

THE WHITE HOUSE

WASHINGTON

June 8, 1993

MEMORANDUM FOR WHITE HOUSE STAFF

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SUBJECT:

Reminder on Ethics Obligations and Gifts

The President is committed to ensuring that all employees adhere to the highest standards of integrity. As a White House employee, you are subject to the criminal conflict of interest laws, the Standards of Ethical Conduct for Executive Branch Employees, the Foreign Gifts Act, and a number of other restrictions, some of them with significant penalties. You should have received a copy of the Standards of Ethical Conduct when you attended your orientation ethics briefing. Additional copies of the Standards of Ethical Conduct are available in the Counsel's Office, OEOB Room 128. If you have not attended an Ethics briefing, please be sure that you attend the next regularly scheduled briefing, on Tuesday, June 29, 1993 at 4:00 p.m. in Room 450, OEOB. It is critical that every White House employee receive training in the ethical obligations that apply to those serving in the government.

This memorandum lays out the White House policy regulating the receipt of gifts, both domestic and foreign, under the Standards of Ethical Conduct for Executive Branch Employees and the Foreign Gift Act.

General Domestic Gift Principles

The principles discussed below apply to gifts offered to or received by you personally. You should be aware that there are only very limited circumstances in which a gift may be accepted for official purposes, or otherwise on behalf of the White House. No gift -- including, but not limited to, computer software or hardware, or other equipment, whether by outright gift or loan --

should be accepted for official use without first checking with the Counsel's Office. Normally, acceptance of such gifts will not be permissible. Although it is often frustrating to deal with outmoded or inadequate equipment, the solution is NOT for White House staff individually to solicit or accept gifts or loans of such equipment from private sources. Moreover, it also is improper to solicit or accept such equipment personally and then use it for official business. It is very important that you understand and comply with this restriction on soliciting and accepting gifts for official purposes.

Gifts that are offered to or received by you personally are also subject to a number of limitations, which are set forth in the Standards of Ethical Conduct. These limits are discussed below, but you should refer to the Standards of Ethical Conduct themselves if any questions arise about a gift.

Under the Standards of Ethical Conduct, executive branch employees may not accept a gift in return for being influenced in the performance of an official act nor may he or she solicit or coerce the offering of any gift.

Moreover, White House employees may not solicit or accept a gift:

1. from a prohibited source; or
2. given because of the employee's official position.

I. What Constitutes a "Gift"

Virtually anything of value constitutes a gift, whether it comes in the form of an outright donation, loan, favor, discount, travel, lodging, entertainment, or other hospitality. This includes, for example, meals, flowers, tickets to events, or loans of software or equipment. When in doubt, it is best to assume that anything of value is a gift. As discussed below, however, some exceptions permit you to accept certain gifts.

II. What Constitutes a "Prohibited Source"

A prohibited source includes anyone who:

1. is seeking official action by the White House;
2. does business or seeks to do business with the White House;
3. conducts activities regulated by the White House;
4. has interests that may be substantially affected by the performance or nonperformance of your official duties; or

5. is an organization composed of members who can be described by the criteria set forth immediately above.

Thus, under the Standards of Ethical Conduct, White House staff members generally are prohibited from accepting gifts (including meals, evaluative computer hardware and software, tickets to events) from most sources -- including, among others, contractors, the press, corporations, regulated business groups, and litigating parties.

III. Gifts That May Be Accepted

The Standards of Ethical Conduct provide limited exceptions under which certain gifts from prohibited sources or gifts given because of a staff member's official position properly may be accepted. These exceptions are very limited; gifts that fall outside of the exceptions cannot be accepted consistent with the Standards of Ethical Conduct.

In addition to the exceptions, you always may choose to pay the regular price for an item -- the face value of a ticket, the market price of a book, etc., -- if you wish to keep an item that you are not permitted to accept as a gift. Moreover, under certain circumstances, travel on official business may be paid for by outside sources. However, you must seek approval for such travel expenses prior to traveling.

In all instances, however, employees may not solicit or coerce the offering of a gift -- even if the gift could be accepted under one of the excepted categories in the Standards of Ethical Conduct.

The following categories of gifts may be accepted consistent with the Standards of Ethical Conduct:

A. Gifts of \$20 or Less. You may accept an unsolicited gift (other than cash or its equivalent) that is valued at \$20 or less per occasion. This category applies to all goods as well as dinners and receptions. See Memorandum for White House Staff, "Meals, Receptions, Dinners, and Events" (March 1, 1993). Although, you may accept a meal, book, or other item valued at \$20 or less, you may not keep a gift valued over \$20 by paying the difference between the gift's market value and the \$20 limitation. Moreover, you may not accept more than an aggregate amount of \$50 in gifts under this exception from any single source in a calendar year.

Unsolicited advertising and promotional materials of nominal value may be accepted even if they come from individuals or businesses having business with your office or regulated by your office or some other agency of the government. This extends only to such customary items as desk calendars, pens, pocket diaries,

and the like. By way of example, this rule would not permit the acceptance of a case of champagne, a work of art, evaluative computer software or hardware equipment, or other items of substantial value.

B. Gift Based on a Personal Relationship. You may accept an unsolicited gift where it is clear that the gift is motivated by a family relationship or close personal friendship rather than your official position. In assessing whether a gift meets this exception, the history of your relationship (does it predate your government service?) and the source of payment (did the individual or a company or business pay?) are important factors.

C. Gifts Based on Outside Business or Employment Relationships. You may accept meals, lodging, transportation and other benefits that results from the business or employment relationships of a spouse, provided it is clear that the gift has not been enhanced because of your official status. Thus, you may attend the opera with your spouse (or significant other) even when his or her employer provides him or her with tickets to attend.

You also may accept such gifts that result from your own outside business or employment activities provided it is clear that such gifts also have not been offered or enhanced because of your official position. Note, however, that all full-time White House officials paid above \$27,789 are prohibited from receiving income from any outside employment activities. Moreover, outside business activities, even if otherwise permissible, should be cleared through Counsel's Office to ensure that no conflicts of interest are created by the activity.

D. Employment-Related Speaking Engagements. When you are speaking or presenting information on behalf of the White House in your official capacity, you may accept meals and the offer of free attendance at a conference, meeting or event on the day of your speech or presentation when provided by the sponsor of the event.

When travel expenses will be covered by a nongovernmental organization, you must receive approval by completing and submitting a non-federal source travel form to the Counsel's Office. These forms are available in the Administrative Office (EOB, Room 1).

E. Widely Attended Gatherings. You may accept free attendance and meals offered by the sponsor of a widely attended gathering of mutual interest to a number of parties, provided your department head has determined it is in the interest of the White House that you attend. However, you may not attend an

event or dinner as the guest of an organization other than the sponsor of the entire event; that is, the ticket must be offered and paid for by the host of the event. You should consult Counsel's Office to ensure that an event properly meets the "widely attended gathering" exception.

F. Gifts from a Political Organization. Those White House officials who are exempt from the Hatch Act (which includes staff members paid from appropriated funds for the White House Office) may accept meals, lodgings, transportation and other benefits, including free attendance at events, when provided by a political organization defined under 26 U.S.C. 527(e) (e.g., the Democratic National Committee or campaign committees for state, local and federal candidates).

G. Social Invitations from Non-Prohibited Sources. You may accept food and entertainment at a social event attended by several persons when the host is not a prohibited source and no fee is charged to anyone in attendance.

H. Awards and Honorary Degrees. You may accept a gift, other than cash or an investment interest, with an aggregate market value of \$200 or less if it is a bona fide award or is offered incident to a bona fide award that is given for meritorious public service or achievement by a person (or organization) who does not have interests that may be substantially affected by the performance or nonperformance of your official duties.

A few other exceptions also apply for certain discounts and for meals and entertainment in foreign areas. You should consult the Standards of Ethical Conduct for specific guidance.

Assuming that the gift you would like to accept does meet one of the above exceptions, you always should consider whether your acceptance of the gift nevertheless would lead a reasonable person to question your impartiality in official matters affecting the donor. Where such an appearance question could be raised, you should decline to accept the gift.

General Foreign Gift Principles

I. Gifts From Foreign Governments

The United States Constitution and the Foreign Gifts Act, 5 U.S.C. 7342, generally prohibit U.S. Government officials, their spouses and dependents from accepting foreign gifts or decorations. The following general guidelines apply to gifts from foreign governments and officials:

A. A U.S. official may not request or encourage an offer of a gift or decoration.

B. Gifts from foreign governments valued at \$200 or more automatically become the property of the U.S. Government. Such gifts may be accepted on behalf of the United States only when "it appears that to refuse . . . would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States" Because such gifts are "deemed to have been accepted on behalf of the United States," however, they must be turned over to the White House Gift Unit as soon as possible for recording, necessary reporting and disposition.

C. Gifts from foreign governments valued under \$200 (termed gifts "of minimal value", which are "tendered and received as a souvenir or mark of courtesy" may be accepted and retained. Such gifts retained by you are subject to the annual public financial disclosure, discussed below, under the same conditions as domestic gifts.

D. Valuation of a gift is based on the retail value in the United States at the time of acceptance. 41 C.F.R. §101.49.001-5. A valuation of any gift should be sought immediately upon receipt (or upon your return from a foreign country). The gift should be submitted to the White House Gift Unit for valuation.

E. Under the General Services Administration's Interim Rule 4 (57 Fed. Reg. 53,283, November 9, 1992), federal employees may accept gifts of travel, meals and lodging from foreign governments and multinational organizations. Pursuant to 31 U.S.C. 1353 (travel by government officials paid for by non-federal sources), acceptance of any such gifts must be consistent with the conflict of interest rules outlined in Interim Rule 4. Such travel also must be approved by Counsel's Office and a thorough record of any such expenses accepted should be kept as they may be required to be reported to the State Department and on the annual financial disclosure form (discussed below).

F. In the case of travel taking place entirely outside of the United States -- e.g., travel by a U.S. official between two foreign countries -- the Foreign Gifts Act specifically requires that the value of travel or expenses paid by foreign governments for transportation, food or lodging must be reasonable and acceptance must be consistent with the interests of the United States.

II. Gifts from Foreign Non-Official Individuals

The Foreign Gifts Act applies only to official gifts from foreign governments and officials. We must caution you to be wary of gifts offered to you from foreign non-official individuals, especially when you do not know the donor. Any such gift is treated the same as a domestic gift in regard to propriety of acceptance, conflicts of interests, reporting, etc.

Reporting Requirements and the Gift Unit

I. White House Gift Unit and Report Forms

Members of the White House Office should complete a White House Staff Gift Report Form for all gifts, foreign and domestic. These forms may be obtained in reasonable quantities from the Supply Room or the White House Gift Unit, OEGB Room 457 (ext. 7133). The gift itself should be submitted to the Gift Unit for appraisal, together with the completed form.

Staff who are required to file annual financial disclosure reports should maintain a log of gifts valued in excess of \$100. Gifts in excess of \$250 from a single source must be disclosed on the annual SF-278 Public Financial Disclosure Report, aggregating gifts of \$100 or more from one source.

II. Disposal of Prohibited Gifts

If you receive a gift that may not be accepted consistent with the Standards of Ethical Conduct, whether abroad, at the office, or at home, you must return it to the donor with the explanation that it cannot be accepted. A copy of the letter returning the gift should be retained for your files, with a copy attached to the White House Staff Gift Report Form that you send to the Gift Unit.

When it is not practical to return a tangible item because it is perishable, you may give the item to a charity, share it with your office or have it destroyed by the Gift Unit. A staff member still must report the gift (and the disposition) to the Gift Unit. Perishable items include flowers and food items.

If for some reason you feel you cannot return the gift (donor unknown, the address of donor unknown, embarrassment to the donor, or other), you should so indicate on the Gift Report Form, making sure to explain the rationale for not returning the item. If after analysis, the Gift Unit confirms that returning the gift is not possible or advisable, it will be turned over to GSA for disposal.

III. Reporting Requirements

In the event that a gift is retained, those staff members required to file financial disclosure reports on Form SF-278 are reminded that they have an obligation to report any gift over \$250 in value received from persons other than relatives -- including any foreign gifts. In addition, foreign and domestic gifts over \$100 in value must be reported if the aggregate of such gifts received from the same source in one year exceeds \$250.

We recommend that you log all gifts received with the Gift Unit so that you can determine at reporting time whether there is a reporting requirement. The Gift Unit will assist you by determining the value of gifts. By routinely submitting the White House Staff Gift Report Forms to the Gift Unit throughout the year, you will enable the Gift Unit to supply you with an accurate and complete list of reportable gifts at the end of the year for inclusion on your SF-278 the following year.

Gifts for the President, First Lady, the Vice President and Mrs. Gore

Anyone who receives a gift intended for the President, the First Lady, the Vice President or Mrs. Gore, must ensure that it is turned over to security personnel for inspection as soon as possible. Please be particularly wary of gifts which are suddenly or unexpectedly thrust upon you. Upon return from security, the gift should be deposited with the White House (or Vice President) Gift Unit, along with information concerning the identity of the donor, time and place of acceptance, etc., so that the gift properly can be recorded and a decision made as to its disposition.

No staff member should accept a foreign gift for the President, the First Lady, the Vice President or Mrs. Gore except by prior arrangement with the host government or entity.

Conclusion

Your observance of these rules is essential and appreciated. This memorandum is necessarily summary and does not deal with all questions that may arise. In all instances, the Standards of Ethical Conduct for Executive Branch Employees should guide your behavior. If you are in doubt about the propriety of accepting any gift or about any other topic covered above, please consult with the Counsel's Office, by calling 456-6229.

