

SUMMARY OF STANDARDS OF EMPLOYEE CONDUCT REGULATIONS  
5 CFR 2635

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## SUBPART A -- GENERAL PROVISIONS

Basic obligation. 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. Each employee shall respect and adhere to the principles of ethical conduct, as well as the standards in these and supplementary conduct regulations, to ensure that every citizen can have complete confidence in the integrity of the Federal Government. 5 CFR 2635.101(a)

General principles. The regulations prescribe the 14 general principles of ethical conduct applicable to all employees that form the basis for the standards of conduct. These principles are set forth in President George H.W. Bush's 1989 Executive Order on ethics (E.O. 12674). If a situation is not covered by the standards of conduct, employees shall apply these principles in determining whether their conduct is proper. These principles prohibit employees from using public office for private gain. They prohibit employees from holding financial interests that conflict with the conscientious performance of duty, engaging in financial transactions using nonpublic Government information, or allowing the improper use of such information to further any private interest. Employees are required to act impartially and not give preferential treatment to any private organization or individual. Employees shall not engage in outside employment or activities, including seeking other employment, that conflict with official duties. Employees are also required to disclose waste, fraud, abuse, and corruption, satisfy their just financial obligations, and endeavor to avoid actions creating the appearance of violating the law or the standards of conduct regulations. 5 CFR 2635.101(b).

Definitions. Many important definitions used throughout the regulations are contained in this subpart:

“Agency” means any executive agency, including the NRC.

“Agency designee” is an employee delegated authority to make determinations, give approvals, grant waivers, or take actions permitted by the conduct regulations. (Management Directive 7.9 specifies the appropriate NRC designees.)

“Agency ethics official” refers to the designated agency ethical official who has responsibility for the agency ethics program. (The NRC General Counsel has been designated by the Commission to fulfill this function.)

“Employee” means any agency officer or employee, including a special Government employee (i.e., those appointed to serve not more than 130 days during a 365-day period). Employee also includes employees of a State or local government or other organization who are serving on detail to an agency. Status as an employee is not affected 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.

“Person” is an all-inclusive term. It includes individuals, corporations and their subsidiaries, companies, associations, partnerships, and their officers, employees, or agents. It also includes nonprofit or other organizations and foreign, State, or local governments. A corporation is deemed to control a subsidiary if it owns 50% or more of its voting securities. The definition specifically excludes a Federal agency or entity or its employees when acting on behalf of their agency. 5 CFR 2635.102.

Employees on Detail. Employees on detail to another agency for more than 30 days are subject to the supplemental conduct regulations of the agency to which the employees are detailed rather than to those of their own agency. (This means that the NRC supplemental conduct regulations on securities restrictions and outside employment apply to Federal employees detailed to the NRC.) Employees detailed to the legislative or judicial branches for more than 30 days are subject to the ethical standards of that branch. Employees detailed to a non-Federal entity remain subject to these regulations and the supplemental regulations of their agency. The agency ethics official can exempt from the gift acceptance standards an employee detailed for more than six months to an international organization or a State or local government if certain specified findings are made. 5 CFR 2635.104.

Supplemental regulations. Agencies are authorized to issue agency-specific regulations supplementing the uniform regulations with the concurrence and joint issuance with the Office of Government Ethics (OGE). (With OGE approval, the NRC issued regulations imposing security ownership restrictions and prior approval for certain outside employment at 5 CFR 5801). 5 CFR 2635.105.

Disciplinary actions. Violations of the standards of conduct or supplemental conduct regulations may be cause for corrective or disciplinary action. Agencies have responsibility to initiate appropriate disciplinary or corrective action, but OGE may order or recommend corrective disciplinary action if dissatisfied with the agency's response. Violations of these standards or supplementary regulations do not create any right or benefit by any person against the United States, its agencies, employees, or any other person. 5 CFR 2635.106.

Ethics Advice. The agency designated ethics official is responsible for coordinating and managing its ethics program, including delegating responsibilities, such as ethics counseling, to deputy ethics officials. (At the NRC, the Commission has designated the General Counsel as the Designated Agency Ethics Official. The General Counsel has designated the Assistant General Counsel for the Division of Legal Counsel, Legislation, and Special Projects as the Alternate Designated Agency Ethics Official, and has designated certain attorneys in that Division as Deputy Counselors. Regional Counsels also provide ethics advice.)

