking employment fall short of actual employment negotiations.

Sec. 2635.602 Applicability and related considerations.

To ensure that he does not violate 18 U.S.C. 208(a) or the principles of ethical conduct contained in Sec. 2635.101(b), an employee who is seeking employment or who has an arrangement concerning prospective employment shall comply with the applicable disqualification requirements of Secs. 2635.604 and 2635.606 if particular matters in which the employee will be participating personally and substantially would directly and predictably affect the financial interests of a prospective employer or of a person with whom he has an arrangement concerning prospective employment. Compliance with this subpart also will ensure that the employee does not violate subpart D or E of this part.

Note: An employee who is seeking employment with a person whose financial interests are not affected directly and predictably by particular matters in which he participates personally and substantially has no obligation under this subpart. An employee may, however, be subject to other statutes which impose requirements on employment contacts or discussions, such as 41 U.S.C. 423(c), applicable to agency officials involved in certain procurement matters.

(a) Related employment restrictions--(1) Outside employment while a Federal employee. An employee who is contemplating outside employment to be undertaken concurrently with his Federal employment must abide by any limitations applicable to his outside activities under subparts G and H of this part. He must also comply with any disqualification requirement that may be applicable under subpart D or E of this part as a result of his outside employment activities.

(2) Post-employment restrictions. An employee who is contemplating employment to be undertaken following the termination of his Federal employment should consult an agency ethics official to obtain advice regarding any post-employment restrictions that may be applicable. Regulations implementing the Governmentwide post-employment statute, 18 U.S.C. 207, are contained in parts 2637 and 2641 of this chapter. Employees are cautioned that they may be subject to additional statutory prohibitions on post-employment acceptance of compensation from contractors, such as 41 U.S.C. 423(d).

(b) Interview trips and entertainment. Where a prospective employer who is a prohibited source as defined in Sec. 2635.203(d) offers to reimburse an employee's travel expenses, or provide other reasonable amenities incident to employment discussions, the employee may accept such amenities in accordance with Sec. 2635.204(e)(3).

Sec. 2635.603 Definitions.

For purposes of this subpart:

(a) Employment means any form of non-Federal employment or business relationship involving the provision of personal services by the employee, whether to be undertaken at the same time as or subsequent to Federal employment. It includes but is not limited to personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee.

Example 1: An employee of the Bureau of Indian Affairs who has announced her intention to retire is approached by tribal representatives concerning a possible consulting contract with the tribe. The independent contractual relationship the tribe wishes to negotiate is employment for purposes of this subpart.

Example 2: An employee of the Department of Health and Human Services is invited to a meeting with officials of a nonprofit corporation to discuss the possibility of his serving as a member of the corporation's board of directors. Service, with or without compensation, as a member of the board of directors constitutes employment for purposes of this subpart.

(b) An employee is seeking employment once he has begun seeking employment within the meaning of paragraph (b)(1) of this section and until he is no longer seeking employment within the meaning of paragraph (b)(2) of this section.

(1) An employee has begun seeking employment if he has directly or indirectly:

(i) Engaged in negotiations for employment with any person. For these purposes, as for 18 U.S.C. 208(a), the term negotiations means discussion or communication with another person, or such person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person. The term is not limited to discussions of specific terms and conditions of employment in a specific position;

(ii) Made an unsolicited communication to any person, or such person's agent or intermediary, regarding possible employment with that person. However, the employee has not begun seeking employment if that communication was:

(A) For the sole purpose of requesting a job application; or

(B) For the purpose of submitting a resume or other employment proposal to a person affected by the performance or nonperformance of the employee's duties only as part of an industry or other discrete class. The employee will be considered to have begun seeking employment upon receipt of any response indicating an interest in employment discussions; or

(iii) Made a response other than rejection to an unsolicited communication from any person, or such person's agent or intermediary, regarding possible employment with that person.

(2) An employee is no longer seeking employment when:

(i) The employee or the prospective employer rejects the possibility of employment and all discussions of possible employment have terminated; or

(ii) Two months have transpired after the employee's dispatch of an unsolicited resume or employment proposal, provided the employee has received no indication of interest in employment discussions from the prospective employer.

(3) For purposes of this definition, a response that defers discussions until the foreseeable future does not constitute rejection of an unsolicited employment overture, proposal, or resume nor rejection of a prospective employment possibility.

Example 1: An employee of the Health Care Financing Administration is complimented on her work by an official of a State Health Department who asks her to call if she is ever interested in leaving Federal service. The employee explains to the State official that she is very happy with her job at HCFA and is not interested in another job. She thanks him for his compliment regarding her work and adds that she'll remember his interest if she ever decides to leave the Government. The employee has rejected the unsolicited employment overture and has not begun seeking employment.

Example 2: The employee in the preceding example responds by stating that she cannot discuss future employment while she is working on a project affecting the State's health care funding but would like to discuss employment with the State when the project is completed. Because the employee has merely deferred employment discussions until the foreseeable future, she has begun seeking employment with the State Health Department.

Example 3: An employee of the Defense Contract Audit Agency is auditing the overhead accounts of an Army contractor. While at the contractor's headquarters, the head of the contractor's accounting division tells the employee that his division is thinking about hiring another accountant and asks whether the employee might be

interested in leaving DCAA. The DCAA employee says he is interested in knowing what kind of work would be involved. They discuss the duties of the position the accounting division would like to fill and the DCAA employee's qualifications for the position. They do not discuss salary. The head of the division explains that he has not yet received authorization to fill the particular position and will get back to the employee when he obtains the necessary approval for additional staffing. The employee and the contractor's official have engaged in negotiations regarding possible employment. The employee has begun seeking employment with the Army contractor.

Example 4: An employee of the Occupational Safety and Health Administration helping to draft safety standards applicable to the textile industry has mailed his resume to 25 textile manufacturers. He has not begun seeking employment with any of the twenty-five. If he receives a response from one of the resume recipients indicating an interest in employment discussions, the employee will have begun seeking employment with the respondent at that time.

Example 5: A special Government employee of the Federal Deposit Insurance Corporation is serving on an advisory committee formed for the purpose of reviewing rules applicable to all member banks. She mails an unsolicited letter to a member bank offering her services as a contract consultant. She has not begun seeking employment with the bank until she receives some response indicating an interest in discussing her employment proposal. A letter merely acknowledging receipt of the proposal is not an indication of interest in employment discussions.

Example 6: A geologist employed by the U.S. Geological Survey has been working as a member of a team preparing the Government's case in an action brought by the Government against six oil companies. The geologist sends her resume to an oil company that is a named defendant in the action. The geologist has begun seeking employment with that oil company and will be seeking employment for two months from the date the resume was mailed. However, if she withdraws her application or is notified within the two-month period that her resume has been rejected, she will no longer be seeking employment with the oil company as of the date she makes such withdrawal or receives such notification.

(c) Prospective employer means any person with whom the employee is seeking employment. Where contacts that constitute seeking employment are made by or with an agent or other intermediary, the term prospective employer includes:

(1) A person who uses that agent or other intermediary for the purpose of seeking to establish an employment relationship with the employee if the agent identifies the prospective employer to the employee; and

(2) A person contacted by the employee's agent or other intermediary for the purpose of seeking to establish an employment relationship if the agent identifies the prospective employer to the employee.

Example 1: An employee of the Federal Aviation Administration has overall responsibility for airport safety inspections in a three-state area. She has retained an employment search firm to help her find another job. The search firm has just reported to the FAA employee that it has given her resume to and had promising discussions with two airport authorities within her jurisdiction. Even though the employee has not personally had employment discussions with either, each airport authority is her prospective employer. She began seeking employment with each upon learning its identity and that it has been given her resume.