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*File
Ethics*

How to Keep Out of Trouble

... Ethical Conduct
for Federal Employees...

in Brief



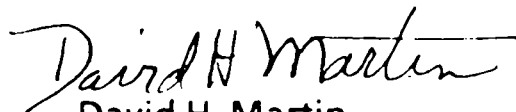
OFFICE OF GOVERNMENT ETHICS

FOREWORD

The Office of Government Ethics has Federal statutory responsibility to promote understanding of ethical standards in executive agencies. The laws and regulations that make up those government-wide standards are found in Title 18 of the United States Code, sections 202 through 209, and Executive Order 11222, as implemented by Part 735 of Title 5 of the Code of Federal Regulations.

This pamphlet is an effort to explain the thrust and practical applications of these ethical laws and regulations. It is not intended to be all-inclusive of the various ethical restrictions placed on you, nor should it be used as a basis for definitive interpretation of the criminal law provisions or the Executive Order. Additionally, you may be subject to other agency-specific restrictions. The question and answer format is designed to anticipate and answer some of the more common concerns facing Federal employees. I hope it will be a useful reference guide to you as you carry out your official responsibilities.

The pamphlet was prepared with the assistance of the President's Council on Integrity and Efficiency. Special recognition is extended to the Inspector General Offices of the Departments of Defense and Housing and Urban Development, and the Assistant Secretary for Personnel of the Department of Health and Human Services for providing representatives to compile the pamphlet. The Department of Health and Human Services also provided materials used in its preparation.

A handwritten signature in cursive script that reads "David H. Martin".

David H. Martin
Director

Office of Government Ethics

INTRODUCTION

As officers and employees of the Federal Government, we must all conform to high standards of ethical conduct. We are judged not only by our official actions and conduct, but also by our personal activities when they are related to our work for the Government. The Government relies on us as its representatives to perform Government business properly, to protect Government interests, and to meet the high ethical standards of public service.

The purpose of this pamphlet is to present the basic laws and regulations on ethical conduct in an easy-to-read, easy-to-understand format. This pamphlet condenses the regulations into a concise document that you can use as a ready reference for answering questions. The pamphlet does not replace existing laws and regulations which should be consulted for the precise requirements.

For the most part, the standards of conduct and conflict of interest laws apply to all Government officers and employees including special Government employees, such as experts, consultants, and advisory committee members. You are responsible for knowing these laws and regulations as well as the specific policies and procedures of your own agency.

Employees, supervisors, and management officials all share the responsibility for ensuring that high standards of ethical conduct are maintained within the Government. You are required to become familiar with the standards of conduct regulations and to exercise judgment to avoid any action that might result in or create the appearance of misconduct or conflict of interest. Supervisors and managers must become familiar with the standards of conduct regulations and apply the standards to the work they do and supervise.

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ETHICAL CONDUCT FOR ALL EMPLOYEES

WHERE CAN YOU GET GUIDANCE ON THE ETHICS LAWS AND REGULATIONS?

You are encouraged to seek guidance whenever you are unsure whether your actions or planned actions are in accordance with the standards. There are several sources within the Government that you can rely on for guidance on ethical matters. Among them are:

- The Office of Government Ethics
- The Office of the General Counsel
- The Designated Agency Ethics Official
- The Personnel Office
- The Office of the Inspector General



WHAT ARE THE GENERAL STANDARDS OF CONDUCT?

An employee must avoid any action that might result in or create the appearance of:

- Using public office for private gain;
- Giving preferential treatment to anyone;
- Impeding Government efficiency or economy;
- Losing complete independence or impartiality;
- Making a Government decision outside official channels; or
- Affecting adversely the confidence of the public in the integrity of the Government.

Employees must be particularly careful that private interests and activities do not impact adversely on or conflict with their public duties. The following sections address specific questions that you may have.

ARE YOU ALLOWED TO USE GOVERNMENT PROPERTY FOR PERSONAL REASONS?

No. You have a positive duty to protect and conserve Federal property and to obey all rules and regulations regarding its use. You cannot directly or indirectly use or allow the use of Government property for other than officially approved activities. This includes property leased to the Government. (5 C.F.R. 735.205)

A few examples of the improper use of Government property include:

- Using Government envelopes to send payroll checks to the bank or for other personal matters.
- Using Government photocopy equipment for personal matters.
- Using a Government-owned, leased, or rented vehicle or aircraft for non-official purposes.
- Using Government telephones to make personal telephone calls. (This includes local and long distance calls over both commercial facilities and the Federal Telecommunications System.)
- Selling commercial products in a Government building.
- Using Government computers and word processors for personal matters.



WHAT IS THE GOVERNMENT'S POLICY ON THE ACCEPTANCE OF GIFTS, ENTERTAINMENT, AND FAVORS?

You may not solicit or accept anything of monetary value, including gifts, gratuities, favors, entertainment or loans from any person who:

- Has or is seeking to obtain contractual or other business or financial relations with your agency.

- Conducts operations or activities that are regulated by your agency; or
- Has interests that may be substantially affected by the performance or nonperformance of your official duties. (5 C.F.R. 735.202)

Your agency may have additional restrictions or may provide exceptions for the following:

- Gifts, gratuities, favors, entertainment, loans or similar favors of monetary value that stem from a family or personal relationship when the circumstances make it clear that it is that relationship rather than the business of the person concerned that motivates the gift;
- Loans from banks or other financial institutions on customary terms;
- Unsolicited advertising or promotional material of nominal value such as pens, note pads, and calendars;
- Food or refreshments of nominal value, served on infrequent occasions, in the ordinary course of a luncheon or dinner meeting and only if you are properly in attendance and there is not a reasonable opportunity to pay, or if the food is offered to all participants attending the meeting or convention.
- Travel and subsistence expenses in certain cases when authorized by your agency.

Listed below are examples of instances when you may be offered gifts or favors and the proper action to take in each case:

- You are on the premises of Company X participating in a meeting at lunchtime. A representative of Company X provides a meal for all meeting participants from a Company X facility and there is no established method for payment. You may accept the meal, unless your agency specifically prohibits it.
- You are on the premises of Company X and you go to a restaurant for lunch with a Company X salesperson. The salesperson offers to pay the bill. Since it is expected that employees pay for their own lunches, you may not accept the salesperson's offer to buy lunch.

You should be aware that there are criminal provisions relating to the acceptance of gifts, entertainment, and favors found in Title 18 of the United States Code.

One provision is Title 18 U.S.C. 209, which prohibits you from receiving any salary as compensation for services as an employee of the Government from any source other than the United States.

Example:

You are asked to give a speech in your official capacity.
You may not accept a fee for a speech given as part of
your Government duties.

This law does not prohibit you from continuing to participate in a *bona fide* employee welfare or benefit plan maintained by a former employer. It also does not prohibit you from receiving compensation from a state, county, or municipality, unless prohibited under your agency's Standards of Conduct.



Gifts to superiors:

You may not solicit a contribution from another employee for a gift to an official superior, or make a donation to a superior. Also, you may not accept a gift from an employee receiving less pay than you. (5 U.S.C. 7351)

Most agencies allow voluntary gifts of nominal value or donations in a nominal amount on a special occasion such as marriage, illness, or retirement.

Example:

Your office decides to take up a collection for your boss who is being promoted within the office. This would not qualify for the exception for special occasions because it involves a continuing workplace relationship.

WHAT ABOUT USING INFORMATION PICKED UP ON THE JOB?

You may not use, for furthering a private interest, information obtained through your Government job that has not been made available to the general public. (5 C.F.R. 735.206) For example, you would not be free to use information that has not been dispersed by the agency or is available to a member of the public only by special request.



WHAT HAPPENS IF YOU FAIL TO PAY YOUR DEBTS?

You should meet your just financial obligations in a proper and timely manner. Failure to do so reflects adversely on the Government and on your agency and is considered improper conduct. (5 C.F.R. 735.207)

CAN YOU GAMBLE WHILE ON DUTY?

No. You are not allowed to participate in any gambling activity while on Government-owned or leased property or while on duty for the Government. This includes the operation of a gambling device in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. (5 C.F.R. 735.208)



CAN YOU HAVE A SECOND JOB OUTSIDE OF THE GOVERNMENT?

You may engage in outside employment, with or without compensation, but only if it will not affect adversely the performance of your official duties and will not conflict with your duties. Such work may include civic, charitable, religious, and community undertakings. You may not participate in outside employment which:

- Tends to impair your mental or physical capacity to perform Government duties and responsibilities in an acceptable manner;**
- Is likely to result in criticism or cause embarrassment to your agency;**
- Creates a real or apparent conflict of interest;**
- Takes your time and attention during your official work hours. (5 C.F.R. 735.203)**

If you are considering outside employment, you may be required to obtain advance administrative approval for certain activities as required by your agency.

There are other types of outside activity that you may be interested in pursuing such as teaching, lecturing, and writing. Advance approval may be required by your agency. A few of the most important restrictions on outside activities are as follows:

- You may not use Government-financed time or supplies;
- You may not use or allow the use of official information that has not been made available to the general public;
- You may not promote the use of your official title or affiliation with your agency, and allow no suggestion of official endorsement.

Title 18 U.S.C. 203 and 205 prohibit you from representing another person before an agency or court of the Federal or D.C. Governments, and from receiving payment for someone else's representation before an agency of the Federal or D.C. Governments. Your representation is prohibited even when uncompensated. For example:

- Unless specifically prohibited by your agency, you may prepare income tax returns for others in your free time, but you may not argue before the Internal Revenue Service on behalf of your client, if there is a dispute over the return.
- You may not represent a non-profit organization of which you are a member before a Federal agency in a request for a grant even though you would not be paid for the representation.

Exceptions:

Generally, you are allowed to represent your parents, your spouse or child, or anyone for whom you serve as a guardian.

You also may provide testimony under oath.

CAN YOU OBTAIN PERSONAL GAIN FROM YOUR OFFICIAL POSITION OR ACTIONS?

Generally speaking, you cannot participate personally and substantially as a Government employee in a matter in which you have a financial interest. There is no minimum amount of value or control that constitutes a financial interest. This prohibition also applies if any of the following individuals or organizations have a financial interest in the matter:

- Your spouse;
- Your minor child;

- Your partner;
- An organization in which you serve as an officer, director, trustee, partner or employee; or
- A person or organization with which you are negotiating for prospective employment or have an arrangement for prospective employment.
(18 U.S.C. 208)

The standards of conduct regulations go further in prohibiting you from having a financial interest that conflicts or even appears to conflict with your Government duties and responsibilities. (5 C.F.R. 735.204)

The following cases are examples of conflict of interest situations:

- You own a single share of stock in a widely-held corporation. If the corporation is likely to be affected by a matter in which you will participate as a Government official, you may violate 18 U.S.C. 208.
- You have a paid part-time position with a non-Federal organization. If the organization is likely to be affected by a matter in which you will participate as a Government official, you would violate 18 U.S.C. 208.
- You are administering a Government contract with a firm owned by your brother-in-law. You probably would not violate 18 U.S.C. 208 because your brother-in-law's financial interests are not considered to be yours, but you would have the appearance of a conflict, which would violate the standards of conduct.
- You are conducting an audit of a private organization in the course of your Government job. The head of this private organization asks you to meet with her to discuss leaving Government to join her organization. Unless you immediately reject the offer, you would have to disqualify yourself from further participation in the audit in order not to violate 18 U.S.C. 208.

The head of your agency can grant you a waiver under 18 U.S.C. 208 if your financial interest is found to be not so substantial as to affect the integrity of your services. A general waiver can also be granted to a group of employees for certain interests found to be too remote or inconsequential to affect the integrity of the employees' services. The general waivers must be published in the Federal Register.





WHAT ARE POST-EMPLOYMENT RESTRICTIONS?

Post-employment restrictions can be found in Title 18 of the United States Code. Title 18 U.S.C. 207 prohibits former Government employees from "switching sides." For example, as a former employee you would be prohibited permanently from acting as another person's representative to the Government in certain matters in which you have been involved substantially while in Federal service.

Also, for two years you would be prohibited from representing another person to the Government in certain matters which were pending under your official responsibility during your last year of Government service.

Examples:

- As a former Government employee, you would be prohibited from representing another person on a contract you administered while with the Government, but you could work on the contract in the contractor's office.

- As a former supervisor with the Government, you would be prohibited for two years from representing another person before the Government on a case that was under your official responsibility during your last year of Government service even if you did not actually work on the case yourself.

- There are additional restrictions, one of which imposes a one-year, agency specific cooling-off period, that apply to certain senior employees whose positions are listed in the Federal Register each year.

If you are planning to leave the Government, you should see your personnel office or your Designated Agency Ethics Official for more information about this law.



ARE EXPERTS, CONSULTANTS, AND ADVISORY COMMITTEE MEMBERS COVERED BY THE STANDARDS OF CONDUCT REGULATIONS AND THE CONFLICT OF INTEREST LAWS?

Yes. The standards of conduct regulations generally apply to those individuals, known as special Government employees who do not serve for more than 130 days in a year. If you are a special Government employee, you should read sections 203, 205, 207, and 208 of Title 18, United States Code, all of which carry criminal penalties related to conflicts of interest, and the standards of conduct regulations, where applicable.

WHAT IF YOU WANT TO REPORT A VIOLATION OF THE STANDARDS OF CONDUCT REGULATIONS OR THE CONFLICT OF INTEREST LAWS?

If you know of criminal violations or violations of the standards of conduct regulations committed by other employees of your agency or any outsider, or if you know of any misconduct or abuses of authority, you are responsible for reporting the violations to your supervisor, the Office of the Inspector General (where applicable), your Designated Agency Ethics Official, or your personnel office. Note, failure to report a criminal violation promptly could result in disciplinary action being taken against the employee having such knowledge. If you want to report violations to the Office of the Inspector General, use the IG "hotline," where one exists.

ARE YOU REQUIRED TO GIVE STATEMENTS TO INVESTIGATIVE OFFICIALS?

You are required to assist the Inspector General and other investigative officials. This requirement includes the giving of statements or evidence to investigators, auditors, or inspectors of the Inspector General's Office or to other investigators authorized to conduct investigations into potential violations. (NOTE: You always retain your constitutional rights, including the rights to counsel and against self-incrimination.)