- Employees with questions about the application of these regulations or supplemental conduct regulations should seek advice from an OGC Deputy Counselor or Regional Counsel. They will not be subject to agency disciplinary action if they follow advice from a Deputy Counselor or Regional Counsel, provided that they made a full disclosure of all the relevant facts. If the employee's conduct violates a criminal statute, good faith reliance on advice from an ethics counselor is a factor that may be taken into account by the Department of Justice in selecting cases for prosecutions. Disclosures to an ethics official are not protected by attorney-client privilege. Ethics officials are required to report any information received relating to a violation of the criminal code. 5 CFR 2635.107.

## **SUBPART B -- GIFTS FROM OUTSIDE SOURCES**

General Prohibition: Employees are prohibited from directly or indirectly soliciting or accepting a gift from a prohibited source or if given because of the employee's official position, unless the gift is excluded from the definition of a gift or it falls under one of the exceptions in this subpart.

Regardless of any of the exceptions, employees cannot:

- accept a gift in return for being influenced in the performance of an official act;
- solicit or coerce the offering of a gift;
- accept a gift from the same or different sources so frequently that a reasonable person would conclude the individual is using public office for private gain;
- accept a gift in violation of any statute (such as the laws barring bribery or supplementation of salary from any source other than the United States); or
- accept vendor promotional training that is contrary to procurement rules.  
5 CFR 2635.202.

### Definitions:

"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, and lodging and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement later.

Excluded from this definition are: (1) modest items of food or refreshments, such as soft drinks, coffee and donuts that are not offered as part of a meal; (2) greeting cards and other items with little intrinsic value, such as plaques, certificates, and trophies; (3) loans from banks and other financial institutions on terms generally available to the public; (4) opportunities and benefits available to the public or a class consisting of all Government employees; (5) rewards and prizes given to competitors in contests or events that are open to the public, including random drawings; (6) pension and other benefits under a former employer's plan; (7) anything which is paid for by the Government or secured by the Government under a contract; (8) any gift accepted by the Government under statutory authority; and (9) anything for which the employee pays market value.

"Market value" means the retail cost the employee would incur to purchase the gift. If unable to ascertain a gift's market value, the employee may estimate its market value by reference to retail cost of similar items of like quality. The market value of a ticket is its face value.

"Prohibited source" means any person who seeks official action by the employee's agency, does or seeks business with the agency, conducts activities regulated by the agency, has interests that may be substantially affected by the performance or nonperformance of the employee's official duties, or is an organization a majority of whose members meets the above description.

“Solicited or accepted because of official position” means that the gift is from a person, other than an employee, and would have not been solicited, offered, or given had the employee not held the status, authority, or duties associated with his or her Federal position.

“Indirect gift” is a gift given with the employee’s knowledge and acquiescence to the employee’s parent, sibling, spouse, child or dependent relative because of the relationship to the employee or is given to another person, including a charity, on the employee’s designation, recommendation, or other specification. 5 CFR 2635.203.

Exceptions: The following are the exceptions to the gift prohibition. (Note that the regulations prohibit employees from accepting gifts from the same source so frequently that a reasonable person would be led to believe the employee is using public office for private gain. Even though a gift may be accepted legally, “it is never inappropriate and frequently prudent for an employee to decline a gift offered from a prohibited source or because of his official position.”)

1. Gifts of \$20 or less. Employees may accept unsolicited gifts having a market value of \$20 or less per occasion, but may not accept gifts with a value of more than \$50 from a single source in a calendar year. This exception does not authorize the acceptance of cash or investment interests, such as stocks, bonds, or certificates of deposit. (Note that an individual NRC licensee or contractor and all of its employees would be considered the same single source.) If a gift exceeds \$20 in value, the employee cannot pay the excess value over \$20 in order to accept the gift. If more than one gift offered on a single occasion exceeds \$20 in aggregate value, the employee may decline any distinct item in order to accept those items aggregating \$20 or less.