(d) Direct and predictable effect, particular matter, and personal and substantial have the respective meanings set forth in Sec. 2635.402(b) (1) and (3).

Sec. 2635.604 Disqualification while seeking employment.

(a) Obligation to disqualify. Unless the employee's participation is authorized in accordance with Sec. 2635.605, the employee shall not participate personally and substantially in a particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom

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he is seeking employment within the meaning of Sec. 2635.603(b). Disqualification is accomplished by not participating in the particular matter.

(b) 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.

(c) 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 specifically 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 employee of the Department of Veterans Affairs is participating in the audit of a contract for laboratory support services. Before sending his resume to a lab which is a subcontractor under the VA contract, the employee should disqualify himself from participation in the audit. Since he cannot withdraw from participation in the contract audit without the approval of his supervisor, he should disclose his intentions to his supervisor in order that appropriate adjustments in his work assignments can be made.

Example 2: An employee of the Food and Drug Administration is contacted in writing by a pharmaceutical company concerning possible employment with the company. The employee is involved in testing a drug for which the company is seeking FDA approval. Before making a response that is not a rejection, the employee should disqualify himself from further participation in the testing. Where he has authority to ask his colleague to assume his testing responsibilities, he may accomplish his disqualification by transferring the work to that coworker. However, to ensure that his colleague and others with whom he had been working on the recommendations do not seek his advice regarding testing or otherwise involve him in the matter, it may be necessary for him to advise those individuals of his disqualification.

Example 3: The General Counsel of a regulatory agency wishes to engage in discussions regarding possible employment as corporate counsel of a regulated entity. Matters directly affecting the financial interests of the regulated entity are pending within the Office of General Counsel, but the General Counsel will not be called upon to act in any such matter because signature authority for that particular class of matters has been delegated to an Assistant General Counsel. Because the General Counsel is responsible for assigning work within the Office of General Counsel, he can in fact accomplish his disqualification by simply avoiding any involvement in matters affecting the regulated entity. However, because it is likely to be assumed by others that the General Counsel is involved in all matters within the cognizance of the Office of General Counsel, he would be wise to file a written disqualification statement with the Commissioners of the regulatory agency and provide his subordinates with written notification of his disqualification, or he may be specifically asked by an agency ethics official or the Commissioners to file a written disqualification statement.

Example 4: A scientist is employed by the National Science Foundation as a special Government employee to serve on a panel that reviews grant applications to fund research relating to deterioration of the ozone layer. She is discussing possible employment as a member of the faculty of a university that several years earlier received an NSF grant to study the effect of fluorocarbons, but has no grant application pending. As long as the university does not submit a new application for the panel's review, the employee would not have to take any action to effect disqualification.

(d) Agency determination of substantial conflict. Where the agency determines that the employee's action in seeking employment with a particular person will require his 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, the agency may allow the employee to take annual leave or leave without pay while seeking employment, or may take other appropriate administrative action.

Sec. 2635.605 Waiver or authorization permitting participation while seeking employment.

(a) Waiver. Where, as defined in Sec. 2635.603(b)(1)(i), an employee is engaged in discussions that constitute employment negotiations for purposes of 18 U.S.C. 208(a), the employee may participate personally and substantially in a particular matter that has a direct and predictable effect on the financial interests of a prospective employer only after receiving a written waiver issued under the authority of 18 U.S.C. 208(b)(1) or (b)(3). These waivers are described in Sec. 2635.402(d). See also subpart C of part 2640 of this chapter. For certain employees, a regulatory exemption under the authority of 18 U.S.C. 208(b)(2) may also apply (see subpart B of part 2640 of this chapter).

Example 1: An employee of the Department of Agriculture has had two telephone conversations with an orange grower regarding possible employment. They have discussed the employee's qualifications for a particular position with the grower, but have not yet discussed salary or other specific terms of employment. The employee is negotiating for employment within the meaning of 18 U.S.C. 208(a) and Sec. 2635.603(b)(1)(i). In the absence of a written waiver issued under 18 U.S.C. 208(b)(1), she may not take official action on a complaint filed by a competitor alleging that the grower has shipped oranges in violation of applicable quotas.

(b) Authorization by agency designee. Where an employee is seeking employment within the meaning of Sec. 2635.603(b)(1) (ii) or (iii), a reasonable person would be likely to question his impartiality if he were to participate personally and substantially in a particular matter that has a direct and predictable effect on the financial interests of any such prospective employer. The employee may participate in such matters only where the agency designee has authorized his participation in accordance with the standards set forth in Sec. 2635.502(d).
Example 1: Within the past month, an employee of the Education Department mailed her resume to a university. She is thus seeking employment with the university within the meaning of Sec. 2635.603(b)(1)(ii) even though she has received no reply. In the absence of specific authorization by the agency designee in accordance with Sec. 2635.502(d), she may not participate in an assignment to review a grant application submitted by the university.

Sec. 2635.606 Disqualification based on an arrangement concerning prospective employment or otherwise after negotiations.

(a) Employment or arrangement concerning employment. An employee shall be disqualified from participating personally and substantially in a particular matter that has a direct and predictable effect on the financial interests of the person by whom he is employed or with whom he has an arrangement concerning future employment, unless authorized to participate in the matter by a written waiver issued under the authority of 18 U.S.C. 208 (b)(1) or (b)(3), or by a regulatory exemption under the authority of 18 U.S.C. 208 (b)(2). These waivers and exemptions are described in Sec. 2635.402(d). See also subparts B and C of part 2640 of this chapter.

Example 1: A military officer has accepted a job with a defense contractor to begin in six months, after his retirement from military service. During the period that he remains with the Government, the officer may not participate in the administration of a contract with that particular defense contractor unless he has received a written waiver under the authority of 18 U.S.C. 208(b)(1).

Example 2: An accountant has just been offered a job with the Comptroller of the Currency which involves a two-year limited appointment. Her private employer, a large corporation, believes the job will enhance her skills and has agreed to give her a two-year unpaid leave of absence at the end of which she has agreed to return to work for the corporation. During the two-year period she is to be a COC employee, the accountant will have an arrangement concerning future employment with the corporation that will require her disqualification from participation in any particular matter that will have a direct and predictable effect on the corporation's financial interests.

(b) Offer rejected or not made. The agency designee for the purpose of Sec. 2635.502(c) may, in an appropriate case, determine that an employee not covered by the preceding paragraph who has sought but is no longer

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seeking employment nevertheless shall be subject to a period of disqualification upon the conclusion of employment negotiations. Any such determination shall be based on a consideration of all the relevant factors, including those listed in Sec. 2635.502(d), and a determination that the concern that a reasonable person may question the integrity of the agency's decisionmaking process outweighs the Government's interest in the employee's participation in the particular matter.

Example 1: An employee of the Securities and Exchange Commission was relieved of responsibility for an investigation of a broker-dealer while seeking employment with the law firm representing the broker-dealer in that matter. The firm did not offer her the partnership position she sought. Even though she is no longer seeking employment with the firm, she may continue to be disqualified from participating in the investigation based on a determination by the agency designee that the concern that a reasonable person might question whether, in view of the history of the employment negotiations, she could act impartially in the matter outweighs the Government's interest in her participation.

Subpart G--Misuse of Position

Sec. 2635.701 Overview.