WHAT ACTION MAY BE TAKEN IF YOU VIOLATE THE STANDARDS OF CONDUCT REGULATIONS OR THE CONFLICT OF INTEREST LAWS?

You may be subject to disciplinary action if you violate any of the standards of conduct regulations. This includes supplemental standards published by your agency. The type of action to be taken must be determined in relation to the specific violation. Some types of disciplinary action that may be considered are: admonishment, written reprimand, reassignment, suspension, demotion and removal. When such actions are taken, applicable laws, regulations, and procedures must be followed. In addition, violations of Federal criminal statutes may subject the violator to criminal prosecution. If you have questions concerning disciplinary action, discuss your concerns with your supervisor or your personnel office.

What Are The Political Do's & Don'ts For Federal Employees?

-----Covered Employees-----

With very few exceptions, all employees in the executive branch of the Federal Government are subject to the political activity provisions of the Hatch Act. Employees of the U.S. Postal Service and the District of Columbia government are also subject to this law.

- | | |
|---|--|
| o May register and vote as they choose | o May not be candidates for public office in partisan elections |
| o May assist in voter registration drives | o May not campaign for or against a candidate or slate of candidates in partisan elections |
| o May express opinions about candidates and issues | o May not make campaign speeches or engage in other campaign activities to elect partisan candidates |
| o May participate in campaigns where none of the candidates represent a political party | o May not collect contributions or sell tickets to political fund-raising functions |
| o May contribute money to political organizations or attend political fund-raising functions | o May not distribute campaign material in partisan elections |
| o May wear or display political badges, buttons, or stickers | o May not organize or manage political rallies or meetings |
| o May attend political rallies and meetings | o May not hold office in political clubs or parties |
| o May join political clubs or parties | o May not circulate nominating petitions |
| o May sign nominating petitions | o May not work to register voters for one party only |
| o May campaign for or against referendum questions, constitutional amendments, and municipal ordinances | |
-

An election is partisan if any candidate for an elected public office is running as a representative of a political party whose presidential candidate received electoral votes in the last presidential election.

Provided Courtesy of the Office of the Special Counsel, U.S. Merit Systems Protection Board.

APPENDIX

Reference Chart to Laws and Regulations

Title in Handbook	Page Number	Citation to Law or Regulation
What are the General Standards of Conduct	1	5 C.F.R. 735.201a
Are You Allowed to Use Government Property for Personal Reasons?	2	5 C.F.R. 735.205
What is the Government's Policy on the Acceptance of Gifts, Entertainment, and Favors?	2	5 C.F.R. 735.202 & 18 U.S.C. 201 & 209
What about Using Information Picked up on the Job?	5	5 C.F.R. 735.206
What Happens if You Fail to Pay Your Debts?	5	5 C.F.R. 735.207
Can You Gamble while on Duty?	6	5 C.F.R. 735.208
Can You Have a Second Job Outside Government?	6	5 C.F.R. 735.203, .205, .206, & .201a(a); & 18 U.S.C. 203 & 205
Can You Obtain Personal Gain from Your Official Position or Actions?	7	5 C.F.R. 735.204 & 18 U.S.C. 208
What are Post-Employment Restrictions?	9	18 U.S.C. 207
Are Experts, Consultants, and Advisory Committee Members Covered by the Standards of Conduct and the Conflict of Interest Laws?	10	5 C.F.R. 735 Subpart C, 18 U.S.C. 203, 205, 207, & 208

THE WHITE HOUSE
WASHINGTON

July 26, 1993

MEMORANDUM FOR ALL NEW APPOINTEES AND EMPLOYEES

FROM: BETH NOLAN, *B.N./mes*
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: MANDATORY ETHICS ORIENTATION RESCHEDULED

The mandatory ethics training session for new White House appointees and employees previously scheduled for Tuesday, July 27, at 4:00 p.m. in OEOB, Room 450 has been rescheduled to:

TUESDAY, August 3 at 4:00 p.m., in OEOB Room 450

This session is for all new appointees and employees hired on or after January 20, 1993 who have not attended one of our previous orientations.

Please build time into your schedule to attend this session.

If you have any questions about the Standards of Ethical Conduct, please call me at 456-6229.

THE WHITE HOUSE

WASHINGTON

SUMMARY

**STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES
OF THE EXECUTIVE BRANCH
5 CFR PART 2635**

GENERAL PROVISIONS - SUBPART A

Subpart A establishes the framework for the rest of the regulation. It includes definitions, provides authority for supplementation of the regulation when necessary by individual agencies and encourages employees to seek advice from agency ethics officials. It also:

- . Restates the 14 principles of ethical conduct and instructs employees to apply them when considering situations not specifically addressed by the regulation; and
- . For situations that involve appearances of conflicts, provides that the circumstances will be judged from the perspective of a reasonable person with knowledge of the relevant facts.

GIFTS FROM OUTSIDE SOURCES-SUBPART B

Subpart B prohibits employees from soliciting or accepting gifts from prohibited sources or gifts given because of their official position. The term "prohibited source" includes anyone seeking business with or official action by an employee's agency and anyone substantially affected by the performance of an employee's official duties. For example, a company bidding for an agency contract or a person seeking an agency grant would be a prohibited source of gifts to employees of that agency.

The term "gift" is defined to include nearly anything of monetary value. However, it does not include items that clearly are not gifts, such as publicly available discounts and commercial loans and it does not include certain inconsequential items, such as coffee, donuts, greeting cards and certificates.

Additional information or a copy of the standards may be obtained from your supervisor. Inquiries about the content of the standards should be directed to the Office of Counsel to the President staff at #(202) 456-6229.

There are several exceptions to the prohibitions against gifts from outside sources. For example, with some limitations, employees may accept:

- Unsolicited gifts with a market value of \$20 or less per occasion, aggregating no more than \$50 in a calendar year from any single source;
- Gifts motivated by a family relationship or personal friendship;
- Free attendance at certain widely-attended gatherings, such as conferences and receptions, when the cost of attendance is borne by the sponsor of the event; and
- Food, refreshments and entertainment at certain meetings or events while on duty in a foreign country.

The subpart also contains guidance on returning or paying for gifts that cannot be accepted.

GIFTS BETWEEN EMPLOYEES-SUBPART C

Subpart C prohibits employees from:

- Giving or soliciting a gift for another employee who is an official superior; or
- Accepting a gift from a lower-paid employee, unless the two employees are personal friends who are not in a superior-subordinate relationship.

The following are among the exceptions to these prohibitions:

- On an occasional basis, employees may give and accept items aggregating \$10 or less per occasion, food and refreshments shared in the office, or personal hospitality at a residence. This exception can be used for birthdays and those holidays when gifts are traditionally exchanged.
- On infrequent occasions of personal significance, such as marriage, and on occasions that terminate the superior-subordinate relationship, such as retirement, employees may give and accept gifts appropriate to the occasion and they may make or solicit voluntary contributions of nominal amounts for group gifts.

* See attached memorandum of March 1, 1993 from Bernard Nussbaum to White House staff.

CONFLICTING FINANCIAL INTERESTS-SUBPART D

Subpart D contains two provisions designed to deal with financial interests that conflict with employees' official duties.

The first provision entitled "Disqualifying financial interests" prohibits an employee from participating in an official government capacity in a matter in which he or she has a financial interest or in which his or her spouse, minor child, employer or any one of several other specified persons has a financial interest. For example, an agency purchasing agent could not place an agency order for computer software with a company owned by his or her spouse. The provision includes alternatives to nonparticipation, which may involve selling or giving up the conflicting interest or obtaining a statutory waiver that will permit the employee to continue to perform specific official duties.

The second provision, entitled "Prohibited financial interests," contains authority by which agencies may prohibit employees from acquiring or retaining certain financial interests.

Employees required by Subchapter D to sell financial interests may be eligible to defer the tax consequences of that divestiture.

IMPARTIALITY IN PERFORMING OFFICIAL DUTIES-SUBPART E

There may be circumstances other than those covered by Subpart D in which employees should not perform official duties in order to avoid an appearance of loss of impartiality. Subpart E contains two disqualification provisions addressing those appearance issues.

The first provision, entitled "Personal and business relationships," states that employees should obtain specific authorization before participating in certain government matters where their impartiality is likely to be questioned. The matters specifically covered by this standard include those:

- Involving specific matters, such as contracts, grants or investigations, that are likely to affect the financial interests of members of employees' households; or
- In which persons with whom employees have specific relationship are parties or represent parties. This would include, for example, matters involving employers of spouses or minor children, or anyone with whom employees have or seek a business or financial relationship.

There are procedures by which employees may be authorized to participate in such matters when it serves the employing agency's interests. The process set forth in Subpart E should be used to address any matter in which an employee's impartiality is likely to be questioned.

The second provision, entitled "Extraordinary payments from former employers," restricts employees' participation in certain matters involving former employers. If a former employer gave an employee an "extraordinary payment" in excess of \$10,000 prior to entering Federal service, it bars the employee from participating for two years in matters in which that former employer is or represents a party. A \$25,000 payment voted on an ad hoc basis by a board of directors would be an "extraordinary payment." A routine severance payment made under an established employee benefit plan would not.

SEEKING OTHER EMPLOYMENT-SUBPART F

Subpart F prohibits employees from participating in their official capacities in particular matters that have a direct and predictable effect on the financial interests of persons with whom they are "seeking employment" or with whom they have an arrangement concerning future employment.

The term "seeking employment" encompasses actual employment negotiations as well as more preliminary efforts to obtain employment, such as sending an unsolicited resume. It does not include:

- Sending an unsolicited resume, for example, to someone only affected by the employee's work on general rulemaking; or
- Requesting a job application or rejecting an unsolicited employment overture.

An employee generally continues to be "seeking employment" until he or she or the prospective employer rejects the possibility of employment and all discussions end. However, an employee is no longer "seeking employment" with the recipient of an unsolicited resume after two months have passed with no response.

MISUSE OF POSITION-SUBPART G

Subpart G contains four provisions designed to ensure that employees do not misuse their official positions. These include:

- A prohibition against employees using public office for their own private gain or for the private gain of friends, relatives or persons with whom they are

affiliated in a nongovernment capacity, or for the endorsement of any product, service or enterprise.

- A prohibition against engaging in financial transactions using nonpublic information, or allowing the improper use of nonpublic information to further private interests;
- An affirmative duty to protect and conserve Government property and to use Government property only for authorized purposes; and
- A prohibition against using official time other than in an honest effort to perform official duties and a prohibition against encouraging or requesting a subordinate to use official time to perform unauthorized activities.

OUTSIDE ACTIVITIES-SUBPART H

Subpart H contains provisions governing employees' involvement in outside activities, including outside employment. These provisions are in addition to the provisions set forth in other subparts of the regulation. The provisions in Subpart H include:

- Synopses of statutes and a constitutional provision that may limit certain outside activities;
- A prohibition against engaging in outside activities that conflict with employees' official duties;
- Authority by which individual agencies may require employees to obtain approval before engaging in outside activities;
- Limitations on outside earned income applicable to certain Presidential appointees and certain noncareer employees;
- A prohibition against serving as an expert witness, other than on behalf of the United States, in certain proceedings in which the United States is a party or has a direct and substantial interest;
- A prohibition against receiving compensation for teaching, speaking or writing related to their official duties, which is in addition to the honorarium prohibition imposed by statute;
- Limitations on fundraising in a personal capacity; and

· A requirement that employees satisfy their just financial obligations.

Subpart H reserves the section which, in the proposed rule, had set forth standards for participation in the activities of professional associations.

RELATED STATUTORY AUTHORITIES-SUBPART I

Subpart I provides references to other statutes which relate to employee conduct.

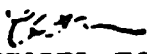
THE WHITE HOUSE

WASHINGTON

March 1, 1993

MEMORANDUM FOR WHITE HOUSE OFFICE STAFF

FROM: BERNARD NUSSBAUM
COUNSEL TO THE PRESIDENT

CHERYL MILLS 
ASSOCIATE COUNSEL TO THE PRESIDENT

SUBJECT: Meals, Receptions, Dinners, and Events

This memorandum provides general guidance on the propriety of accepting meals and invitations to receptions, dinners and other events from outside domestic sources. The rules governing the Standards of Conduct for Executive Branch Employees are contained in 5 C.F.R. Part 2635, which were issued by the Office of Government Ethics ("OGE"). These rules are provided at every ethics briefing for White House Office employees. Additional copies of the rules are available from Counsel's Office (OEOB, Room 128).

Under the ethics rules, White House employees may not accept a gift in return for being influenced in the performance of an official act nor may he or she solicit or coerce the offering of a gift. Moreover, White House employees may not solicit or accept a gift:

1. from a prohibited source; or
2. given because of the employee's official position.

A 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." 5 C.F.R. § 2635.203.

A prohibited source includes anyone who:

1. is seeking official action by the White House Office;
2. does business or seeks to do business with the White House Office;
3. conducts activities regulated by the White House Office;

4. has interests that may be substantially affected by the performance or nonperformance of your official duties; or
5. is an organization composed of members who can be described by the criteria set forth immediately above.

Under this policy, we generally are prohibited from accepting meals (dinners, tickets to events) from virtually all sources -- including, among others, contractors, regulated business groups, and litigating parties.

With regard to the press, a 1987 OGE opinion determined that reporters seeking information from, or an interview or ongoing working relationship with, a government employee because of the employee's official position are prohibited sources for the official. Thus, members of the press are prohibited sources. As a general rule, the 1987 OGE opinion stated that any individual or organization that offers free food or refreshments to a government employee simply because of the employee's official position is considered a prohibited source.