2. Personal gifts. Employees may accept gifts that are clearly motivated by a family relationship or personal friendship rather than the employee’s position. (Meals or gifts funded from corporate expense accounts are not personal gifts.)

3. Discounts. Employees may accept reduced membership or other fees from professional organizations for participation in their activities, if the offer is available to all government employees and the only restrictions on membership relate to professional qualifications. Employees may also accept opportunities and benefits, including favorable rates and commercial discounts, that are:

- Offered to members of a group or class in which membership is unrelated to Government employment;
- Offered to members of an organization, such as an employees’ association or credit union, in which membership is related to Government employment if the same offer is available to large segments of the public through similar organizations;
- Offered by a non-prohibited source to any group or class not defined in a manner that specifically discriminates among Government employees on the basis of official responsibility or favors those of higher rank or pay. However, employees cannot personally accept any benefit to which the Government would be entitled because of the use of Government funds, such as a free gift resulting from the agency’s purchases from a vendor.

4. Awards and honorary degrees. Employees can accept gifts, other than cash or an investment interest, of \$200 or less in value if such gifts are a bona fide award or incident to a bona fide award for meritorious public service or achievement if the donor does not have interests that may be substantially affected by the performance or nonperformance of the employee's duties or is an organization whose members do not have such interests. Gifts with an aggregate market value in excess of \$200 and awards of cash or investment interests may be accepted if an agency ethics official determines in writing that the award is part of an established program of recognition made on a regular basis according to written standards.

- Employees can accept honorary degrees from institutions of higher education based on a written determination by an agency ethics official that the timing of the degree would not cause a reasonable person to question the employee's impartiality in a matter affecting the institution. Meals and entertainment for the employee and family at a presentation event of the award or degree may be accepted regardless of value.

5. Outside Business or Employment Gifts. Employees may accept meals, lodging, transportation, and other benefits resulting from the outside employment or business relationship of the employee or the employee's spouse if it is clear that the gift is not offered or enhanced because of the employee's official position.

- Employees may accept expenses customarily provided by a prospective employer in connection with bona fide employment discussions; if the prospective employer has interests that could be affected by the employee's performance or nonperformance of official duties, the employee must disqualify himself or herself in advance from participating in any Government particular matters affecting the prospective employer. (NRC employees required to file financial disclosure reports must report gifts exceeding \$335 in value, except those from relatives, the Government, personal hospitality, or received by their spouse or dependent child.)

6. Gifts from political organizations. Officials exempt from the Hatch Act may accept meals, lodging, transportation, free attendance, and other benefits from political organizations for participating at political events. (The only NRC officials exempt from the Hatch Act are the Commissioners.) Other employees whose official duties require them to accompany such official to a political event may also accept meals, free attendance, and entertainment provided at the event.

7. Speaking engagements. Employees who are speakers, panelists, or otherwise presenting information on behalf of the agency at a conference or other event may accept free attendance from the sponsor of the event only on the day of their presentation. ("Free attendance" includes waiver of conference or other fees and food, refreshments, entertainment, instruction and materials furnished to all attendees. It does not include travel expenses, lodging, or entertainment collateral to the event.) On the days they are not speaking or otherwise presenting information at the conference, employees may receive prior approval to accept free attendance if the event is a "widely-attended gathering" or the sponsoring organization is a tax exempt organization under 26 U.S.C. 501(c) (3), which are generally nonprofit charitable, religious, or educational institutions and some professional organizations.

8. Widely attended gatherings. Employees can accept free attendance at a “widely attended gathering” from the sponsor of the event if an agency designee has determined that their attendance is in the interest of the agency because it will further agency programs and operations. They can accept free attendance from a non-sponsor if more than 100 persons are expected to attend and the gift of free attendance has a market value of \$335 or less.

- A gathering is “widely attended” if, for example, it is open to members from throughout given industry or profession or if those in attendance represent a range of persons interested in a given matter. For employees subject to the Federal leave system, attendance at the event shall be on the employee’s own time, unless administrative leave has been authorized.

- The agency designee’s determination that attendance is in the agency’s interest may be given orally. If the person inviting the employee has interests that would be substantially affected by the performance or nonperformance of the employee’s duties or is an organization the majority of whose members have such interests, the agency designee must determine in writing that the agency interest in the employee’s participation in the event outweighs the concern that acceptance of the gift or free attendance may improperly influence the employee in the performance of official duties.