This subpart contains provisions relating to the proper use of official time and authority, and of information and resources to which an employee has access because of his Federal employment. This subpart sets forth standards relating to:

(a) Use of public office for private gain;
(b) Use of nonpublic information;
(c) Use of Government property; and
(d) Use of official time.

Sec. 2635.702 Use of public office for private gain.

An employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations. The specific prohibitions set forth in paragraphs (a) through (d) of this section apply this general standard, but are not intended to be exclusive or to limit the application of this section.

(a) Inducement or coercion of benefits. An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

Example 1: Offering to pursue a relative's consumer complaint over a household appliance, an employee of the Securities and Exchange Commission called the general counsel of the manufacturer and, in the course of discussing the problem, stated that he worked at the SEC and was responsible for reviewing the company's filings. The employee violated the prohibition against use of public office for private gain by invoking his official authority in an attempt to influence action to benefit his relative.

Example 2: An employee of the Department of Commerce was asked by a friend to determine why his firm's export license had not yet been granted by another office within the Department of Commerce. At a department-level staff meeting, the employee raised as a matter for official inquiry the delay in approval of the particular license and asked that the particular license be expedited. The official used her public office in an attempt to benefit her friend and, in acting as her friend's agent for the purpose of pursuing the export license with the Department of Commerce, may also have violated 18 U.S.C. 205.

Note: the prohibitions and requirements in ***bold italics*** are general orders and apply to all military members without further implementation. Violations may result in prosecution under the UCMJ, as well as adverse administrative action and other adverse action authorized by the United States Code or Federal Regulations.

(b) Appearance of governmental sanction. Except as otherwise provided in this part, an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another. When teaching, speaking, or writing in a personal capacity, he may refer to his official title or position only as permitted by Sec. 2635.807(b). He may sign a letter of recommendation using his official title only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual with whom he has dealt in the course of Federal employment or whom he is recommending for Federal employment.

Example 1: An employee of the Department of the Treasury who is asked to provide a letter of recommendation for a former subordinate on his staff may provide the recommendation using official stationery and may sign the letter using his official title. If, however, the request is for the recommendation of a personal friend with whom he has not dealt in the Government, the employee should not use official stationery or sign the letter of recommendation using his official title, unless the recommendation is for Federal employment. In writing the letter of recommendation for his personal friend, it may be appropriate for the employee to refer to his official position in the body of the letter.

(c) Endorsements. An employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service or enterprise except:

(1) In furtherance of statutory authority to promote products, services or enterprises; or

(2) As a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency's mission.

Example 1: A Commissioner of the Consumer Product Safety Commission may not appear in a television commercial in which she endorses an electrical appliance produced by her former employer, stating that it has been found by the CPSC to be safe for residential use.

Example 2: A Foreign Commercial Service officer from the Department of Commerce is asked by a United States telecommunications company to meet with representatives of the Government of Spain, which is in the process of procuring telecommunications services and equipment. The company is bidding against five European companies and the statutory mission of the Department of Commerce includes assisting the export activities of U.S. companies. As part of his official duties, the Foreign Commercial Service officer may meet with Spanish officials and explain the advantages of procurement from the United States company.

Example 3: The Administrator of the Environmental Protection Agency may sign a letter to an oil company indicating that its refining operations are in compliance with Federal air quality standards even though he knows that the company has routinely displayed letters of this type in television commercials portraying it as a "trustee of the environment for future generations."

Example 4: An Assistant Attorney General may not use his official title or refer to his Government position in a book jacket endorsement of a novel about organized crime written by an author whose work he admires. Nor may he do so in a book review published in a newspaper.

(d) Performance of official duties affecting a private interest. To ensure that the performance of his official duties does not give rise to an appearance of use of public office for private gain or of giving preferential treatment, an employee whose duties would affect the financial interests of a friend, relative or person with whom he is affiliated in a non-governmental capacity shall comply with any applicable requirements of Sec. 2635.502.

(e) Use of terms of address and ranks. Nothing in this section prohibits an employee who is ordinarily addressed using a general term of address, such as "The Honorable", or a rank, such as a military or ambassadorial rank, from using that term of address or rank in connection with a personal activity.

Note: the prohibitions and requirements in ***bold italics*** are general orders and apply to all military members without further implementation. Violations may result in prosecution under the UCMJ, as well as adverse administrative action and other adverse action authorized by the United States Code or Federal Regulations.

Sec. 2635.703 Use of nonpublic information.

(a) Prohibition. An employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure.

(b) Definition of nonpublic information. For purposes of this section, nonpublic information is information that the employee gains by reason of Federal employment and that he knows or reasonably should know has not been made available to the general public. It includes information that he knows or reasonably should know:

(1) Is routinely exempt from disclosure under 5 U.S.C. 552 or otherwise protected from disclosure by statute, Executive order or regulation;

(2) Is designated as confidential by an agency; or

(3) Has not actually been disseminated to the general public and is not authorized to be made available to the public on request.

Example 1: A Navy employee learns in the course of her duties that a small corporation will be awarded a Navy contract for electrical test equipment. She may not take any action to purchase stock in the corporation or its suppliers and she may not advise friends or relatives to do so until after public announcement of the award. Such actions could violate Federal securities statutes as well as this section.

Example 2: A General Services Administration employee involved in evaluating proposals for a construction contract cannot disclose the terms of a competing proposal to a friend employed by a company bidding on the work. Prior to award of the contract, bid or proposal information is nonpublic information specifically protected by 41 U.S.C. 423.

Example 3: An employee is a member of a source selection team assigned to review the proposals submitted by several companies in response to an Army solicitation for spare parts. As a member of the evaluation team, the employee has access to proprietary information regarding the production methods of Alpha Corporation, one of the competitors. He may not use that information to assist Beta Company in drafting a proposal to compete for a Navy spare parts contract. The Federal Acquisition Regulation in 48 CFR parts 3, 14 and 15 restricts the release of information related to procurements and other contractor information that must be protected under 18 U.S.C. 1905 and 41 U.S.C. 423.

Example 4: An employee of the Nuclear Regulatory Commission inadvertently includes a document that is exempt from disclosure with a group of documents released in response to a Freedom of Information Act request. Regardless of whether the document is used improperly, the employee's disclosure does not violate this section because it was not a knowing unauthorized disclosure made for the purpose of furthering a private interest.

Example 5: An employee of the Army Corps of Engineers is actively involved in the activities of an organization whose goals relate to protection of the environment. The employee may not, other than as permitted by agency procedures, give the organization or a newspaper reporter nonpublic information about long-range plans to build a particular dam.

Sec. 2635.704 Use of Government property.

(a) Standard. An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes.

(b) Definitions. For purposes of this section:

(1) Government property includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. The term includes office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data processing capabilities, printing and reproduction facilities, Government records, and Government vehicles.

(2) Authorized purposes are those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation.

Example 1: Under regulations of the General Services Administration at 41 CFR 101-35.201, an employee may make a personal long distance call charged to her personal calling card.

Example 2: An employee of the Commodity Futures Trading Commission whose office computer gives him access to a commercial service providing information for investors may not use that service for personal investment research.

Example 3: In accordance with Office of Personnel Management regulations at part 251 of this title, an attorney employed by the Department of Justice may be permitted to use her office word processor and agency photocopy equipment to prepare a paper to be presented at a conference sponsored by a professional association of which she is a member.

Sec. 2635.705 Use of official time.

(a) Use of an employee's own time. Unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties. An employee not under a leave system, including a Presidential appointee exempted under 5 U.S.C. 6301(2), has an obligation to expend an honest effort and a reasonable proportion of his time in the performance of official duties.