Exceptions

There are exceptions under which gifts of meals or entertainment -- invitations to events, dinners, receptions and parties -- may be accepted from a prohibited source, provided that doing so does not otherwise create an appearance of impropriety. These exceptions are summarized below:

a) Gifts of \$20 or Less. You may accept an unsolicited gift (other than cash or its equivalent) valued at \$20 or less per occasion. Typically, a two-hour Washington reception for which no attendance fee is charged will meet this exception. Although, you may accept a meal, book, or other item valued at \$20 or less, you may not go to dinner and pay for the amount by which the dinner exceeds the \$20 limitation. You also may not keep any other type of gift valued over \$20 by paying the difference between the gift's market value and the \$20 limitation. Moreover, you may not accept more than an aggregate amount of \$50 in gifts under this exception from any single person in a calendar year.

b) Gift Based on a Personal Relationship. You may accept an unsolicited gift from a prohibited source where it is clear that the gift is motivated by a family relationship or close personal friendship rather than your official position. In assessing whether a gift meets this exception, the history of your relationship (does it predate your government service?) and the source of payment are important factors.

c) Gifts Based on Outside Business or Employment Relationships. You may accept meals, lodging, transportation and other benefits from a prohibited source that results from the business or employment relationships of a spouse, provided it is clear that the gift has not been enhanced because of your official status. Thus, you can attend the opera with your spouse (or significant other) where his or her employer provides him or her with tickets to attend. You also may accept such gifts that result from your own outside business or employment activities provided it is clear that such gifts also have not been offered or enhanced because of your official position. Note, however, that all full-time White House officials paid above \$27,789 are prohibited from receiving income from any outside employment activities.

d) Employment-Related Speaking Engagements. When you are speaking or presenting information on behalf of the White House Office in your official capacity, you may accept meals and the offer of free attendance at a conference, meeting or event on the day of your speech or presentation when provided by the sponsor of the event.

e) Widely-Attended-Gatherings. You may accept free attendance and meals offered by the sponsor of a widely-attended-gathering of mutual interest to a number of parties, provided Counsel's Office has determined it is in the interest of the White House Office that you attend. Therefore, where the sponsor of a dinner (e.g., the Gridiron Association) offers you free attendance, you can attend if Counsel Office's determines it is in the White House's interest that you attend. You cannot attend this dinner as the guest of another organization that has paid for your ticket.

f) Gifts from a Political Organization. Those White House officials who are exempt from the Hatch Act may accept meals, lodgings, transportation and other benefits, including free attendance at events, when provided by a political organization pursuant to 26 U.S.C. § 527(e) (e.g., the Democratic National Committee, campaign committees for state, local and federal candidates).

g) Social Invitations from Non-Prohibited Sources. You can accept food and entertainment at a social event attended by several persons where the person is not a prohibited source and no fee is charged to any in attendance.

Assuming that the event, dinner or reception you would like to attend does meet one of the above exceptions, you always should consider whether your attendance at the event nevertheless would lead a reasonable person to question your impartiality in official matters affecting the host, attendees, etc. Where such

an appearance question could be raised, you should consider foregoing the event.

Finally, please remember that if you are required to file a public financial disclosure form, all gifts (including meals that are not received as personal hospitality) valued over \$250 from any one source (aggregating gifts over \$100) must be reported annually on your public disclosure form.

To summarize, except in limited circumstances, it generally is prudent for White House Office staff to avoid accepting a free meal or refreshments from any donor with government business. If the meal, event, dinner or reception proffered by a prohibited source does not meet any of the above exceptions, you may not attend the event consistent with the Standards of Ethical Conduct. You should perform your own analysis of an event you wish to attend prior to contacting Counsel's Office to seek advice. If, after careful evaluation in light of this memorandum, you have difficulty judging a particular situation, please contact Counsel's Office.

STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

Including:

**Part I of Executive Order 12674
and
5 C.F.R. Part 2635 Regulation**



Prepared by:
United States Office of Government Ethics
Suite 500, 1201 New York Avenue, NW.
Washington, DC 20005-3917

August 1992

STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

**Final Regulation Issued by
the U.S. Office of Government Ethics**

To be Codified at 5 C.F.R. Part 2635

The following document is an informal computer-generated version of the regulatory text of the final ethical conduct standards rule, the official version of which was published at 57 Federal Register 35006-35067 (August 7, 1992), with an effective date of February 3, 1993. The authority citation for this regulation is: 5 United States Code §§ 7351 & 7353; 5 United States Code Appendix (Ethics in Government Act of 1978); and Executive Order 12674, 54 Federal Register 15159-15162, 3 Code of Federal Regulations, 1989 Compilation, pp. 215-218, as modified by Executive Order 12731, 55 Federal Register 42547-42550, 3 Code of Federal Regulations, 1990 Compilation, pp. 306-311.

PRINCIPLES OF ETHICAL CONDUCT FOR GOVERNMENT OFFICERS AND EMPLOYEES

**Executive Order 12674 of April 12, 1989
(as modified by E.O. 12731)**

By virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish fair and exacting standards of ethical conduct for all executive branch employees, it is hereby ordered as follows:

Part I--Principles of Ethical Conduct

Section 101. Principles of Ethical Conduct. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each Federal employee shall respect and adhere to the fundamental principles of ethical service as implemented in regulations promulgated under sections 201 and 301 of this order:

- (a) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.
- (b) Employees shall not hold financial interests that conflict with the conscientious performance of duty.
- (c) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.
- (d) An employee shall not, except pursuant to such reasonable exceptions as are provided by regulation, 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.
- (e) Employees shall put forth honest effort in the performance of their duties.

(f) Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Government.

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

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

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

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

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

(l) 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.

(m) 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.

(n) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this order.

Sec. 102. *Limitations on Outside Earned Income.*

(a) No employee who is appointed by the President to a full-time noncareer position in the executive branch (including full-time noncareer employees in the White House Office, the Office of Policy Development, and the Office of Cabinet Affairs), shall receive any earned income for any outside employment or activity performed during that Presidential appointment.

(b) The prohibition set forth in subsection (a) shall not apply to any full-time noncareer employees employed pursuant to 3 U.S.C. 105 and 3 U.S.C. 107(a) at salaries below the minimum rate of basic pay then paid for GS-9 of the General Schedule. Any outside employment must comply with relevant agency standards of conduct, including any requirements for approval of outside employment.

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Subpart A -- General Provisions

§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.

(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.

§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 §2638.202(b) of this chapter, and to any deputy ethics official, described in §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 §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 §2635.105.

§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.

§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 subpart 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.

(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.

§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.

§2635.106

Disciplinary and corrective action.

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

(b) It is the responsibility of the employing agency to initiate appropriate disciplinary or corrective action in individual cases. However, corrective action may be ordered or disciplinary action recommended by the Director of the Office of Government Ethics under the procedures at part 2638 of this chapter.

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

§2635.107

Ethics advice.

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

(b) Employees who have questions about the application of this part or any supplemental agency regulations to particular situations should seek advice from an agency ethics official. Disciplinary action for violating this part or any supplemental agency regulations will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee, in seeking such advice, has made full disclosure of all relevant circumstances. Where the employee's conduct violates a criminal statute, reliance on the advice of an agency ethics official cannot ensure that the employee will not be prosecuted under that statute. However, good faith reliance on the advice of an agency ethics official is a factor that may be taken into account by the Department of Justice in the selection of cases for prosecution. Disclosures made by an employee to an agency ethics official are not protected by an attorney-client privilege. An agency ethics official is required by 28 U.S.C. 535 to report any information he receives relating to a violation of the criminal code, title 18 of the United States Code.

Subpart B -- Gifts From Outside Sources

§2635.201

Overview.

This subpart contains standards that prohibit an employee from soliciting or accepting any gift from a prohibited source or given because of the employee's official position unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subpart.

§2635.202

General standards.

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

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

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

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

- (1) Accept a gift in return for being influenced in the performance of an official act;
- (2) Solicit or coerce the offering of a gift;
- (3) Accept gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his public office for private gain;

Example 1: A purchasing agent for a Veterans Administration hospital routinely deals with representatives of pharmaceutical manufacturers who provide information about new company products. Because of his crowded calendar, the purchasing agent has offered to meet with manufacturer representatives during his lunch hours Tuesdays through Thursdays and the representatives routinely arrive at the employee's office bringing a sandwich and a soft drink for the employee. Even though

the market value of each of the lunches is less than \$6 and the aggregate value from any one manufacturer does not exceed the \$50 aggregate limitation in §2635.204(a) on de minimis gifts of \$20 or less, the practice of accepting even these modest gifts on a recurring basis is improper.

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

(i) 18 U.S.C. 201(b), which prohibits a public official from seeking, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or omit to take any action in violation of his official duty. As used in 18 U.S.C. 201(b), the term "public official" is broadly construed and includes regular and special Government employees as well as all other Government officials;

(ii) 18 U.S.C. 209, which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. The statute contains several specific exceptions to this general prohibition, including an exception for contributions made from the treasury of a State, county, or municipality; and

(iii) 41 U.S.C. 423(b)(2), which prohibits a procurement official from seeking, accepting, or agreeing to receive any money, gratuity, or other thing of value from any officer, employee, representative, agent, or consultant of a competing contractor during the conduct of a Federal agency procurement. Implementing regulations, including exceptions to the gift prohibition, are contained in the Federal Acquisition Regulation, 48 CFR 3.104; 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 §2635.204(l).

§2635.203

Definitions.

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

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

(b) Gift includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. It does not include:

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

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

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

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

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

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

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

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

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

(i) Travel, subsistence, and related expenses accepted by an agency under the authority of 31 U.S.C. 1353 in connection with an employee's attendance at a meeting or similar function relating to his official duties which takes place away from his duty station. The agency's acceptance must be in accordance with the implementing regulations at 41 CFR part 304-1; and

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

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

(c) Market value means the retail cost the employee would incur to purchase the gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. The market value of a gift of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit shall be the face value of the ticket.

Example 1: An employee who has been given an acrylic paperweight embedded with the corporate logo of a prohibited source may determine its market value based on her observation that a comparable acrylic paperweight, not embedded with a logo, generally sells for about \$20.

Example 2: A prohibited source has offered an employee a ticket to a charitable event consisting of a cocktail reception to be followed by an evening of chamber music. Even though the food, refreshments, and entertainment provided at the event may be worth only \$20, the market value of the ticket is its \$250 face value.

(d) Prohibited source means any person who:

(1) Is seeking official action by the employee's agency;

(2) Does business or seeks to do business with the employee's agency;

(3) Conducts activities regulated by the employee's agency;

(4) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or

(5) Is an organization a majority of whose members are described in paragraphs (d) (1) through (4) of this section.

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

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

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

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

(1) Given with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person's relationship to the employee, or

(2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee, except as permitted for the disposition of perishable items by §2635.205(a)(2) or for payments made to charitable organizations in lieu of honoraria under §2636.204 of this chapter.

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

(g) Vendor promotional training means training provided by any person for the purpose of promoting its products or services. It does not include training provided under a Government contract or by a contractor to facilitate use of products or services it furnishes under a Government contract.

§2635.204

Exceptions.

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

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

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

Example 2: An employee of the Defense Mapping Agency has been invited by an association of cartographers to speak about his agency's role in the evolution of missile technology. At the conclusion of his speech, the association presents the employee a framed map with a market value of \$18 and a book about the history of cartography with a market value of \$15. The employee may accept the map or the book, but not both, since the aggregate value of these two tangible items exceeds \$20.

Example 3: On four occasions during the calendar year, an employee of the Defense Logistics Agency was given gifts worth \$10 each by four employees of a corporation that is a DLA contractor. For purposes of applying the yearly \$50 limitation on gifts of \$20 or less from any one person, the four gifts must be aggregated because a person is defined at §2635.102(k) to mean not only the corporate entity, but its officers and employees as well. However, for purposes of applying the \$50 aggregate limitation, the employee would not have to include the value of a birthday present received from his cousin, who is employed by the same corporation, if he can accept the birthday present under the exception at §2635.204(b) for gifts based on a personal relationship.

Example 4: Under the authority of 31 U.S.C. 1353 for agencies to accept payments from non-Federal sources in connection with attendance at certain meetings or similar functions, the Environmental Protection Agency has accepted an association's gift of travel expenses and conference fees for an employee of its Office of Radiation Programs to attend an international conference on "The Chernobyl Experience." While at the conference, the employee may accept a gift of \$20 or less from the association or from another person attending the conference even though it was not approved in advance by the EPA. Although 31 U.S.C. 1353 is the only authority under which an agency may accept gifts from certain non-Federal sources in connection with its employees' attendance at such functions, a gift of \$20 or less accepted under §2635.204(a) is a gift to the employee rather than to his employing agency.

Example 5: A Navy contracting officer is participating in a procurement for environmental cleanup services at a Navy installation that has recently been closed. She is presently involved in negotiations with three competing contractors, one of whom has offered her a fancy ballpoint pen embossed with its corporate logo. Even though the pen has a market value of \$18 and could be accepted under the \$20 de

minimis exception at §2635.204(a), the contracting officer cannot accept the competing contractor's gift. Under the procurement integrity provisions at 41 U.S.C. 423, she is a "procurement official" for that contract and, except as specifically permitted by the regulations implementing that statute, she is prohibited prior to award from accepting a gift from a competing contractor for that contract. The Federal Acquisition Regulation at 48 CFR 3.104 contains an exception for gifts with a market value of \$10 or less.

(b) Gifts based on a personal relationship. An employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.

Example 1: An employee of the Federal Deposit Insurance Corporation has been dating a secretary employed by a member bank. For Secretary's Week, the bank has given each secretary 2 tickets to an off-Broadway musical review and has urged each to invite a family member or friend to share the evening of entertainment. Under the circumstances, the FDIC employee may accept his girlfriend's invitation to the theater. Even though the tickets were initially purchased by the member bank, they were given without reservation to the secretary to use as she wished, and her invitation to the employee was motivated by their personal friendship.