- The agency designee may authorize the employee’s spouse or other guest to attend this event if other attendees will generally be accompanied by their spouse or other guest. (Management Directive 7.9 specifies the agency designees. For most employees, they are office directors or regional administrators.)

9. Social invitations for non-prohibited sources. Employees may accept food, refreshments, and entertainment, not including travel or lodging, at a social event where the invitation is from a non-prohibited source and no fee is charged to anyone in attendance.

10. Meals, refreshments and entertainment in foreign areas. Employees assigned to duty in, or on official travel to, a foreign area may accept food, refreshments, or entertainment at a meal or other event if (1) the market value of the gift does not exceed the applicable per diem rate for the foreign area, (2) there is participation in the meeting or event by non-U.S. citizens or representatives of foreign governments or other foreign entities, (3) attendance at the meeting is part of the employee’s official duties, and (4) the gift of meals, refreshments or entertainment is not from a foreign government. (Employees can accept from a foreign government a gift of no more than \$335 in value, under the Foreign Gifts and Decorations Act.)

11. Gifts authorized by supplemental regulation or statute. The NRC has no specific gift acceptance statutory authority. Employees can receive approval to accept travel expenses from nonprofit organizations with a 501(c)(3) tax-exempt status (such as most educational or religious institutions) for training or attendance at meetings under 5 U.S.C. 4111 or gifts from foreign governments under the Foreign Gifts and Decorations Act. 5 CFR 2635.204.

Disposition of gifts. Employees must return gifts they cannot accept or pay the donor the fair market value of the gift. Employees 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. Perishable gifts, such as food or flowers, may, at the discretion of the supervisor, be given to a charity, shared with others in the office, or destroyed. Agencies may authorize disposition or return of gifts at Government expense. Employees who promptly satisfy the disposition requirements on their own initiative or after prompt consultation with an agency ethics official will be considered to have complied with these requirements. 5 CFR 2635.205.

## SUBPART C -- GIFTS BETWEEN EMPLOYEES

Gifts to superiors. With limited exceptions, employees cannot directly or indirectly: (1) give a gift to, or make a donation for a gift to, an official superior; or (2) solicit contributions from other employees for a gift to either their own or the other employees' official superior. 5 CFR 2635.301.

Gifts from employees receiving less pay. Employees cannot directly or indirectly accept gifts from an employee receiving less pay, unless they are not in a subordinate-superior relationship and there is a personal relationship that justifies the gift. An official superior may never coerce the offering of a gift from a subordinate, regardless of any exceptions in this subpart. 5 CFR 2635.302.

Official superior means any other employee 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. Employees are considered to be the subordinate of any of their official superiors. 5 CFR 2635.303(d).

### Exceptions to the prohibition:

- Items (other than cash) valued at \$10 or less may be given occasionally to a superior on a gift-exchanging event (such as birthdays or holidays);
- Food and refreshments to be shared in the office;
- Personal hospitality at a residence customarily provided to friends and customary items, such as "hostess gifts," given in connection with hospitality at a residence;
- Contributions of annual leave under the Government's leave transfer program (except to immediate supervisor);
- Gifts appropriate for special, infrequent occasions such as marriage, illness, birth of a child, or the termination of a subordinate-superior relationship, such as retirement. For these special occasions, employees may solicit voluntary contributions of a nominal amount from other employees for the gift or for items, such as food or refreshments, to be shared in the office among employees. Voluntary contributions must be freely given, without pressure or coercion. The amount is to be left to the employee's discretion although the employee soliciting contributions may suggest an amount or respond to an inquiry on an appropriate amount. The solicitor must make clear that employees can contribute less than the suggested amount or nothing. Employees who pay a proportionate share of the total cost of an organized lunch or similar event will be deemed to have made a voluntary contribution. 5 CFR 2635.304.



## SUBPART D -- CONFLICTING FINANCIAL INTERESTS

Basic prohibition: Employees are prohibited by 18 USC 208(a) from participating personally and substantially in their official capacity in a particular matter in which, to their knowledge, they or any person whose interests are “imputed” to them have a financial interest, if the particular matter will have a “direct and predictable” effect on that interest. 5 CFR 2635.402(a).