Example 1: An employee of the Social Security Administration may use official time to engage in certain representational activities on behalf of the employee union of which she is a member. Under 5 U.S.C. 7131, this is a proper use of her official time even though it does not involve performance of her assigned duties as a disability claims examiner.

Example 2: A pharmacist employed by the Department of Veterans Affairs has been granted excused absence to participate as a speaker in a conference on drug abuse sponsored by the professional association to which he belongs. Although excused absence granted by an agency in accordance with guidance in chapter 630 of the Federal Personnel Manual allows an employee to be absent from his official duties without charge to his annual leave account, such absence is not on official time.

(b) Use of a subordinate's time. An employee shall not encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

Example 1: An employee of the Department of Housing and Urban Development may not ask his secretary to type his personal correspondence during duty hours. Further, directing or coercing a subordinate to perform such activities during non-duty hours constitutes an improper use of public office for private gain in violation of Sec. 2635.702(a). Where the arrangement is entirely voluntary and appropriate compensation is paid, the secretary may type the correspondence at home on her own time. Where the compensation is not adequate, however, the arrangement would involve a gift to the superior in violation of the standards in subpart C of this part.

Subpart H--Outside Activities

Note: the prohibitions and requirements in ***bold italics*** are general orders and apply to all military members without further implementation. Violations may result in prosecution under the UCMJ, as well as adverse administrative action and other adverse action authorized by the United States Code or Federal Regulations.

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Sec. 2635.801 Overview.

(a) This subpart contains provisions relating to outside employment, outside activities and personal financial obligations of employees that are in addition to the principles and standards set forth in other subparts of this part. Several of these provisions apply to uncompensated as well as to compensated outside activities.

(b) An employee who wishes to engage in outside employment or other outside activities must comply with all relevant provisions of this subpart, including, when applicable:

(1) The prohibition on outside employment or any other outside activity that conflicts with the employee's official duties;

(2) Any agency-specific requirement for prior approval of outside employment or activities;

(3) The limitations on receipt of outside earned income by certain Presidential appointees and other noncareer employees;

(4) The limitations on paid and unpaid service as an expert witness;

(5) The limitations on participation in professional organizations;

(6) The limitations on paid and unpaid teaching, speaking, and writing; and

(7) The limitations on fundraising activities.

(c) Outside employment and other outside activities of an employee must also comply with applicable provisions set forth in other subparts of this part and in supplemental agency regulations. These include the principle that an employee shall endeavor to avoid actions creating an appearance of violating any of the ethical standards in this part and the prohibition against use of official position for an employee's private gain or for the private gain of any person with whom he has employment or business relations or is otherwise affiliated in a nongovernmental capacity.

(d) In addition to the provisions of this and other subparts of this part, an employee who wishes to engage in outside employment or other outside activities must comply with applicable statutes and regulations. Relevant provisions of law, many of which are listed in subpart I of this part, may include:

(1) 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;

(2) 18 U.S.C. 201(c), which prohibits a public official, otherwise than as provided by law for the proper discharge of official duty, from seeking, accepting, or agreeing to receive or accept anything of value for or because of any official act;

(3) 18 U.S.C. 203(a), which prohibits an employee from seeking, accepting, or agreeing to receive or accept compensation for any representational services, rendered personally or by another, in relation to any particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, or other specified entity. This statute contains several exceptions, as well as standards for special Government employees that limit the scope of the restriction;

Note: the prohibitions and requirements in ***bold italics*** are general orders and apply to all military members without further implementation. Violations may result in prosecution under the UCMJ, as well as adverse administrative action and other adverse action authorized by the United States Code or Federal Regulations.

(4) 18 U.S.C. 205, which prohibits an employee, whether or not for compensation, from acting as agent or attorney for anyone in a claim against the United States or from acting as agent or attorney for anyone, before any department, agency, or other specified entity, in any particular matter in which the United States is a party or has a direct and substantial interest. It also prohibits receipt of any gratuity, or any share of or interest in a claim against the United States, in consideration for assisting in the prosecution of such claim. This statute contains several exceptions, as well as standards for special Government employees that limit the scope of the restrictions;

(5) 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 exceptions that limit its applicability;

(6) The Emoluments Clause of the United States Constitution, article I, section 9, clause 8, which prohibits anyone holding an office of profit or trust under the United States from accepting any gift, office, title or emolument, including salary or compensation, from any foreign government except as authorized by Congress. In addition, 18 U.S.C. 219 generally prohibits any public official from being or acting as an agent of a foreign principal, including a foreign government, corporation or person, if the employee would be required to register as a foreign agent under 22 U.S.C. 611 et seq.;

(7) The Hatch Act Reform Amendments, 5 U.S.C. 7321 through 7326, which govern the political activities of executive branch employees; and (8) The limitations on outside employment, 5 U.S.C. App. (Ethics in Government Act of 1978), which prohibit a covered noncareer employee's receipt of compensation for specified activities and provide that he shall not allow his name to be used by any firm or other entity which provides professional services involving a fiduciary relationship. Implementing regulations are contained in Secs. 2636.305 through 2636.307 of this chapter.

Sec. 2635.802 Conflicting outside employment and activities.

An employee shall not engage in outside employment or any other outside activity that conflicts with his official duties. An activity conflicts with an employee's official duties:
(a) If it is prohibited by statute or by an agency supplemental regulation; or

(b) If, under the standards set forth in Secs. 2635.402 and 2635.502, it would 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.

Employees are cautioned that even though an outside activity may not be prohibited under this section, it may violate other principles or standards set forth in this part or require the employee to disqualify himself from participation in certain particular matters under either subpart D or subpart E of this part.

Example 1: An employee of the Environmental Protection Agency has just been promoted. His principal duty in his new position is to write regulations relating to the disposal of hazardous waste. The employee may not continue to serve as president of a nonprofit environmental organization that routinely submits comments on such regulations. His service as an officer would require his disqualification from duties critical to the performance of his official duties on a basis so frequent as to materially impair his ability to perform the duties of his position.

Example 2: An employee of the Occupational Safety and Health Administration who was and is expected again to be instrumental in formulating new OSHA safety standards applicable to manufacturers that use chemical solvents has been offered a consulting contract to provide advice to an affected company in restructuring its manufacturing operations to comply with the OSHA standards. The employee should not enter into the consulting arrangement even though he is not currently working on OSHA standards affecting this industry and his consulting contract can be expected to be completed before he again works on such standards. Even though the consulting arrangement would not be a conflicting activity within the meaning of Sec. 2635.802, it would

create an appearance that the employee had used his official position to obtain the compensated outside business opportunity and it would create the further appearance of using his public office for the private gain of the manufacturer.

Sec. 2635.803 Prior approval for outside employment and activities.

When required by agency supplemental regulation issued after February 3, 1993, an employee shall obtain prior approval before engaging in outside employment or activities. Where it is determined to be necessary or desirable for the purpose of administering its ethics program, an agency shall, by supplemental regulation, require employees or any category of employees to obtain prior approval before engaging in specific types of outside activities, including outside employment.

Sec. 2635.804 Outside earned income limitations applicable to certain Presidential appointees and other noncareer employees.

(a) Presidential appointees to full-time noncareer positions. A Presidential appointee to a full-time noncareer position shall not receive any outside earned income for outside employment, or for any other outside activity, performed during that Presidential appointment. This limitation does not apply to any outside earned income received for outside employment, or for any other outside activity, carried out in satisfaction of the employee's obligation under a contract entered into prior to April 12, 1989.