Example 2: Three partners in a law firm that handles corporate mergers have invited an employee of the Federal Trade Commission to join them in a golf tournament at a private club at the firm's expense. The entry fee is \$500 per foursome. The employee cannot accept the gift of one-quarter of the entry fee even though he and the three partners have developed an amicable relationship as a result of the firm's dealings with the FTC. As evidenced in part by the fact that the fees are to be paid by the firm, it is not a personal friendship but a business relationship that is the motivation behind the partners' gift.

(c) Discounts and similar benefits. In addition to those opportunities and benefits excluded from the definition of a gift by §2635.203(b)(4), an employee may accept:

(1) Reduced membership or other fees for participation in organization activities offered to all Government employees or all uniformed military personnel by professional organizations if the only restrictions on membership relate to professional qualifications; and

(2) Opportunities and benefits, including favorable rates and commercial discounts not precluded by paragraph (c)(3) of this section:

(i) Offered to members of a group or class in which membership is unrelated to Government employment;

(ii) Offered to members of an organization, such as an employees' association or agency credit union, in which membership is related to Government employment if the same offer is broadly available to large segments of the public through organizations of similar size; or

(iii) Offered by a person who is not a prohibited source to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of type of official responsibility or on a basis that favors those of higher rank or rate of pay; provided, however, that

(3) An employee may not accept for personal use any benefit to which the Government is entitled as the result of an expenditure of Government funds.

Example 1: An employee of the Consumer Product Safety Commission may accept a discount of \$50 on a microwave oven offered by the manufacturer to all members of the CPSC employees' association. Even though the CPSC is currently conducting studies on the safety of microwave ovens, the \$50 discount is a standard offer that the manufacturer has made broadly available through a number of similar organizations to large segments of the public.

Example 2: An Assistant Secretary may not accept a local country club's offer of membership to all members of Department Secretariats which includes a waiver of its \$5,000 membership initiation fee. Even though the country club is not a prohibited source, the offer discriminates in favor of higher ranking officials.

Example 3: The administrative officer for a district office of the Immigration and Naturalization Service has signed an INS order to purchase 50 boxes of photocopy paper from a supplier whose literature advertises that it will give a free briefcase to anyone who purchases 50 or more boxes. Because the paper was purchased with INS funds, the administrative officer cannot keep the briefcase which, if claimed and received, is Government property.

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

determination by an agency ethics official that the award is made as part of an established program of recognition:

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

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

(2) An employee may accept an honorary degree from an institution of higher education as defined at 20 U.S.C. 1141(a) based on a written determination by an agency ethics official that the timing of the award of the degree would not cause a reasonable person to question the employee's impartiality in a matter affecting the institution.

(3) An employee who may accept an award or honorary degree pursuant to paragraph (d)(1) or (2) of this section may also accept meals and entertainment given to him and to members of his family at the event at which the presentation takes place.

Example 1: Based on a determination by an agency ethics official that the prize meets the criteria set forth in §2635.204(d)(1), an employee of the National Institutes of Health may accept the Nobel Prize for Medicine, including the cash award which accompanies the prize, even though the prize was conferred on the basis of laboratory work performed at NIH.

Example 2: Prestigious University wishes to give an honorary degree to the Secretary of Labor. The Secretary may accept the honorary degree only if an agency ethics official determines in writing that the timing of the award of the degree would not cause a reasonable person to question the Secretary's impartiality in a matter affecting the university.

Example 3: An ambassador selected by a nonprofit organization as recipient of its annual award for distinguished service in the interest of world peace may, together with his wife, and children, attend the awards ceremony dinner and accept a crystal bowl worth \$200 presented during the ceremony. However, where the organization has also offered airline tickets for the ambassador and his family to travel to the city where the awards ceremony is to be held, the aggregate value of the tickets and the crystal bowl exceeds \$200 and he may accept only upon a written determination by the agency ethics official that the award is made as part of an established program of recognition.

(e) Gifts based on outside business or employment relationships. An employee may accept meals, lodgings, transportation and other benefits:

(1) Resulting from the business or employment activities of an employee's spouse when it is clear that such benefits have not been offered or enhanced because of the employee's official position;

Example 1: A Department of Agriculture employee whose husband is a computer programmer employed by an Agriculture Department contractor may attend the company's annual retreat for all of its employees and their families held at a resort facility. However, under §2635.502, the employee may be disqualified from performing official duties affecting her husband's employer.

Example 2: Where the spouses of other clerical personnel have not been invited, an employee of the Defense Contract Audit Agency whose wife is a clerical worker at a defense contractor may not attend the contractor's annual retreat in Hawaii for corporate officers and members of the board of directors, even though his wife received a special invitation for herself and her spouse.

(2) Resulting from his outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of his official status; or

Example 1: The members of an Army Corps of Engineers environmental advisory committee that meets 6 times per year are special Government employees. A member who has a consulting business may accept an invitation to a \$50 dinner from her corporate client, an Army construction contractor, unless, for example, the invitation was extended in order to discuss the activities of the committee.

(3) Customarily provided by a prospective employer in connection with bona fide employment discussions. If the prospective employer has interests that could be affected by performance or nonperformance of the employee's duties, acceptance is permitted only if the employee first has complied with the disqualification requirements of subpart F of this part applicable when seeking employment.

Example 1: An employee of the Federal Communications Commission with responsibility for drafting regulations affecting all cable television companies wishes to apply for a job opening with a cable television holding company. Once she has properly disqualified herself from further work on the regulations as required by subpart F of this part, she may enter into employment discussions with the company and may accept the company's offer to pay for her airfare, hotel and meals in connection with an interview trip.

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

(f) Gifts from a political organization. An employee who is exempt under 5 U.S.C. 7324(d) from the Hatch Act prohibitions against active participation in political

management or political campaigns may accept meals, lodgings, transportation and other benefits, including free attendance at events, when provided, in connection with such active participation, by a political organization described in 26 U.S.C. 527(e). Any other employee, such as a security officer, whose official duties require him to accompany an exempt employee to a political event may accept meals, free attendance and entertainment provided at the event by such a political organization.

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

(g) Widely attended gatherings and other events-(1) Speaking and similar engagements. When an employee is assigned to participate as a speaker or panel participant or otherwise to present information on behalf of the agency at a conference or other event, his acceptance of an offer of free attendance at the event on the day of his presentation is permissible when provided by the sponsor of the event. The employee's participation in the event on that day is viewed as a customary and necessary part of his performance of the assignment and does not involve a gift to him or to the agency.

(2) Widely attended gatherings. When there has been a determination that his attendance is in the interest of the agency because it will further agency programs or operations, an employee may accept a sponsor's unsolicited gift of free attendance at all or appropriate parts of a widely attended gathering of mutual interest to a number of parties. A gathering is widely attended if, for example, it is open to members from throughout a given industry or profession or if those in attendance represent a range of persons interested in a given matter. For employees subject to a leave system, attendance at the event shall be on the employee's own time or, if authorized by the employee's agency, on excused absence pursuant to applicable guidelines for granting such absence, or otherwise without charge to the employee's leave account.

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

(i) If the sponsor is a person who has interests that may be substantially affected by the performance or nonperformance of an employee's official duties or an association or organization the majority of whose members have such interests, the employee's participation may be determined to be in the interest of the agency only where there is a written finding by the agency designee that the agency's interest in the employee's participation in the event outweighs concern that acceptance of the gift of free attendance may or may appear to improperly influence the employee in the

performance of his official duties. Relevant factors that should be considered by the agency designee include the importance of the event to the agency, the nature and sensitivity of any pending matter affecting the interests of the sponsor of the event, the significance of the employee's role in any such matter, the purpose of the event, the identity of other expected participants and the monetary value of the gift of free attendance.

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

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

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

(5) Cost provided by sponsor of event. The cost of the employee's attendance will not be considered to be provided by the sponsor where a person other than the sponsor designates the employee to be invited and bears the cost of the employee's attendance through a contribution or other payment intended to facilitate that employee's attendance. Payment of dues or a similar assessment to a sponsoring organization does not constitute a payment intended to facilitate a particular employee's attendance.

(6) Accompanying spouse. When others in attendance will generally be accompanied by spouses, the agency designee may authorize an employee to accept a sponsor's invitation to an accompanying spouse to participate in all or a portion of the event at which the employee's free attendance is permitted under paragraph (g)(1) or (2) of this section. The authorization required by this paragraph may be provided orally or in writing.

Example 1: An aerospace industry association that is a prohibited source sponsors a seminar for which it charges a fee of \$100. An Air Force contractor pays \$500 to the association so that the association can extend free invitations to five Air Force officials designated by the contractor. The Air Force officials may not accept the gifts

of free attendance. Because the contractor specified the invitees and bore the cost of their attendance, the gift of free attendance is considered to be provided by the company and not by the sponsoring association. Had the contractor paid \$500 to the association in order that it might invite any five Federal employees, an Air Force official to whom the sponsoring association extended one of the five invitations could attend if his participation were determined to be in the interest of the agency.

Example 2: An employee of the Department of the Treasury authorized to participate in a panel discussion of economic issues as part of a one-day conference may accept the sponsor's waiver of the conference fee. Under the separate authority of §2635.204(a), he may accept a token of appreciation for his speech having a market value of \$20 or less.

Example 3: An Assistant U.S. Attorney is invited to attend a luncheon meeting of a local bar association to hear a distinguished judge lecture on cross-examining expert witnesses. Although members of the bar association are assessed a \$15 fee for the meeting, the Assistant U.S. Attorney may accept the bar association's offer to attend for free, even without a determination of agency interest. The gift can be accepted under the \$20 de minimis exception at §2635.204(a).

Example 4: An employee of the Department of the Interior authorized to speak on the first day of a four-day conference on endangered species may accept the sponsor's waiver of the conference fee for the first day of the conference. If the conference is widely attended, he may be authorized, based on a determination that his attendance is in the agency's interest, to accept the sponsor's offer to waive the attendance fee for the remainder of the conference.

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

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

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

Example 2: An employee of the White House Press Office has been invited to a cocktail party given by a noted Washington hostess who is not a prohibited source.

The employee may attend even though he has only recently been introduced to the hostess and suspects that he may have been invited because of his official position.

(i) Meals, refreshments and entertainment in foreign areas. An employee assigned to duty in, or on official travel to, a foreign area as defined in 41 CFR 301-7.3(c) may accept food, refreshments or entertainment in the course of a breakfast, luncheon, dinner or other meeting or event provided:

(1) The market value in the foreign area of the food, refreshments or entertainment provided at the meeting or event, as converted to U.S. dollars, does not exceed the per diem rate for the foreign area specified in the U.S. Department of State's Maximum Per Diem Allowances for Foreign Areas, Per Diem Supplement Section 925 to the Standardized Regulations (GC,FA) available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402;

(2) There is participation in the meeting or event by non-U.S. citizens or by representatives of foreign governments or other foreign entities;

(3) Attendance at the meeting or event is part of the employee's official duties to obtain information, disseminate information, promote the export of U.S. goods and services, represent the United States or otherwise further programs or operations of the agency or the U.S. mission in the foreign area; and

(4) The gift of meals, refreshments or entertainment is from a person other than a foreign government as defined in 5 U.S.C. 7342(a)(2).

Example 1: A number of local businessmen in a developing country are anxious for a U.S. company to locate a manufacturing facility in their province. An official of the Overseas Private Investment Corporation may accompany the visiting vice president of the U.S. company to a dinner meeting hosted by the businessmen at a province restaurant where the market value of the food and refreshments does not exceed the per diem rate for that country.

(j) Gifts to the President or Vice President. Because of considerations relating to the conduct of their offices, including those of protocol and etiquette, the President or the Vice President may accept any gift on his own behalf or on behalf of any family member, provided that such acceptance does not violate §2635.202(c) (1) or (2), 18 U.S.C. 201(b) or 201(c)(3), or the Constitution of the United States.

(k) Gifts authorized by supplemental agency regulation. An employee may accept any gift the acceptance of which is specifically authorized by a supplemental agency regulation.

(1) Gifts accepted under specific statutory authority. The prohibitions on acceptance of gifts from outside sources contained in this subpart do not apply to any item, receipt of which is specifically authorized by statute. Gifts which may be received by an employee under the authority of specific statutes include, but are not limited to:

(1) Free attendance, course or meeting materials, transportation, lodgings, food and refreshments or reimbursements therefor incident to training or meetings when accepted by the employee under the authority of 5 U.S.C. 4111 from an organization with tax-exempt status under 26 U.S.C. 501(c)(3) or from a person to whom the prohibitions in 18 U.S.C. 209 do not apply. The employee's acceptance must be approved by the agency in accordance with §410.701 through §410.706 of this title; or

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

(2) Gifts from a foreign government or international or multinational organization, or its representative, when accepted by the employee under the authority of the Foreign Gifts and Decorations Act, 5 U.S.C. 7342. As a condition of acceptance, an employee must comply with requirements imposed by the agency's regulations or procedures implementing that Act.

§2635.205

Proper disposition of prohibited gifts.

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

(1) Return any tangible item to the donor or pay the donor its market value. An employee who cannot ascertain the actual market value of an item may estimate its market value by reference to the retail cost of similar items of like quality. See §2635.203(c).

Example 1: To avoid public embarrassment to the seminar sponsor, an employee of the National Park Service did not decline a barometer worth \$200 given at the conclusion of his speech on Federal lands policy. The employee must either return the barometer or promptly reimburse the sponsor \$200.

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

Example 1: With approval by the recipient's supervisor, a floral arrangement sent by a disability claimant to a helpful employee of the Social Security Administration may be placed in the office's reception area.

(3) For any entertainment, favor, service, benefit or other intangible, reimburse the donor the market value. Subsequent reciprocation by the employee does not constitute reimbursement.

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

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

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

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

Subpart C -- Gifts Between Employees

§2635.301

Overview.

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

§2635.302

General standards.