### Definitions.

“Direct and predictable effect.” 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. There is no such effect if the chain of causation is attenuated or contingent on the occurrence of events that are speculative, independent, or unrelated to the matter. There will be a “predictable” effect if there is a real, as opposed to a speculative, possibility that the matter will affect a financial interest.

“Imputed interests” are the financial interests of the employee’s spouse, minor child, general partner, any organization the employee serves as officer, director, trustee, general partner, or employee, and anyone with whom the employee is negotiating, or has an arrangement for, prospective employment.

“Particular matter” encompasses only matters involving deliberation, decision, or action focused on the interests of specific persons or a discrete and identifiable class of persons (even though it does not involve formal parties). It may include governmental action, such as legislation or policy-making narrowly focused on the interests of a discrete and identifiable class. It does not extend to broad policy options directed to the interests of a large and diverse group. Some generic rulemakings could be considered particular matters.

“Personal and substantial.” “Personal” participation means to directly participate in the matter, including direct and active supervision. “Substantial” participation means involvement that is of significance to the matter, even though it is not determinative of the outcome. Substantiality is based not only on the effort devoted to the matter, but also on its importance. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial, such as participation through decision, approval, disapproval, recommendation, investigation, or rendering advice. 5 CFR 2635.402(b).

“Financial interest” is limited to interests owned by the employee or by the employee’s spouse or minor children. The term includes any current or contingent ownership, equity, or security interest (e.g. stocks and bonds) and may include indebtedness or compensated employment relationship. It also includes service, with or without compensation, as an officer, director, trustee, general partner, or employee of any person, including a nonprofit entity. It does not include a future interest created by someone other than the employee, spouse, or dependent child or any right as a beneficiary in an estate that is not settled. 5 CFR 2635.403(c).

Disqualification. Employees are required to disqualify themselves from participating in particular matters which affect their financial interests or those imputed to them. Employees who become aware of the need to disqualify themselves from a particular matter to which they have been assigned should notify their supervisor so that they can be immediately relieved of responsibility for the matter. There is no specific requirement to file a written statement of disqualification unless asked by an agency ethics official or the person responsible for their assignment. However, NRC recommends that employees at a minimum retain a written documentation of their disqualification in their own files and consider providing the written disqualification to their supervisor and/or key co-workers. 5 CFR 2635.402(c).

Waivers or exemptions. Employees with a disqualifying financial interest may participate in a particular matter if they receive a waiver from their appointing official based on a determination that the interest is not so substantial as to affect the integrity of their services to the government. (Management Directive 7.9 authorizes office directors and regional administrators to grant such waivers after consultation with OGC, which is also required to consult with OGE.) However, employees may also participate in particular matters if their financial interest is considered too remote or inconsequential under regulations in 5 CFR 2640, such as stocks which are below a certain value. Special Government employees who serve on advisory committees are eligible for waivers if the need for their services outweighs the potential for a conflict of interest. 5 CFR 2635.402(d).

Divestiture. Sale or other divestiture of the disqualifying interest will result in permitting the employee to participate in the particular matter. Employees may be required to sell the interest if the continued holding is prohibited by statute or supplemental regulation or if the agency determines that a substantial conflict exists between the financial interest and the employee's duties or the accomplishment of the agency's mission. 5 CFR 2635.402(e).

Prohibited financial interests. Employees cannot acquire or hold interests prohibited by statute, agency regulation, or agency determination of substantial conflict.

- Agencies may issue supplemental regulations prohibiting the holding of a financial interest or a class of financial interests by employees or a class of employees, based on a determination that holding the interest would cause a reasonable person to question the impartiality and objectivity with which agency programs are administered. Supplemental regulations may also restrict the holdings of the employee's spouse or minor children if the agency determines that there is a direct and appropriate nexus between the prohibition or restriction and the efficiency of the service. An agency could also prohibit the holding of a financial interest if the employee would be required to disqualify himself or herself from matters critical to the performance of official duties or would adversely affect the efficient accomplishment of the agency's mission because another employee could not be readily assigned to the matter. 5 CFR 2635.403(a), (b).