(b) Covered noncareer employees. Covered noncareer employees, as defined in Sec. 2636.303(a) of this chapter, may not, in any calendar year, receive outside earned income attributable to that calendar year which exceeds 15 percent of the annual rate of basic pay for level II of the Executive Schedule under 5 U.S.C. 5313, as in effect on January 1 of such calendar year. Employees should consult the regulations implementing this limitation, which are contained in Secs. 2636.301 through 2636.304 of this chapter.

Note: In addition to the 15 percent limitation on outside earned income, covered noncareer employees are prohibited from receiving any compensation for: practicing a profession which involves a fiduciary relationship; affiliating with or being employed by a firm or other entity which provides professional services involving a fiduciary relationship; serving as an officer or member of the board of any association, corporation or other entity; or teaching without prior approval. Implementing regulations are contained in Secs. 2636.305 through 2636.307 of this chapter.

(c) Definitions. For purposes of this section:

(1) Outside earned income has the meaning set forth in Sec. 2636.303(b) of this chapter, except that Sec. 2636.303(b)(8) shall not apply.

(2) Presidential appointee to a full-time noncareer position means any employee who is appointed by the President to a full-time position described in 5 U.S.C. 5312 through 5317 or to a position that, by statute or as a matter of practice, is filled by Presidential appointment, other than:

(i) A position filled under the authority of 3 U.S.C. 105 or 3 U.S.C. 107(a) for which the rate of basic pay is 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 Sec. 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.

Sec. 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 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 Sec. 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.

Sec. 2635.806 Participation in professional associations. [Reserved]

Sec. 2635.807 Teaching, speaking and writing.

(a) Compensation for teaching, speaking or writing. Except as permitted by paragraph (a)(3) of this 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 requirement contained in Sec. 2636.307 of this chapter that covered noncareer employees obtain advance authorization before engaging in teaching for compensation; and

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

(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 Sec. 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 Sec. 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.

Note: Section 2635.807(a)(2)(i)(E) does not preclude an employee, other than a covered noncareer employee, from receiving compensation for teaching, speaking or writing on a subject within the employee's discipline or inherent area of expertise based on his educational background or experience even though the teaching, speaking or writing deals generally with a subject within the agency's areas of responsibility.

Example 1: The Director of the Division of Enforcement at the Commodity Futures Trading Commission has a keen interest in stamp collecting and has spent years developing his own collection as well as studying the field generally. He is asked by an international society of philatelists to give a series of four lectures on how to assess the value of American stamps. Because the subject does not relate to his official duties, the Director may accept compensation for the lecture series. He could not, however, accept a similar invitation from a commodities

broker.

Example 2: A scientist at the National Institutes of Health, whose principal area of Government research is the molecular basis of the development of cancer, could not be compensated for writing a book which focuses specifically on the research she conducts in her position at NIH, and thus, relates to her official duties. However, the scientist could receive compensation for writing or editing a textbook on the treatment of all cancers, provided that the book does not focus on recent research at NIH, but rather conveys scientific knowledge gleaned from the scientific community as a whole. The book might include a chapter, among many other chapters, which discusses the molecular basis of cancer development. Additionally, the book could contain brief discussions of recent developments in cancer treatment, even though some of those developments are derived from NIH research, as long as it is available to the public.

Example 3: On his own time, a National Highway Traffic Safety Administration employee prepared a consumer's guide to purchasing a safe automobile that focuses on automobile crash worthiness statistics gathered and made public by NHTSA. He may not receive royalties or any other form of compensation for the guide. The guide deals in significant part with the programs or operations of NHTSA and, therefore, relates to the employee's official duties. On the other hand, the employee could receive royalties from the sale of a consumer's guide to values in used automobiles even though it contains a brief, incidental discussion of automobile safety standards developed by NHTSA.

Example 4: An employee of the Securities and Exchange Commission may not receive compensation for a book which focuses specifically on the regulation of the securities industry in the United States, since that subject concerns the regulatory programs or operations of the SEC. The employee may, however, write a book about the advantages of investing in various types of securities as long as the book contains only an incidental discussion of any program or operation of the SEC.

Example 5: An employee of the Department of Commerce who works in the Department's employee relations office is an acknowledged expert in the field of Federal employee labor relations, and participates in Department negotiations with employee unions. The employee may receive compensation from a private training institute for a series of lectures which describe the decisions of the Federal Labor Relations Authority concerning unfair labor practices, provided that her lectures do not contain any significant discussion of labor relations cases handled at the Department of Commerce, or the Department's labor relations policies. Federal Labor Relations Authority decisions concerning Federal employee unfair labor practices are not a specific program or operation of the Department of Commerce and thus do not relate to the employee's official duties. However, an employee of the FLRA could not give the same presentations for compensation.

Example 6: A program analyst employed at the Environmental Protection Agency may receive royalties and other compensation for a book about the history of the environmental movement in the United States even though it contains brief references to the creation and responsibilities of the EPA. A covered noncareer employee of the EPA, however, could not receive compensation for writing the same book because it deals with the general subject matter area affected by EPA programs and operations. Neither employee could receive compensation for writing a book that focuses on specific EPA regulations or otherwise on its programs and operations.

Example 7: An attorney in private practice has been given a one year appointment as a special Government employee to serve on an advisory committee convened for the purpose of surveying and recommending modification of procurement regulations that deter small businesses from competing for Government contracts. Because his service under that appointment is not expected to exceed 60 days, the attorney may accept compensation for an article about the anticompetitive effects of certain regulatory certification requirements even though those regulations are being reviewed by the advisory committee. The regulations which are the focus of the advisory committee deliberations are not a particular matter involving specific parties. Because the information is nonpublic, he could not, however, accept compensation for an article which recounts advisory committee deliberations that took place in a meeting closed to the public in order to discuss proprietary information provided by a small business.

Example 8: A biologist who is an expert in marine life is employed for more than 60 days in a year as a special Government employee by the National Science Foundation to assist in developing a program of grants by the Foundation for the study of coral reefs. The biologist may continue to receive compensation for speaking, teaching and writing about marine life generally and coral reefs specifically. However, during the term of her appointment as a special Government employee, she may not receive compensation for an article about the NSF program she is participating in developing. Only the latter would concern a matter to which the special Government employee is assigned.

Example 9: An expert on international banking transactions has been given a one-year appointment as a special Government employee to assist in analyzing evidence in the Government's fraud prosecution of owners of a failed savings and loan association. It is anticipated that she will serve fewer than 60 days under that appointment. Nevertheless, during her appointment, the expert may not accept compensation for an article about the fraud prosecution, even though the article does not reveal nonpublic information. The prosecution is a particular matter that involves specific parties.

(ii) Agency has the meaning set forth in Sec. 2635.102(a), except that any component of a department designated as a separate agency under Sec. 2635.203(a) shall be considered a separate agency.

(iii) Compensation includes any form of consideration, remuneration or income, including royalties, given for or in connection with the employee's teaching, speaking or writing activities. Unless accepted under specific statutory authority, such as 31 U.S.C. 1353, 5 U.S.C. 4111 or 7342, or an agency gift acceptance statute, it includes transportation, lodgings and meals, whether provided in kind, by purchase of a ticket, by payment in advance or by reimbursement after the expense has been incurred. It does not include:

(A) Items offered by any source that could be accepted from a prohibited source under subpart B of this part;

(B) Meals or other incidents of attendance such as waiver of attendance fees or course materials furnished as part of the event at which the teaching or speaking takes place;

(C) Copies of books or of publications containing articles, reprints of articles, tapes of speeches, and similar items that provide a record of the teaching, speaking or writing activity~~.~~ ; or

(D) In the case of an employee other than a covered noncareer employee as defined in 5 CFR 2636.303(a), travel expenses, consisting of transportation, lodgings or meals, incurred in connection with the teaching, speaking or writing activity.