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

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

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

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

(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.

§2635.303

Definitions.

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

(a) Gift has the meaning set forth in §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.

(b) Indirectly, for purposes of §2635.302(b), has the meaning set forth in §2635.203(f). For purposes of §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 §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.

§2635.304

Exceptions.

The prohibitions set forth in §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 §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 §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 §2635.304(b). However, subordinates may take up a collection and employees may contribute \$3 each to buy refreshments to be consumed by everyone in the immediate office to mark either such occasion.

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

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

Subpart D -- Conflicting Financial Interests

§2635.401

Overview.

This subpart contains two provisions relating to financial interests. One is a disqualification requirement and the other is a prohibition on acquiring or continuing to hold specific financial interests. An employee may acquire or hold any financial interest not prohibited by §2635.403. Notwithstanding that his acquisition or holding of a particular interest is proper, an employee is prohibited in accordance with §2635.402 of this subpart from participating in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

§2635.402

Disqualifying financial interests.

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

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

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

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

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

Note: If a particular matter involves a specific party or parties, generally the matter will at most only have a direct and predictable effect, for purposes of this subpart, on a financial interest of the employee in or with a party, such as the employee's interest by virtue of owning stock. There may, however, be some situations in which, under the above standards, a particular matter will have a direct and predictable effect on an employee's financial interests in or with a nonparty. For example, if a party is a corporation, a particular matter may also have a direct and predictable effect on an employee's financial interests through ownership of stock in an affiliate, parent, or subsidiary of that party. Similarly, the disposition of a protest against the award of a contract to a particular company may also have a direct and predictable effect on an employee's financial interest in another company listed as a subcontractor in the proposal of one of the competing offerors.

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

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

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

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

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

Example 2: The spouse of an employee of the Food and Drug Administration has obtained a position with a well established biomedical research company. The

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

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

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

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

(4) Personal and substantial. To participate personally means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate substantially means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to a matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial

participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

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

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

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

Example 1: An Assistant Secretary of the Department of the Interior owns recreational property that borders on land which is being considered for annexation to a national park. Annexation would directly and predictably increase the value of her vacation property and, thus, she is disqualified from participating in any way in the Department's deliberations or decisions regarding the annexation. Because she is responsible for determining which matters she will work on, she may accomplish her disqualification merely by ensuring that she does not participate in the matter. Because of the level of her position, however, the Assistant Secretary might be wise to establish a record that she has acted properly by providing a written disqualification statement to an official superior and by providing written notification of the disqualification to subordinates to ensure that they do not raise or discuss with her any issues related to the annexation.

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

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

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

(i) The employee:

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

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

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

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

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

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

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

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

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

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

(3) Eligibility for special tax treatment. An employee who is directed to divest an interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this chapter. An employee who divests before obtaining a certificate of divestiture will not be eligible for this special tax treatment.

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

§2635.403

Prohibited financial interests.

An employee shall not acquire or hold any financial interest that he is prohibited from acquiring or holding by statute, by agency regulation issued in accordance with

paragraph (a) of this section or by reason of an agency determination of substantial conflict under paragraph (b) of this section.

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

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

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

(b) Agency determination of substantial conflict. An agency may prohibit or restrict an individual employee from acquiring or holding a financial interest or a class of financial interests based upon the agency designee's determination that the holding of such interest or interests will:

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

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

Example 1: An Air Force employee who owns stock in a major aircraft engine manufacturer is being considered for promotion to a position that involves responsibility for development of a new fighter airplane. If the agency determined that engineering and other decisions about the Air Force's requirements for the fighter would directly and predictably affect his financial interests, the employee

could not, by virtue of 18 U.S.C. 208(a), perform these significant duties of the position while retaining his stock in the company. The agency can require the employee to sell his stock as a condition of being selected for the position rather than allowing him to disqualify himself in particular matters.

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

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

Example 1: A regulatory agency has concluded that ownership by its employees of stock in entities regulated by the agency would significantly diminish public confidence in the agency's performance of its regulatory functions and thereby interfere with the accomplishment of its mission. In its supplemental agency regulations, the agency may prohibit its employees from acquiring or continuing to hold stock in regulated entities.

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

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

Example 1. The Foundation for the Preservation of Wild Horses maintains herds of horses that graze on public and private lands. Because its costs are affected by Federal policies regarding grazing permits, the Foundation routinely comments on

all proposed rules governing use of Federal grasslands issued by the Bureau of Land Management. BLM may require an employee to resign his uncompensated position as Vice President of the Foundation as a condition of his promotion to a policy-level position within the Bureau rather than allowing him to rely on disqualification in particular cases.

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

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

Subpart E -- Impartiality in Performing Official Duties

§2635.501

Overview.

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

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

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

§2635.502

Personal and business relationships.

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

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

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

(b) Definitions. For purposes of this section:

(1) An employee has a covered relationship with:

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

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

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

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

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

(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 §2635.402(b)(1).

(3) Particular matter involving specific parties has the meaning set forth in §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 §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.

§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.

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

§2635.601

Overview.

This subpart contains a disqualification requirement that applies to employees when seeking employment with persons who otherwise would be affected by the performance or nonperformance of the employees' official duties. 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." 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.

§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 §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 §§2635.604 and 2635.606 if the employee's official duties would 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 by the performance or nonperformance of his official duties has no obligation under this subpart. An employee may, however, be subject to other statutes which impose restrictions on employment contacts or discussions, such as 41 U.S.C. 423(b)(1), applicable to procurement officials, and 10 U.S.C. 2397a, applicable to certain employees of the Department of Defense.

(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 restrictions on their post-employment activities, such as 41 U.S.C. 423(f) applicable to procurement officials, 10 U.S.C. 2397b applicable to certain Department of Defense personnel and special statutes applicable to certain retired officers.

(b) Interview trips and entertainment. Where a prospective employer who is a prohibited source as defined in §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 §2635.204(e)(3).

§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 and particular matter have the respective meanings set forth in §2635.402(b) (1) and (3).

§2635.604

Disqualification while seeking employment.

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

§2635.605

Waiver or authorization permitting participation while seeking employment.

(a) Waiver. Where, as defined in §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 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 §2635.402(d).

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 §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 §2635.603(b)(1) (ii) or (iii), a reasonable person would be likely to question his impartiality if he were to participate 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 §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 §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 §2635.502(d), she may not participate in an assignment to review a grant application submitted by the university.

§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 taking official action 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). These waivers are described in §2635.402(d).

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 §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 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 §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

§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.

§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.

(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 §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 nongovernmental capacity shall comply with any applicable requirements of §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.

§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.

§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 201-21.601, 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 chapter 252 of the Federal Personnel Manual, 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.

§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 nonduty hours constitutes an improper use of public office for private gain in violation of §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

§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;

(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, 5 U.S.C. 7321 through 7328, which prohibits most employees from engaging in certain partisan political activities and prohibits all employees from interfering with elections and conducting political activities in the Federal workplace;

(8) The honorarium prohibition, 5 U.S.C. App. (Ethics in Government Act of 1978), which prohibits an employee, other than a special Government employee, from receiving any compensation for an appearance, speech or article. Implementing regulations are contained in §§2636.201 through 2636.205 of this chapter; and

(9) 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 §§2636.305 through 2636.307 of this chapter.

§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 §§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 §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.

§2635.803

Prior approval for outside employment and activities.

When required by agency supplemental regulation, 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.

Note: Any requirement for prior approval of employment or activities contained in any agency regulation, instruction, or other issuance in effect prior to the effective date of this part shall constitute a requirement for prior approval for purposes of this section for one year after the effective date of this part or until issuance of an agency supplemental regulation, whichever occurs first.

§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 §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 §§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 §§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 §2636.303(b) of this chapter, except that §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 §213.3301 of this title to a Schedule C position is appointed by the agency and, thus, is not a Presidential appointee to a full-time noncareer position.

§2635.805

Service as an expert witness.

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

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

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

(i) Is appointed by the President;

(ii) Serves on a commission established by statute; or

(iii) Has served or is expected to serve for more than 60 days in a period of 365 consecutive days.

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

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

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

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

§2635.806

Participation in professional associations. [Reserved]

§2635.807

Teaching, speaking and writing.

(a) Compensation for teaching, speaking or writing. Except as permitted by paragraph (a)(3) of 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 honorarium prohibition on receipt of compensation for an appearance, speech or article, which is implemented in §§2636.201 through 2636.205 of this chapter;

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

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

Example 1. A personnel specialist employed by the Department of Labor has been asked by the publisher of a magazine to write an article on his hobby of collecting arrowheads. Even though the subject matter is unrelated to his official duties, he may

not accept the publisher's offer of \$200 for the article. Because the compensation offered is for an article, its receipt would violate the honorarium prohibition contained in §§2636.201 through 2636.205 of this chapter.

(2) Definitions. For purposes of this paragraph:

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

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

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

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

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

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

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

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

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

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

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 §2635.102(a), except that any component of a department designated as a separate agency under §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; or

(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.

(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 §2637.102(a)(7) of this chapter.

(vi) Personal and substantial participation has the meaning set forth in §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. Moreover, his receipt of a salary or other compensation for teaching this course does not violate the honorarium prohibition on receipt of compensation for any speech, which is implemented in §§2636.201 through 2636.205 of this chapter.

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.

§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 political parties. However, there are statutory restrictions that apply to political fundraising. Employees, other than those exempt under 5 U.S.C. 7324(d), are prohibited by the Hatch Act, 5 U.S.C. 7321 through 7328, from soliciting or collecting contributions or other funds for a partisan political purpose or in connection with a partisan election. In addition, all employees are prohibited by 18 U.S.C. 602 from knowingly soliciting contributions for any political purpose from other employees and by 18 U.S.C. 607 from soliciting such contributions in the Federal workplace.

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 §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 §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 §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 the 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 §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 §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 §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.

§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

§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 §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.

§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 post-employment restrictions applicable to former procurement officials (41 U.S.C. 423(f)).
- (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 prohibition on a procurement official's negotiating for employment with competing contractors (41 U.S.C. 423(b)(1)).

(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 solicitation or receipt of gifts from competing contractors (41 U.S.C. 423(b)(2)).

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

(n) The Code of Ethics for Government Service (Pub. L. 96-303, 94 Stat. 855).

(o) The prohibitions against certain political activities (5 U.S.C. 7321 et seq. 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 against acting as the agent of a foreign principal required to register under the Foreign Agents Registration Act (18 U.S.C. 219).

(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(b)).

(aa) The prohibition against disclosure of proprietary information and certain other information of a confidential nature (18 U.S.C. 1905).

(bb) The prohibition against unauthorized disclosure of certain procurement sensitive information, including proprietary or source selection information (41 U.S.C. 423(b) (3) and (d)).

(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).

File
Atty

THE WHITE HOUSE
WASHINGTON

March 1, 1993

MEMORANDUM FOR EOP SENIOR STAFF

FROM: MARK GEARAN *McGillair*
DEPUTY CHIEF OF STAFF

BERNARD NUSSBAUM
COUNSEL TO THE PRESIDENT

SUBJECT: Ethics Guidelines

As you know, one of the President's first actions was to issue Executive Order 12834, requiring certain ethics commitments by senior appointees of the executive branch. "Senior appointees" is defined in the Order as those employees who are paid at or above Executive Schedule ("ES") Level V (currently \$108,200). However, as a result of the salary reductions that President Clinton implemented for a wide range of senior positions in the EOP, the Order by its terms applies to a smaller than expected group of senior EOP staff. Indeed, the Order does not cover some personnel who are in fact "senior appointees" entirely apart from their pay grades.

Accordingly, beginning today we are requesting, as a condition of appointment, that all EOP staff earning at or above ES Level V as well as all Assistants and Deputy Assistants to the President sign and adhere to the ethics guidelines in the Order.

A copy of the President's Executive Order and the pledges are attached.

Attachment

THE WHITE HOUSE

WASHINGTON

March 1, 1993

MEMORANDUM FOR SENIOR EOP OFFICIALS

FROM: BERNARD NUSSBAUM *B. Nussbaum*
COUNSEL TO THE PRESIDENT

SUBJECT: Clinton Ethics Pledges

Attached is a copy of Executive Order 12834 ("Clinton Pledges") as well as the pledges.

Please take a moment to review all of these materials. Once you have done so, please sign both forms (if you have not already done so) and return them to Counsel's Office (Room 128) by **Wednesday, March 3, 1993.**

If you have any questions please contact Beth Nolan or Cheryl Mills in Counsel's Office.

Presidential Documents

Title 3—

Executive Order 12834 of January 20, 1993

The President

Ethics Commitments by Executive Branch Appointees

By the authority vested in me as President of the United States by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. *Ethics Pledges.* (a) Every senior appointee in every executive agency appointed on or after January 20, 1993, shall sign, and upon signing shall be contractually committed to, the following pledge ("senior appointee pledge") upon becoming a senior appointee:

"As a condition, and in consideration, of my employment in the United States Government in a senior appointee position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

"1. I will not, within five years after the termination of my employment as a senior appointee in any executive agency in which I am appointed to serve, lobby any officer or employee of that agency.

"2. In the event that I serve as a senior appointee in the Executive Office of the President ('EOP'), I also will not, within five years after I cease to be a senior appointee in the EOP, lobby any officer or employee of any other executive agency with respect to which I had personal and substantial responsibility as a senior appointee in the EOP.

"3. I will not, at any time after the termination of my employment in the United States Government, engage in any activity on behalf of any foreign government or foreign political party which, if undertaken on January 20, 1993, would require me to register under the Foreign Agents Registration Act of 1938, as amended.

"4. I will not, within five years after termination of my personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government, foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency, in carrying out his or her official duties.

"5. I acknowledge that the Executive order entitled 'Ethics Commitments by Executive Branch Appointees,' issued by the President on January 20, 1993, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service."