- NRC supplemental conduct regulation, 5 CFR 5801.102, prohibits senior employees and certain employees who have licensee responsibilities, as well as their spouse or minor children, from holding securities issued by the nuclear entities on a list published annually by OGC. The list of employees subject to this restriction is published in Management Handbook 7.7.

Period for divestiture. Employees directed by their agency to divest themselves of a financial interest have a reasonable time to sell or transfer the security to someone not covered by the restriction. Except in cases of unusual hardship, a reasonable period should not exceed 90 days. (NRC's security ownership regulation requires divestiture within 90 days of acquisition or when the entity is placed on the prohibited securities list.) All employees, except special Government employees, are eligible to defer the tax consequences of a required sale (see 5 CFR 2634 Subpart J). 5 CFR 2635.403(d), (e).

## **SUBPART E -- IMPARTIALITY IN PERFORMING OFFICIAL DUTIES**

Basic restriction. Employees should not participate in a "particular matter involving specific parties" they know is likely to have a direct and predictable effect on the financial interest of a member of their household or know that a person with whom they have a "covered relationship" is or represents a party to such matter if they determine that a reasonable person with knowledge of the relevant facts would question their impartiality in the matter.

Employees concerned that other circumstances would raise a question about their impartiality should use the process in this subpart to determine whether they should or should not participate in the particular matter. They may seek the assistance of their supervisor, an agency ethics official, or the agency designee. (Office directors and regional administrators are agency designees under Management Directive 7.9.) 5 CFR 2635.501.

"Covered relationships." There are five categories of covered relationships:

- Persons, other than prospective employers, with whom the employee has or seeks a financial relationship (except a routine consumer transaction);
- Members of the employee's household or relatives with whom the employee has a close
- Personal relationship;
- Persons for whom the employee's spouse., parents or dependent child serves or seeks to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee;
- Persons for whom the employee served in the last year as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee; and
- Nonpolitical organizations in which the employee is an active participant. (Payment of dues or the donation or solicitation of financial support does not, in itself, constitute active participation.)

"Particular matters involving parties" are only particular matters that involve a special party or parties. This typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties. This would include a specific contract, grant, license, enforcement action, adjudication, or court case. It does not include matters of general applicability, such as rulemaking, policies, or standards. 5 CFR 2635.502(b).

Agency designee determination. Where an agency designee has information concerning a potential appearance problem arising from the financial interest of anyone with whom the employee has a covered relationship, the 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. At any time, the designee may make this determination on his or her own initiative or when requested by the employee's supervisor or any other person responsible for the employee's assignment. If the designee determines that the employee's participation should not be authorized, the employee will be disqualified from participation.

Authorization by agency designee. The agency designee may authorize the employee's participation, based on a determination that the interest of the Government in the employee's participation outweighs circumstances that a reasonable person may question the integrity of the agency's programs and operations. Factors which may be taken into consideration include: the nature of the relationship, the difficulty of reassignment, the effect of the matter on the financial interest of the person involved, the sensitivity of the matter, the nature and importance of the employee's role, and the difficulty of reassigning the matter. The authorization shall be documented in writing at the designee's discretion or when requested by the employee. 5 CFR 2635.502(d).

Disqualification. Employees shall not participate in a particular matter involving parties when the agency designee has concluded that the financial interest of the person with whom they have a covered relationship is likely to raise a question in the mind of a reasonable person about their impartiality. Such employees should notify the person responsible for their assignment of their disqualification. Appropriate oral or written notification of the disqualification may be made to coworkers or a supervisor to ensure that employees are not involved in particular matters involving parties from which they are disqualified. Employees need not file a written disqualification unless asked by an ethics official or the person responsible for their assignment. However, employees may elect to create a record of their actions by providing a written notice to their supervisor or other appropriate official. 5 CFR 2635.502(e).

Extraordinary payments from former employers. Employees who receive a severance payment exceeding \$10,000 prior to entering Federal service are prohibited for two years from the date of receipt of payment from participating in any particular matter in which the former employer is a party or represents a party. This does not apply to payments made pursuant to an established compensation or benefit plan. A waiver can be granted only by the head of the agency (or person delegated authority to issue individual 18 USC 208(b) waivers) if there is a finding that the amount was not so substantial as to cause a reasonable person to question the employee's ability to act impartially. 5 CFR 2635.503.