Note to Paragraph (a)(2)(iii): Independent of Sec. 2635.807(a), other authorities, such as 18 U.S.C. 209, in some circumstances may limit or entirely preclude an employee's acceptance of travel expenses.

Example 1 to paragraph (a)(2)(iii): A GS-15 employee of the Forest Service has developed and marketed, in her private capacity, a speed reading technique for which popular demand is growing. She is invited to speak about the technique by a representative of an organization that will be substantially affected by a regulation on land management which the employee is in the process of drafting for the Forest Service. The representative offers to pay the employee a $200 speaker's fee and to reimburse all her travel expenses. She may accept the travel reimbursements, but not the speaker's fee. The speech is related to her duties under Sec. 2635.807(a)(2)(i)(C) and the fee is prohibited compensation for such speech; travel expenses incurred in connection with the speaking engagement, on the other hand, are not prohibited compensation for a career GS-15 employee.

Example 2 to paragraph (a)(2)(iii): Solely because of her recent appointment to a Cabinet-level position, a Government official is invited by the Chief Executive Officer of a major international corporation to attend firm meetings to be held in Aspen for the purpose of addressing senior corporate managers on the importance of recreational activities to a balanced lifestyle. The firm offers to reimburse the official's travel expenses. The official may not accept the offer. The speaking activity is related to duties under Sec. 2635.807(a)(2)(i)(B) and, because she is a covered noncareer employee as defined in Sec. 2636.303(a) of this chapter, the travel expenses

are prohibited compensation as to her.

Example 3 to paragraph (a)(2)(iii): A GS-14 attorney at the Federal Trade Commission (FTC) who played a lead role in a recently concluded merger case is invited to speak about the case, in his private capacity, at a conference in New York. The attorney has no public speaking responsibilities on behalf of the FTC apart from the judicial and administrative proceedings to which he is assigned. The sponsors of the conference offer to reimburse the attorney for expenses incurred in connection with his travel to New York. They also offer him, as compensation for his time and effort, a free trip to San Francisco. The attorney may accept the travel expenses to New York, but not the expenses to San Francisco. The lecture relates to his official duties under paragraphs (a)(2)(i)(E)(1) and (a)(2)(i)(E)(2) of Sec. 2635.807, but because he is not a covered noncareer employee as defined in Sec. 2636.303(a) of this chapter, the expenses associated with his travel to New York are not a prohibited form of compensation as to him. The travel expenses to San Francisco, on the other hand, not incurred in connection with the speaking activity, are a prohibited form of compensation. If the attorney were a covered noncareer employee he would be barred from accepting the travel expenses to New York as well as the travel expenses to San Francisco.

Example 4 to paragraph (a)(2)(iii): An advocacy group dedicated to improving treatments for severe pain asks the National Institutes of Health (NIH) to provide a conference speaker who can discuss recent advances in the agency's research on pain. The group also offers to pay the employee's travel expenses to attend the conference. After performing the required conflict of interest analysis, NIH authorizes acceptance of the travel expenses under 31 U.S.C. 1353 and the implementing General Services Administration regulation, 41 CFR part 304-1, and authorizes an employee to undertake the travel. At the conference the advocacy group, as agreed, pays the employee's hotel bill and provides several of his meals. Subsequently the group reimburses the agency for the cost of the employee's airfare and some additional meals. All of the payments by the advocacy group are permissible. Since the employee is speaking officially and the expense payments are accepted under 31 U.S.C. 1353, they are not prohibited compensation under Sec. 2635.807(a)(2)(iii). The same result would obtain with respect to expense payments made by non-Government sources properly authorized under an agency gift acceptance statute, the Government Employees Training Act, 5 U.S.C. 4111, or the foreign gifts law, 5 U.S.C. 7342.

(iv) Receive means that there is actual or constructive receipt of the compensation by the employee so that the employee has the right to exercise dominion and control over the compensation and to direct its subsequent use. Compensation received by an employee includes compensation which is:

(A) Paid to another person, including a charitable organization, on the basis of designation, recommendation or other specification by the employee; or

(B) Paid with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative.

(v) Particular matter involving specific parties has the meaning set forth in Sec. 2637.102(a)(7) of this chapter.

(vi) Personal and substantial participation has the meaning set forth in Sec. 2635.402(b)(4).

(3) Exception for teaching certain courses. Notwithstanding that the activity would relate to his official duties under paragraphs (a)(2)(i) (B) or (E) of this section, an employee may accept compensation for teaching a course requiring multiple presentations by the employee if the course is offered as part of:

(i) The regularly established curriculum of:

(A) An institution of higher education as defined at 20 U.S.C. 1141(a);

(B) An elementary school as defined at 20 U.S.C. 2891(8); or

(C) A secondary school as defined at 20 U.S.C. 2891(21); or

(ii) A program of education or training sponsored and funded by the Federal Government or by a State or local government which is not offered by an entity described in paragraph (a)(3)(i) of this section.

Example 1: An employee of the Cost Accounting Standards Board who teaches an advanced accounting course as part of the regular business school curriculum of an accredited university may receive compensation for teaching the course even though a substantial portion of the course deals with cost accounting principles applicable to contracts with the Government.

Example 2: An attorney employed by the Equal Employment Opportunity Commission may accept compensation for teaching a course at a state college on the subject of Federal employment discrimination law. The attorney could not accept compensation for teaching the same seminar as part of a continuing education program sponsored by her bar association because the subject of the course is focused on the operations or programs of the EEOC and the sponsor of the course is not an accredited educational institution.

Example 3: An employee of the National Endowment for the Humanities is invited by a private university to teach a course that is a survey of Government policies in support of artists, poets and writers. As part of his official duties, the employee administers a grant that the university has received from the NEH. The employee may not accept compensation for teaching the course because the university has interests that may be substantially affected by the performance or nonperformance of the employee's duties. Likewise, an employee may not receive compensation for any teaching that is undertaken as part of his official duties or that involves the use of nonpublic information.

(b) Reference to official position. An employee who is engaged in teaching, speaking or writing as outside employment or as an outside activity shall not use or permit the use of his official title or position to identify him in connection with his teaching, speaking or writing activity or to promote any book, seminar, course, program or similar undertaking, except that:

(1) An employee may include or permit the inclusion of his title or position as one of several biographical details when such information is given to identify him in connection with his teaching, speaking or writing, provided that his title or position is given no more prominence than other significant biographical details;

(2) An employee may use, or permit the use of, his title or position in connection with an article published in a scientific or professional journal, provided that the title or position is accompanied by a reasonably prominent disclaimer satisfactory to the agency stating that the views expressed in the article do not necessarily represent the views of the agency or the United States; and

(3) An employee who is ordinarily addressed using a general term of address, such as "The Honorable," or a rank, such as a military or ambassadorial rank, may use or permit the use of that term of address or rank in connection with his teaching, speaking or writing.

Note: Some agencies may have policies requiring advance agency review, clearance, or approval of certain speeches, books, articles or similar products to determine whether the product contains an appropriate disclaimer, discloses nonpublic information, or otherwise complies with this section.

Example 1: A meteorologist employed with the National Oceanic and Atmospheric Administration is asked by a local university to teach a graduate course on hurricanes. The university may include the meteorologist's Government title and position together with other information about his education and previous employment in course materials setting forth biographical data on all teachers involved in the graduate program. However, his title or position may not be used to promote the course, for example, by featuring the meteorologist's Government title, Senior Meteorologist, NOAA, in bold type under his name. In contrast, his title may be used in this manner when the meteorologist is authorized by NOAA to speak in his official capacity.