(b) Every trade negotiator who is not a senior appointee and is appointed to a position in an executive agency on or after January 20, 1993, shall (prior to personally and substantially participating in a trade negotiation) sign, and upon signing be contractually committed to, the following pledge ("trade negotiator pledge"):

"As a condition, and in consideration, of my employment in the United States Government as a trade negotiator, which is a position

invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

"1. I will not, within five years after termination of my personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government, foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency, in carrying out his or her official duties.

"2. I acknowledge that the Executive order entitled 'Ethics Commitments by Executive Branch Appointees,' issued by the President on January 20, 1993, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service."

Sec. 2. Definitions. As used herein and in the pledges:

(a) "Senior appointee" means every full-time, non-career Presidential, Vice-presidential or agency head appointee in an executive agency whose rate of basic pay is not less than the rate for level V of the Executive Schedule (5 U.S.C. 5316) but does not include any person appointed as a member of the senior foreign service or solely as a uniformed service commissioned officer.

(b) "Trade negotiator" means a full-time, non-career Presidential, Vice-presidential or agency head appointee (whether or not a senior appointee) who personally and substantially participates in a trade negotiation as an employee of an executive agency.

(c) "Lobby" means to knowingly communicate to or appear before any officer or employee of any executive agency on behalf of another (except the United States) with the intent to influence official action, except that the term "lobby" does not include:

(1) communicating or appearing on behalf of and as an officer or employee of a State or local government or the government of the District of Columbia, a Native American tribe or a United States territory or possession;

(2) communicating or appearing with regard to a judicial proceeding, or a criminal or civil law enforcement inquiry, investigation or proceeding (but not with regard to an administrative proceeding) or with regard to an administrative proceeding to the extent that such communications or appearances are made after the commencement of and in connection with the conduct or disposition of a judicial proceeding;

(3) communicating or appearing with regard to any government grant, contract or similar benefit on behalf of and as an officer or employee of:

(A) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of title 20, United States Code; or

(B) a hospital; a medical, scientific or environmental research institution; or a charitable or educational institution; provided that such entity is a not-for-profit organization exempted from Federal income taxes under sections 501(a) and 501(c)(3) of title 26, United States Code;

(4) communicating or appearing on behalf of an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interest of the United States;

(5) communicating or appearing solely for the purpose of furnishing scientific or technological information, subject to the procedures and conditions applicable under section 207(j)(5) of title 18, United States Code; or

(6) giving testimony under oath, subject to the conditions applicable under section 207(j)(6) of title 18, United States Code.

(d) "On behalf of another" means on behalf of a person or entity other than the individual signing the pledge or his or her spouse, child or parent.

(e) "Administrative proceeding" means any agency process for rulemaking, adjudication or licensing, as defined in and governed by the Administrative Procedure Act, as amended (5 U.S.C. 551, *et seq.*).

(f) "Executive agency" and "agency" mean "Executive agency" as defined in section 105 of title 5, United States Code, except that the term includes the Executive Office of the President, the United States Postal Service and the Postal Rate Commission and excludes the General Accounting Office. As used in paragraph 1 of the senior appointee pledge, "executive agency" means the entire agency in which the senior appointee is appointed to serve, except that:

(1) with respect to those senior appointees to whom such designations are applicable under section 207(h) of title 18, United States Code, the term means an agency or bureau designated by the Director of the Office of Government Ethics under section 207(h) as a separate department or agency at the time the senior appointee ceased to serve in that department or agency; and

(2) a senior appointee who is detailed from one executive agency to another for more than sixty days in any calendar year shall be deemed to be an officer or employee of both agencies during the period such person is detailed.

(g) "Personal and substantial responsibility" "with respect to" an executive agency, as used in paragraph 2 of the senior appointee pledge, means ongoing oversight of, or significant ongoing decision-making involvement in, the agency's budget, major programs or personnel actions, when acting both "personally" and "substantially" (as those terms are defined for purposes of sections 207(a) and (b) of title 18, United States Code).

(h) "Personal and substantial participation" and "personally and substantially participates" mean acting both "personally" and "substantially" (as those terms are defined for purposes of sections 207(a) and (b) of title 18, United States Code) as an employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or other such action.

(i) "Trade negotiation" means a negotiation that the President determines to undertake to enter into a trade agreement with one or more foreign governments, and does not include any action taken before that determination.

(j) "Foreign Agents Registration Act of 1938, as amended" means sections 611-621 of title 22, United States Code.

(k) "Foreign government" means "the government of a foreign country," as defined in section 1(e) of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611(e)).

(l) "Foreign political party" has the same meaning as that term in section 1(f) of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611(f)).

(m) "Foreign business entity" means a partnership, association, corporation, organization or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

(n) Terms that are used herein and in the pledges, and also used in section 207 of title 18, United States Code, shall be given the same meaning as they have in section 207 and any implementing regulations issued or to be issued by the Office of Government Ethics, except to the extent those terms are otherwise defined in this order.

Sec. 3. Waiver. (a) The President may grant to any person a waiver of any restrictions contained in the pledge signed by such person if, and to the extent that, the President certifies in writing that it is in the public interest to grant the waiver.

(b) A waiver shall take effect when the certification is signed by the President.

(c) The waiver certification shall be published in the **Federal Register**, identifying the name and executive agency position of the person covered by the waiver and the reasons for granting it.

(d) A copy of the waiver certification shall be furnished to the person covered by the waiver and filed with the head of the agency in which that person is or was appointed to serve.

Sec. 4. Administration. (a) The head of every executive agency shall establish for that agency such rules or procedures (conforming as nearly as practicable to the agency's general ethics rules and procedures, including those relating to designated agency ethics officers) as are necessary or appropriate:

(1) to ensure that every senior appointee in the agency signs the senior appointee pledge upon assuming the appointed office or otherwise becoming a senior appointee;

(2) to ensure that every trade negotiator in the agency who is not a senior appointee signs the trade negotiator pledge prior to personally and substantially participating in a trade negotiation;

(3) to ensure that no senior appointee or trade negotiator in the agency personally and substantially participates in a trade negotiation prior to signing the pledge; and

(4) generally to ensure compliance with this order within the agency.

(b) With respect to the Executive Office of the President, the duties set forth in section 4(a), above, shall be the responsibility of the White House Counsel or such other official or officials to whom the President delegates those duties.

(c) The Director of the Office of Government Ethics shall:

(1) subject to the prior approval of the White House Counsel, develop a form of the pledges to be completed by senior appointees and trade negotiators and see that the pledges and a copy of this Executive order are made available for use by agencies in fulfilling their duties under section 4(a) above;

(2) in consultation with the Attorney General or White House Counsel, when appropriate, assist designated agency ethics officers in providing advice to current or former senior appointees and trade negotiators regarding the application of the pledges; and

(3) subject to the prior approval of the White House Counsel, adopt such rules or procedures (conforming as nearly as practicable to its generally applicable rules and procedures) as are necessary or appropriate to carry out the foregoing responsibilities.

(d) In order to promote clarity and fairness in the application of paragraph 3 of the senior appointee pledge:

(1) the Attorney General shall, within six months after the issuance of this order, publish in the **Federal Register** a "Statement of Covered Activities," based on the statute, applicable regulations and published guidelines, and any other material reflecting the Attorney General's current interpretation of the law, describing in sufficient detail to provide adequate guidance the activities on behalf of a foreign government or foreign political party which, if undertaken as of January 20, 1993, would require a person to register as an agent for such foreign government or political party under the Foreign Agents Registration Act of 1938, as amended; and

(2) the Attorney General's "Statement of Covered Activities" shall be presumed to be the definitive statement of the activities in which the senior appointee agrees not to engage under paragraph 3 of the pledge.

(e) A senior appointee who has signed the senior appointee pledge is not required to sign the pledge again upon appointment to a different office, except that a person who has ceased to be a senior appointee, due to

termination of employment in the executive branch or otherwise, shall sign the senior appointee pledge prior to thereafter assuming office as a senior appointee.

(f) A trade negotiator who is not also a senior appointee and who has once signed the trade negotiator pledge is not required to sign the pledge again prior to personally and substantially participating in a subsequent trade negotiation, except that a person who has ceased employment in the executive branch shall, after returning to such employment, be obligated to sign a pledge as provided herein notwithstanding the signing of any previous pledge.

(g) All pledges signed by senior appointees and trade negotiators, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder.

Sec. 5. Enforcement. (a) The contractual, fiduciary and ethical commitments in the pledges provided for herein are enforceable by any legally available means, including any or all of the following: debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive or monetary relief.

(b) Any former senior appointee or trade negotiator who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge not to lobby any officer or employee of that agency, or not to represent, aid or advise a foreign entity specified in the pledge with the intent to influence the official decision of that agency, may be barred from lobbying any officer or employee of that agency for up to five years in addition to the five-year time period covered by the pledge.

(1) The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish procedures to implement the foregoing subsection, which shall conform as nearly as practicable to the procedures for debarment of former employees found to have violated section 207 of title 18, United States Code (1988 ed.), set forth in section 2637.212 of title 5, Code of Federal Regulations (revised as of January 1, 1992).

(2) Any person who is debarred from lobbying following an agency proceeding pursuant to the foregoing subsection may seek judicial review of the administrative determination, which shall be subject to established standards for judicial review of comparable agency actions.

(c) The Attorney General is authorized:

(1) upon receiving information regarding the possible breach of any commitment in a signed pledge, to request any appropriate federal investigative authority to conduct such investigations as may be appropriate; and

(2) upon determining that there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue, if not enjoined, to commence a civil action against the former employee in any United States District Court with jurisdiction to consider the matter.

(d) In such civil action, the Attorney General is authorized to request any and all relief authorized by law, including but not limited to:

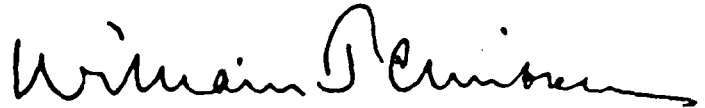
(1) such temporary restraining orders and preliminary and permanent injunctions as may be appropriate to restrain future, recurring or continuing conduct by the former employee in breach of the commitments in the pledge he or she signed; and

(2) establishment of a constructive trust for the benefit of the United States, requiring an accounting and payment to the United States Treasury of all money and other things of value received by, or payable to, the former employee arising out of any breach or attempted breach of the pledge signed by the former employee.

Sec. 6. General Provisions. (a) No prior Executive orders are repealed by this order. To the extent that this order is inconsistent with any provision of any prior Executive order, this order shall control.

(b) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

(c) Except as expressly provided in section 5(b)(2) of this order, nothing in the pledges or in this order is intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.



THE WHITE HOUSE,
January 20, 1993.

[FR Doc. 93-1871

Filed 1-21-93; 12:29 pm]

Billing code 3195-01-M

SENIOR APPOINTEE PLEDGE

As a condition, and in consideration, of my employment in the United States Government in a senior appointee position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. I will not, within five years after the termination of my employment as a senior appointee in any executive agency in which I am appointed to serve, lobby any officer or employee of that agency.

2. In the event that I serve as a senior appointee in the Executive Office of the President ("EOP"), I also will not, within five years after I cease to be a senior appointee in the EOP, lobby any officer or employee of any other executive agency with respect to which I had personal and substantial responsibility as a senior appointee in the EOP.

3. I will not, at any time after the termination of my employment in the United States Government, engage in any activity on behalf of any foreign government or foreign political party which, if undertaken on January 20, 1993, would require me to register under the Foreign Agents Registration Act of 1938, as amended.

4. I will not, within five years after termination of my personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government, foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency, in carrying out his or her official duties.

5. I acknowledge that the Executive order entitled "Ethics Commitments by Executive Branch Appointees," issued by the President on January 20, 1993, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

Signature

Date

_____, 19____

Print or type your full name (Last, first, middle -- spell out each fully)

Privacy Act Statement

Executive Order 12834 entitled "Ethics Commitments by Executive Branch Appointees," issued by the President on January 20, 1993 (and published at 58 Federal Register 5911-5916 on 1/22/93), requires every senior appointee in every executive agency appointed on or after January 20, 1993 to sign this pledge upon becoming a senior appointee. This pledge establishes a contractual commitment regarding your post-employment activities and your activities after your personal and substantial participation in a trade negotiation has ceased. If there is a violation or apparent violation of this pledge, this pledge may be disclosed to the Department of Justice or any other appropriate Federal agency charged with the responsibility of investigating, prosecuting, enforcing or implementing the Executive order. Disclosure of this pledge can also be made to another Federal agency, a court or a party in court litigation or an administrative proceeding when the Government is a party as well as to another Federal agency in connection with your hiring when the pledge is relevant and necessary thereto. Further, this pledge may be disclosed to the Executive Office of the President and the Office of Government Ethics to enable them to carry out their responsibilities under Executive Order 12834 and other ethics oversight authorities. This pledge will be filed for permanent retention in your official personnel folder or equivalent folder. Your signing this pledge is a condition, and in consideration, of your employment as a senior appointee, or your receiving a pay raise that will make you a senior appointee, as defined in the Executive order.

TRADE NEGOTIATOR PLEDGE

As a condition, and in consideration, of my employment in the United States Government as a trade negotiator, which is a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. I will not, within five years after termination of my personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government, foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency, in carrying out his or her official duties.