## SUBPART F -- SEEKING OTHER EMPLOYMENT

Basic Restriction. Employees are required to disqualify themselves from participation in any particular matter directly and predictably affecting the financial interests of a person with whom they are seeking employment (a prospective employer) or have any arrangement concerning prospective employment. There are no disqualification obligations on employees who seek employment with someone whose financial interests are not affected by their official duties. (This means, for example, that an employee in one regional office may negotiate with a utility for which the employee has no responsibility without informing management.) 5 CFR 2635.601, .602.

### Definitions:

“Prospective employer” is any person with whom the employee is seeking employment. It includes a person who uses an agent or other intermediary or is contacted by an employee’s agent to seek to establish an employment relationship if the agent identifies the prospective employer to the employee. 5 CFR 2635.603(c).

“Seeking employment” is very broadly defined as beginning when the employee directly or indirectly:

- Engaged in “negotiations,” which involve discussion or communication with another person or the person’s agent or intermediary, mutually conducted with a view toward reaching an agreement on possible employment. It is not limited to discussions of specific terms and conditions in a specific position;
- Made an unsolicited communication (e.g., sent out a resume or job application) to a person or such person’s agent on possible employment. It does not include communications for the sole purpose of requesting a job application. (Employees are not required to disqualify themselves from participating in a generic rulemaking affecting an entity to whom they have submitted a resume until the recipient responds by indicating an interest in employment discussions); or
- Made a response, other than a rejection, to an unsolicited communication from a person or agent on possible employment.

An employee is no longer seeking employment when:

- Either party rejects the possibility of employment and all employment discussions have terminated, or
- Two months have transpired after the employee sent an unsolicited resume or proposal and the employee received no indication of interest in employment discussions from the prospective employer.
- A response deferring discussions for the foreseeable future does not constitute a rejection. 5 CFR 2635.603(b).

Disqualification Obligation. Employees who wish to initiate employment contacts with a person whose financial interests they know will be directly and predictably affected by a particular matter to which they will be assigned shall take steps necessary to disqualify themselves before beginning to seek employment with that person.

- Notification. Employees who become aware of the need to disqualify themselves from participation in a particular matter to which they have been assigned should notify the person responsible for their assignment. Employees who are responsible for their own assignments should take whatever steps are necessary to ensure that they do not participate in the matter from which they are disqualified. Appropriate oral or written notification of the employee's disqualification may be made by the employee to coworkers or a supervisor to ensure that the employee does not participate in matters affecting the prospective employer.

- Documentation. Written disqualification statements are not necessary unless requested by the agency ethics official or the employee's supervisor. However, the NRC recommends that employees, at a minimum, retain a written document of their disqualification, including a record of when employment negotiations began and ended, and consider providing the disqualification to their supervisor and/or key co-workers

Agency determination of substantial conflict. Where the agency determines that the disqualification will preclude the employee from participating in matters so central or critical to the performance of official duties (such as a resident inspector seeking employment with the utility that operates the facility he or she is responsible for), the agency may allow the employee to take annual leave or leave without pay while seeking employment, or may take other appropriate administrative action. 5 CFR 2635.604.

Waiver. Employees may only participate in matters affecting a prospective employer if they receive a waiver from the agency designee, after consultation with OGC. The designee must determine that the Government's need for the employee's participation outweighs the concerns that a reasonable person may question the integrity of the agency's programs or operations. The agency designee may determine that an employee no longer seeking employment shall remain disqualified for a specified period of time from matters affecting a prospective employer if the designee determines that the concern that a reasonable person may question the integrity of the agency's decision making process outweighs the Government's interest in the employee's participation in the particular matter. (Agency designees are office directors or regional administrators under Management Directive 7.9.) 5 CFR 2635.604 - .606.

Interview expenses. Employees may accept travel expenses and other reasonable amenities incident to employment discussions, even from a prospective employer who is a prohibited source. (However, the Foreign Gifts Act generally prohibits employees from accepting travel expenses from a foreign government that exceeds \$335.) 5 CFR 2635.602(b).