Example 2: A doctor just employed by the Centers for Disease Control has written a paper based on his earlier independent research into cell structures. Incident to the paper's publication in the Journal of the American Medical Association, the doctor may be given credit for the paper, as Dr. M. Wellbeing, Associate Director, Centers for Disease Control, provided that the article also contains a disclaimer, concurred in by the CDC, indicating that the paper is the result of the doctor's independent research and does not represent the findings of the CDC.

Example 3: An employee of the Federal Deposit Insurance Corporation has been asked to give a speech in his private capacity, without compensation, to the annual meeting of a committee of the American Bankers Association on the need for banking reform. The employee may be described in his introduction at the meeting as an employee of the Federal Deposit Insurance Corporation provided that other pertinent biographical details are mentioned as well.

Sec. 2635.808 Fundraising activities.

An employee may engage in fundraising only in accordance with the restrictions in part 950 of this title on the conduct of charitable fundraising in the Federal workplace and in accordance with paragraphs (b) and (c) of this section.

(a) Definitions. For purposes of this section:

(1) Fundraising means the raising of funds for a nonprofit organization, other than a political organization as defined in 26 U.S.C. 527(e), through:

(i) Solicitation of funds or sale of items; or

(ii) Participation in the conduct of an event by an employee where any portion of the cost of attendance or participation may be taken as a charitable tax deduction by a person incurring that cost.

(2) Participation in the conduct of an event means active and visible participation in the promotion, production, or presentation of the event and includes serving as honorary chairperson, sitting at a head table during the event, and standing in a reception line. The term does not include mere attendance at an event provided that, to the employee's knowledge, his attendance is not used by the nonprofit organization to promote the event. While the term generally includes any public speaking during the event, it does not include the delivery of an official speech as defined in paragraph (a)(3) of this section or any seating or other participation appropriate to the delivery of such a speech. Waiver of a fee for attendance at an event by a participant in the conduct of that event does not constitute a gift for purposes of subpart B of this part.

Note: This section does not prohibit fundraising for a political party, candidate for partisan political office, or partisan political group. However, there are statutory restrictions that apply to political fundraising. For example, under the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323(a), employees may not knowingly solicit, accept, or receive a political contribution from any person, except under limited circumstances. In addition, employees are prohibited by 18 U.S.C. 607 from soliciting or receiving political contributions in Federal offices, and, except as permitted by the Hatch Act Reform Amendments, are prohibited by 18 U.S.C. 602 from knowingly soliciting political contributions from other employees.

Example 1: The Secretary of Transportation has been asked to serve as master of ceremonies for an All-Star Gala. Tickets to the event cost $150 and are tax deductible as a charitable donation, with proceeds to be donated to a local hospital. By serving as master of ceremonies, the Secretary would be participating in fundraising.

(3) Official speech means a speech given by an employee in his official capacity on a subject matter that relates to his official duties, provided that the employee's agency has determined that the event at which the speech is to be given provides an appropriate forum for the dissemination of the information to be presented and provided that the employee does not request donations or other support for the nonprofit organization. Subject matter relates to an employee's official duties if it focuses specifically on the employee's official duties, on the

responsibilities, programs, or operations of the employee's agency as described in Sec. 2635.807(a)(2)(i)(E), or on matters of Administration policy on which the employee has been authorized to speak.

Example 1: The Secretary of Labor is invited to speak at a banquet honoring a distinguished labor leader, the proceeds of which will benefit a nonprofit organization that assists homeless families. She devotes a major portion of her speech to the Administration's Points of Light initiative, an effort to encourage citizens to volunteer their time to help solve serious social problems. Because she is authorized to speak on Administration policy, her remarks at the banquet are an official speech. However, the Secretary would be engaged in fundraising if she were to conclude her official speech with a request for donations to the nonprofit organization.

Example 2: A charitable organization is sponsoring a two-day tennis tournament at a country club in the Washington, DC area to raise funds for recreational programs for learning disabled children. The organization has invited the Secretary of Education to give a speech on federally funded special education programs at the awards dinner to be held at the conclusion of the tournament and a determination has been made that the dinner is an appropriate forum for the particular speech. The Secretary may speak at the dinner and, under Sec. 2635.204(g)(1), he may partake of the meal provided to him at the dinner.

(4) Personally solicit means to request or otherwise encourage donations or other support either through person-to-person contact or through the use of one's name or identity in correspondence or by permitting its use by others. It does not include the solicitation of funds through the media or through either oral remarks, or the contemporaneous dispatch of like items of mass-produced correspondence, if such remarks or correspondence are addressed to a group consisting of many persons, unless it is known to the employee that the solicitation is targeted at subordinates or at persons who are prohibited sources within the meaning of Sec. 2635.203(d). It does not include behind-the-scenes assistance in the solicitation of funds, such as drafting correspondence, stuffing envelopes, or accounting for contributions.

Example 1: An employee of the Department of Energy who signs a letter soliciting funds for a local private school does not "personally solicit" funds when 500 copies of the letter, which makes no mention of his DOE position and title, are mailed to members of the local community, even though some individuals who are employed by Department of Energy contractors may receive the letter.

(b) Fundraising in an official capacity. An employee may participate in fundraising in an official capacity if, in accordance with a statute, Executive order, regulation or otherwise as determined by the agency, he is authorized to engage in the fundraising activity as part of his official duties. When authorized to participate in an official capacity, an employee may use his official title, position and authority.

Example 1: Because participation in his official capacity is authorized under part 950 of this title, the Secretary of the Army may sign a memorandum to all Army personnel encouraging them to donate to the Combined Federal Campaign.

(c) Fundraising in a personal capacity. An employee may engage in fundraising in his personal capacity provided that he does not:

(1) Personally solicit funds or other support from a subordinate or from any person:

(i) Known to the employee, if the employee is other than a special Government employee, to be a prohibited source within the meaning of Sec. 2635.203(d); or

(ii) Known to the employee, if the employee is a special Government employee, to be a prohibited source within the meaning of Sec. 2635.203(d)(4) that is a person whose interests may be substantially affected by performance or nonperformance of his official duties;

(2) Use or permit the use of his official title, position or any authority associated with his public office to further the fundraising effort, except that an employee who is ordinarily addressed using a general term of address, such "The Honorable," or a rank, such as a military or ambassadorial rank, may use or permit the

use of that term of address or rank for such purposes; or

(3) Engage in any action that would otherwise violate this part.

Example 1: A nonprofit organization is sponsoring a golf tournament to raise funds for underprivileged children. The Secretary of the Navy may not enter the tournament with the understanding that the organization intends to attract participants by offering other entrants the opportunity, in exchange for a donation in the form of an entry fee, to spend the day playing 18 holes of golf in a foursome with the Secretary of the Navy.

Example 2: An employee of the Merit Systems Protection Board may not use the agency's photocopier to reproduce fundraising literature for her son's private school. Such use of the photocopier would violate the standards at Sec. 2635.704 regarding use of Government property.

Example 3: An Assistant Attorney General may not sign a letter soliciting funds for a homeless shelter as "John Doe, Assistant Attorney General." He also may not sign a letter with just his signature, "John Doe," soliciting funds from a prohibited source, unless the letter is one of many identical, mass-produced letters addressed to a large group where the solicitation is not known to him to be targeted at persons who are either prohibited sources or subordinates.