2. I acknowledge that the Executive order entitled "Ethics Commitments by Executive Branch Appointees," issued by the President on January 20, 1993, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

Signature

_____, 19____
Date

Print or type your full name (Last, first, middle -- spell out each fully)

Privacy Act Statement

Executive Order 12834 entitled "Ethics Commitments by Executive Branch Appointees," issued by the President on January 20, 1993 (and published at 58 Federal Register 5911-5916 on 1/22/93), requires every trade negotiator (who is not a senior appointee) in every executive agency appointed on or after January 20, 1993 to sign this pledge prior to personally and substantially participating in a trade negotiation. This pledge establishes a contractual commitment regarding your activities after your personal and substantial participation in a trade negotiation has ceased. If there is a violation or apparent violation of this pledge, this pledge may be disclosed to the Department of Justice or any other appropriate Federal agency charged with the responsibility of investigating, prosecuting, enforcing or implementing the Executive order. Disclosure of this pledge can also be made to another Federal agency, a court or a party in court litigation or an administrative proceeding when the Government is a party as well as to another Federal agency in connection with your hiring when the pledge is relevant and necessary thereto. Further, this pledge may be disclosed to the Executive Office of the President and the Office of Government Ethics to enable them to carry out their responsibilities under Executive Order 12834 and other ethics oversight authorities. This pledge will be filed for permanent retention in your official personnel folder or equivalent folder. Your signing this pledge is a condition, and in consideration, of your employment in the United States Government as a trade negotiator, as defined in the Executive order.

Your Executive Branch Agency has ethics counselors.
For further information contact:

Name and Title of Ethics Officials:

Telephone #: _____

Office Address:

(Maggie Williams)

THE WHITE HOUSE
WASHINGTON

January 21, 1993

MEMORANDUM FOR ALL AGENCY GENERAL COUNSELS AND
WHITE HOUSE OFFICE STAFF

FROM: BERNARD NUSSBAUM
COUNSEL TO THE PRESIDENT 

SUBJECT Ethics Commitments By Executive Branch
Appointees

Attached for your information and appropriate action is a copy of an Executive Order entitled "Ethics Commitments By Executive Branch Appointees." The order was signed January 20, 1993. The order requires every senior appointee and trade negotiator in every executive agency appointed on or after January 20, 1993 to sign a pledge not to engage in certain post-employment activity.

Section 4 of the order requires each agency to establish rules or procedures to ensure that each senior appointee and trade negotiator signs the pledge upon assuming office.

If you have any questions about your responsibilities under the order, please contact my office.

Attachment

EXECUTIVE ORDER

- - - - -

ETHICS COMMITMENTS BY EXECUTIVE BRANCH APPOINTEES

By the authority vested in me as President of the United States by the Constitution and laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Ethics Pledges. (a) Every senior appointee in every executive agency appointed on or after January 20, 1993, shall sign, and upon signing shall be contractually committed to, the following pledge ("senior appointee pledge") upon becoming a senior appointee:

"As a condition, and in consideration, of my employment in the United States Government in a senior appointee position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

"1. I will not, within five years after the termination of my employment as a senior appointee in any executive agency in which I am appointed to serve, lobby any officer or employee of that agency.

"2. In the event that I serve as a senior appointee in the Executive Office of the President ('EOP'), I also will not, within five years after I cease to be a senior appointee in the EOP, lobby any officer or employee of any other executive agency with respect to which I had personal and substantial responsibility as a senior appointee in the EOP.

"3. I will not, at any time after the termination of my employment in the United States Government, engage in any activity on behalf of any foreign government or foreign political party which, if undertaken on January 20, 1993, would require me to register under the Foreign Agents Registration Act of 1938, as amended.

"4. I will not, within five years after termination of my personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government, foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency, in carrying out his or her official duties.

"5. I acknowledge that the Executive order entitled 'Ethics Commitments by Executive Branch Appointees,' issued by the President on January 20, 1993, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service."

(b) Every trade negotiator who is not a senior appointee and is appointed to a position in an executive agency on or after January 20, 1993, shall (prior to personally and substantially participating in a trade negotiation) sign, and upon signing be contractually committed to, the following pledge ("trade negotiator pledge"):

"As a condition, and in consideration, of my employment in the United States Government as a trade negotiator, which is a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

"1. I will not, within five years after termination of my personal and substantial participation in a trade negotiation, represent, aid or advise any foreign government, foreign political party or foreign business entity with the intent to influence a decision of any officer or employee of any executive agency, in carrying out his or her official duties.

"2. I acknowledge that the Executive order entitled 'Ethics Commitments by Executive Branch Appointees,' issued by the President on January 20, 1993, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service."

Sec. 2. Definitions. As used herein and in the pledges:

(a) "Senior appointee" means every full-time, non-career Presidential, Vice-presidential or agency head appointee in an executive agency whose rate of basic pay is not less than the rate for level V of the Executive Schedule (5 U.S.C. 5316) but does not include any person appointed as a member of the senior foreign service or solely as a uniformed service commissioned officer.

(b) "Trade negotiator" means a full-time, non-career Presidential, Vice-presidential or agency head appointee (whether or not a senior appointee) who personally and substantially participates in a trade negotiation as an employee of an executive agency.

(c) "Lobby" means to knowingly communicate to or appear before any officer or employee of any executive agency on behalf of another (except the United States) with the intent to influence official action, except that the term "lobby" does not include:

(1) communicating or appearing on behalf of and as an officer or employee of a State or local government or the government of the District of Columbia, a Native American tribe or a United States territory or possession;

(2) communicating or appearing with regard to a judicial proceeding, or a criminal or civil law enforcement inquiry, investigation or proceeding (but not with regard to an administrative proceeding) or with regard to an administrative proceeding to the extent that such communications or appearances are made after the commencement of and in connection with the conduct or disposition of a judicial proceeding;

(3) communicating or appearing with regard to any government grant, contract or similar benefit on behalf of and as an officer or employee of:

(A) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of title 20, United States Code; or

(B) a hospital; a medical, scientific or environmental research institution; or a charitable or educational institution; provided that such entity is a not-for-profit organization exempted from Federal income taxes under sections 501(a) and 501(c)(3) of title 26, United States Code;

(4) communicating or appearing on behalf of an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interest of the United States;

(5) communicating or appearing solely for the purpose of furnishing scientific or technological information, subject to the procedures and conditions applicable under section 207(j)(5) of title 18, United States Code; or

(6) giving testimony under oath, subject to the conditions applicable under section 207(j)(6) of title 18, United States Code.

(d) "On behalf of another" means on behalf of a person or entity other than the individual signing the pledge or his or her spouse, child or parent.

(e) "Administrative proceeding" means any agency process for rulemaking, adjudication or licensing, as defined in and governed by the Administrative Procedure Act, as amended (5 U.S.C. 551, et seq.).

(f) "Executive agency" and "agency" mean "Executive agency" as defined in section 105 of title 5, United States Code, except that the term includes the Executive Office of the President, the United States Postal Service and the Postal Rate Commission and excludes the General Accounting Office. As used in paragraph 1 of the senior appointee pledge, "executive agency" means the entire agency in which the senior appointee is appointed to serve, except that:

(1) with respect to those senior appointees to whom such designations are applicable under section 207(h) of title 18, United States Code, the term means an agency or bureau designated by the Director of the Office of Government Ethics under section 207(h) as a separate department or agency at the time the senior appointee ceased to serve in that department or agency; and

(2) a senior appointee who is detailed from one executive agency to another for more than sixty days in any calendar year shall be deemed to be an officer or employee of both agencies during the period such person is detailed.

(g) "Personal and substantial responsibility" "with respect to" an executive agency, as used in paragraph 2 of the senior appointee pledge, means ongoing oversight of, or significant ongoing decision-making involvement in, the agency's budget, major programs or personnel actions, when acting both "personally" and "substantially" (as those terms are defined for purposes of sections 207(a) and (b) of title 18, United States Code).

(h) "Personal and substantial participation" and "personally and substantially participates" mean acting both "personally" and "substantially" (as those terms are defined for

purposes of sections 207(a) and (b) of title 18, United States Code) as an employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or other such action.

(i) "Trade negotiation" means a negotiation that the President determines to undertake to enter into a trade agreement with one or more foreign governments, and does not include any action taken before that determination.

(j) "Foreign Agents Registration Act of 1938, as amended" means sections 611-621 of title 22, United States Code.

(k) "Foreign government" means "the government of a foreign country," as defined in section 1(e) of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611(e)).

(l) "Foreign political party" has the same meaning as that term in section 1(f) of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611(f)).

(m) "Foreign business entity" means a partnership, association, corporation, organization or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

(n) Terms that are used herein and in the pledges, and also used in section 207 of title 18, United States Code, shall be given the same meaning as they have in section 207 and any implementing regulations issued or to be issued by the Office of Government Ethics, except to the extent those terms are otherwise defined in this order.

Sec. 3. Waiver. (a) The President may grant to any person a waiver of any restrictions contained in the pledge signed by such person if, and to the extent that, the President certifies in writing that it is in the public interest to grant the waiver.

(b) A waiver shall take effect when the certification is signed by the President.

(c) The waiver certification shall be published in the Federal Register, identifying the name and executive agency position of the person covered by the waiver and the reasons for granting it.

(d) A copy of the waiver certification shall be furnished to the person covered by the waiver and filed with the head of the agency in which that person is or was appointed to serve.

Sec. 4. Administration. (a) The head of every executive agency shall establish for that agency such rules or procedures (conforming as nearly as practicable to the agency's general ethics rules and procedures, including those relating to designated agency ethics officers) as are necessary or appropriate:

(1) to ensure that every senior appointee in the agency signs the senior appointee pledge upon assuming the appointed office or otherwise becoming a senior appointee;

(2) to ensure that every trade negotiator in the agency who is not a senior appointee signs the trade negotiator pledge prior to personally and substantially participating in a trade negotiation;

(3) to ensure that no senior appointee or trade negotiator in the agency personally and substantially participates in a trade negotiation prior to signing the pledge; and

(4) generally to ensure compliance with this order within the agency.

(b) With respect to the Executive Office of the President, the duties set forth in section 4(a), above, shall be the responsibility of the White House Counsel or such other official or officials to whom the President delegates those duties.

(c) The Director of the Office of Government Ethics shall:

(1) subject to the prior approval of the White House Counsel, develop a form of the pledges to be completed by senior appointees and trade negotiators and see that the

pledges and a copy of this Executive order are made available for use by agencies in fulfilling their duties under section 4(a) above;

(2) in consultation with the Attorney General or White House Counsel, when appropriate, assist designated agency ethics officers in providing advice to current or former senior appointees and trade negotiators regarding the application of the pledges; and

(3) subject to the prior approval of the White House Counsel, adopt such rules or procedures (conforming as nearly as practicable to its generally applicable rules and procedures) as are necessary or appropriate to carry out the foregoing responsibilities.

(d) In order to promote clarity and fairness in the application of paragraph 3 of the senior appointee pledge:

(1) the Attorney General shall, within six months after the issuance of this order, publish in the Federal Register a "Statement of Covered Activities," based on the statute, applicable regulations and published guidelines, and any other material reflecting the Attorney General's current interpretation of the law, describing in sufficient detail to provide adequate guidance the activities on behalf of a foreign government or foreign political party which, if undertaken as of January 20, 1993, would require a person to register as an agent for such foreign government or political party under the Foreign Agents Registration Act of 1938, as amended; and

(2) the Attorney General's "Statement of Covered Activities" shall be presumed to be the definitive statement of the activities in which the senior appointee agrees not to engage under paragraph 3 of the pledge.

(e) A senior appointee who has signed the senior appointee pledge is not required to sign the pledge again upon appointment to a different office, except that a person who has ceased to be a senior appointee, due to termination of employment in the executive branch or otherwise, shall sign the senior appointee pledge prior to thereafter assuming office as a senior appointee.

(f) A trade negotiator who is not also a senior appointee and who has once signed the trade negotiator pledge is not required to sign the pledge again prior to personally and substantially participating in a subsequent trade negotiation, except that a person who has ceased employment in the executive branch shall, after returning to such employment, be obligated to sign a pledge as provided herein notwithstanding the signing of any previous pledge.

(g) All pledges signed by senior appointees and trade negotiators, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder.

Sec. 5. Enforcement. (a) The contractual, fiduciary and ethical commitments in the pledges provided for herein are enforceable by any legally available means, including any or all of the following: debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive or monetary relief.

(b) Any former senior appointee or trade negotiator who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge not to lobby any officer or employee of that agency, or not to represent, aid or advise a foreign entity specified in the pledge with the intent to influence the official decision of that agency, may be barred from lobbying any officer or employee

of that agency for up to five years in addition to the five-year time period covered by the pledge.

(1) The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish procedures to implement the foregoing subsection, which shall conform as nearly as practicable to the procedures for debarment of former employees found to have violated section 207 of title 18, United States Code (1988 ed.), set forth in section 2637.212 of title 5, Code of Federal Regulations (revised as of January 1, 1992).

(2) Any person who is debarred from lobbying following an agency proceeding pursuant to the foregoing subsection may seek judicial review of the administrative determination, which shall be subject to established standards for judicial review of comparable agency actions.

(c) The Attorney General is authorized:

(1) upon receiving information regarding the possible breach of any commitment in a signed pledge, to request any appropriate federal investigative authority to conduct such investigations as may be appropriate; and

(2) upon determining that there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue, if not enjoined, to commence a civil action against the former employee in any United States District Court with jurisdiction to consider the matter.

(d) In such civil action, the Attorney General is authorized to request any and all relief authorized by law, including but not limited to:

(1) such temporary restraining orders and preliminary and permanent injunctions as may be appropriate to restrain future, recurring or continuing conduct by the former employee in breach of the commitments in the pledge he or she signed; and

(2) establishment of a constructive trust for the benefit of the United States, requiring an accounting and payment to the United States Treasury of all money and other things of value received by, or payable to, the former employee arising out of any breach or attempted breach of the pledge signed by the former employee.

Sec. 6. General Provisions. (a) No prior Executive orders are repealed by this order. To the extent that this order is inconsistent with any provision of any prior Executive order, this order shall control.

(b) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

(c) Except as expressly provided in section 5(b)(2) of this order, nothing in the pledges or in this order is intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.



THE WHITE HOUSE,

January 20, 1993.

STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

Including:

**Part I of Executive Order 12674
and
5 C.F.R. Part 2635 Regulation**



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