Sec. 2635.809 Just financial obligations.

Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those such as Federal, State, or local taxes that are imposed by law. For purposes of this section, a just financial obligation includes any financial obligation acknowledged by the employee or reduced to judgment by a court. In good faith means an honest intention to fulfill any just financial obligation in a timely manner. In the event of a dispute between an employee and an alleged creditor, this section does not require an agency to determine the validity or amount of the disputed debt or to collect a debt on the alleged creditor's behalf.

Subpart I--Related Statutory Authorities

Sec. 2635.901 General.

In addition to the standards of ethical conduct set forth in subparts A through H of this part, there are a number of statutes that establish standards to which an employee's conduct must conform. The list set forth in Sec. 2635.902 references some of the more significant of those statutes. It is not comprehensive and includes only references to statutes of general applicability. While it includes references to several of the basic conflict of interest statutes whose standards are explained in more detail throughout this part, it does not include references to statutes of more limited applicability, such as statutes that apply only to officers and employees of the Department of Defense.

Sec. 2635.902 Related statutes.

(a) The prohibition against solicitation or receipt of bribes (18 U.S.C. 201(b)).

(b) The prohibition against solicitation or receipt of illegal gratuities (18 U.S.C. 201(c)).

(c) The prohibition against seeking or receiving compensation for certain representational services before the Government (18 U.S.C. 203).

(d) The prohibition against assisting in the prosecution of claims against the Government or acting as agent or attorney before the Government (18 U.S.C. 205).

(e) The post-employment restrictions applicable to former employees (18 U.S.C. 207, with implementing regulations at parts 2637 and 2641 of this chapter).

(f) The prohibition on certain former agency officials' acceptance of compensation from a contractor (41 U.S.C. 423(d)).

(g) The prohibition against participating in matters affecting an employee's own financial interests or the financial interests of other specified persons or organizations (18 U.S.C. 208).

(h) The actions required of certain agency officials when they contact, or are contacted by, offerors or bidders regarding non-Federal employment (41 U.S.C. 423(c)).

(i) The prohibition against receiving salary or any contribution to or supplementation of salary as compensation for Government service from a source other than the United States (18 U.S.C. 209).

(j) The prohibition against gifts to superiors (5 U.S.C. 7351).

(k) The prohibition against solicitation or receipt of gifts from specified prohibited sources (5 U.S.C. 7353).

(l) The prohibition against fraudulent access and related activity in connection with computers (18 U.S.C. 1030).

(m) The provisions governing receipt and disposition of foreign gifts and decorations (5 U.S.C. 7342).

(n) [Reserved]

(o) The prohibitions against certain political activities (5 U.S.C. 7321 through 7326 and 18 U.S.C. 602, 603, 606 and 607).

(p) The prohibitions against disloyalty and striking (5 U.S.C. 7311 and 18 U.S.C. 1918).

(q) The general prohibition (18 U.S.C. 219) against acting as the agent of a foreign principal required to register under the Foreign Agents Registration Act (22 U.S.C. 611 through 621).

(r) The prohibition against employment of a person convicted of participating in or promoting a riot or civil disorder (5 U.S.C. 7313).

(s) The prohibition against employment of an individual who habitually uses intoxicating beverages to excess (5 U.S.C. 7352).

(t) The prohibition against misuse of a Government vehicle (31 U.S.C. 1344).

(u) The prohibition against misuse of the franking privilege (18 U.S.C. 1719).

(v) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(w) The prohibition against concealing, mutilating or destroying a public record (18 U.S.C. 2071).

(x) The prohibition against counterfeiting or forging transportation requests (18 U.S.C. 508).

(y) The restrictions on disclosure of certain sensitive Government information under the Freedom of Information Act and the Privacy Act (5 U.S.C. 552 and 552a).

(z) The prohibitions against disclosure of classified information (18 U.S.C. 798 and 50 U.S.C. 783(a)).

(aa) The prohibition against disclosure of proprietary information and certain other information of a confidential nature (18 U.S.C. 1905).
(bb) The prohibitions on disclosing and obtaining certain procurement information (41 U.S.C. 423(a) and (b)).

Note: the prohibitions and requirements in ***bold italics*** are general orders and apply to all military members without further implementation. Violations may result in prosecution under the UCMJ, as well as adverse administrative action and other adverse action authorized by the United States Code or Federal Regulations.

(cc) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(dd) The prohibition against certain personnel practices (5 U.S.C. 2302).

(ee) The prohibition against interference with civil service examinations (18 U.S.C. 1917).

(ff) The restrictions on use of public funds for lobbying (18 U.S.C. 1913).

(gg) The prohibition against participation in the appointment or promotion of relatives (5 U.S.C. 3110).

(hh) The prohibition against solicitation or acceptance of anything of value to obtain public office for another (18 U.S.C. 211).

(ii) The prohibition against conspiracy to commit an offense against or to defraud the United States (18 U.S.C. 371).

(jj) The prohibition against embezzlement or conversion of Government money or property (18 U.S.C. 641).

(kk) The prohibition against failing to account for public money (18 U.S.C. 643).

(ll) The prohibition against embezzlement of the money or property of another person that is in the possession of an employee by reason of his employment (18 U.S.C. 654).

Note: the prohibitions and requirements in ***bold italics*** are general orders and apply to all military members without further implementation. Violations may result in prosecution under the UCMJ, as well as adverse administrative action and other adverse action authorized by the United States Code or Federal Regulations.

U.S. Department of Transportation
United States Coast Guard

Memorandum

Subject: WIDELY ATTENDED GATHERING; DETERMINATION OF AGENCY INTEREST

Date:

5370

Reply to Attn. of:

From: [Assistant Ethics Official]

To: File

Ref: (a) Standards of Ethical Conduct, 5 C.F.R. § 2635.204(g)(3)

1. **[Insert name, rank and position of employee]** has been invited to attend **[name of event]**, a widely attended gathering of mutual interest to a number of parties, by **[name of sponsor of event, or name of person other than the sponsor if that person has issued invite, or will bear the costs of employee's attendance]**. I am **[employee's name]**'s Assistant Ethics Official.

2. Pursuant to reference (a), I have evaluated this invitation, and find:

   a. **[name of sponsor or other person bearing costs of your attendance]** is a person who has interests that may be substantially affected by the performance or nonperformance of this employee's official duties (or an association or organization a majority of whose members have such interests);

   b. This event is important to the Coast Guard because _____ ;

   c. There are no pending matters (There is one pending matter; There are two pending matters, etc.) before the Coast Guard affecting the interests of **[name of sponsor or other person bearing costs]**. (should discuss the nature and sensitivity of any pending matters);

   d. **[Employee]** has no role in any pending matter before the Coast Guard concerning **[name of sponsor or other person bearing costs].** (As applicable: **[Employee]** has the following minor role in the matter(s) pending before the Coast Guard concerning **[name of sponsor or other person bearing costs]**: _____);

   e. The purpose of this event is: _____;

f. The identity of other expected participants at the event are: _____; and

g. The monetary value of the gift of free attendance at this event is _____.

Note: if person other than sponsor of event issues invitation, and will cover the costs of the employee's attendance, the gift may only be accepted if more than 100 persons are expected to attend the event and the gift of free attendance has a market value of $260 or less

3. I find that the Coast Guard's interest in this employee's participation in the event outweighs concern that acceptance of the gift may or may appear to improperly influence the employee in the performance of his/her official duties.

[ASSISTANT ETHICS OFFICIAL]

Encl: (1) Invitation or other supporting documentation

Copy: [Employee]