## **SUBPART G -- MISUSE OF POSITION**

Public office for private gain. Employees shall not use their public office for their own private gain. Employees also cannot use their public office for the endorsement of any product, service, or enterprise, or for the private gain of friends, relatives, or persons with whom they are affiliated in a nongovernmental capacity, including nonprofit organizations in which they are officers or members, or persons with whom they have or seek employment or business relations. Employees shall not use their office in a manner to induce or coerce another person, including a subordinate, to provide any benefit to themselves or their friends, relatives, or persons with whom they are affiliated in a nongovernmental capacity. 5 CFR 2635.702.

Appearance of Government sanction. Employees shall not use their Government position or title in a manner that could reasonably be construed to imply Government endorsement of their personal activities or those of another. Employees may sign a letter of recommendation using their official title or Government letterhead paper only in response to a request for an employment recommendation or character reference based on their personal knowledge of an individual they dealt with in the course of Federal employment or whom they are recommending for Federal employment. For other letters of recommendation, employees can mention their official title in the body of the letter but cannot sign the letter with their title or use agency letterhead.

- Employees are not prohibited, in connection with a personal activity, from using a term of address or rank that they normally employ, such as “The Honorable.” When teaching, speaking, or writing in a personal capacity, employees may include their title or position as one of several biographical details, but with no more prominence than other significant biographical details. In writing for scientific or professional journals, the title may be used as long as there is a prominent disclaimer. 5 CFR 2635.702(b).

Endorsements. Employees shall not use or permit use of their Government position or title or any authority associated with their public office to endorse any product, service, or enterprise, except under statutory authority or agency recognition programs. 5 CFR 2635.702(c).

Nonpublic information. Employees shall not engage in a financial transaction using nonpublic information, nor allow the use of nonpublic information to further their own private interest or that of another through advice, recommendation, or by an unauthorized disclosure. Nonpublic information is information employees gain from Federal employment that they know or reasonably should know has not been made available to the general public. It includes information (1) exempt from disclosure under the Freedom of Information Act, (2) designated confidential by an agency, or (3) that has not actually been disseminated to the general public and is not authorized to be made available to the public on request. 5 CFR 2635.703.

Government property. Employees have a duty to protect and conserve Government property and may not use it or allow its use for other than authorized purposes. (Management Directive 2.7 permits employees to use information technology, such as computers, e-mail, the Internet, phones, and faxes, for personal purposes on a limited basis and on non-duty time. There are specific prohibitions for using such property, such as commercial or political purposes.) 5 CFR 2635.704.

Official time. Unless authorized, employees shall use official time to perform official duties. Employees shall also not encourage, direct, coerce, or request a subordinate to use official time for nonofficial activities unless legally authorized. 5 CFR 2635.705.

## **SUBPART H -- OUTSIDE ACTIVITIES**

Basic requirement. Employees who wish to engage in outside employment or other activities are subject to applicable requirements in the conduct regulations and their agency's supplemental conduct regulations. Their outside activities are also subject to the conflict of interest laws (18 U.S.C. 201- 209), the Hatch Act (prohibiting certain political activities), and the Emoluments clause of the Constitution (which bars acceptance of compensation for services from foreign governments). They should avoid actions creating an appearance of violating any of the ethical standards and the prohibition on using official position for any private gain. 5 CFR 2635.801.

Conflicting activities. Employees shall not engage in outside activities that conflict with official duties, those prohibited by statute or agency supplemental regulation, or those which would require disqualification by reason of the conflicting financial interest or the impartiality standards (see subparts D and E). 5 CFR 2635.802.

Prior approval for outside employment. Employees shall obtain prior approval for outside employment or activities if required by agency supplemental regulations. Agencies may require prior approval of outside employment by employees or any category of employees by supplemental regulation. (NRC supplemental conduct regulation, 5 CFR 5801.103, requires prior written approval before engaging in employment with NRC licensees, contractors, applicants, or other nuclear entities.) 5 CFR 2635.803.

Noncareer employees. Full-time noncareer Presidential appointees shall not receive any outside earned income during their appointment. Noncareer employees covered under title VI of the Ethics Reform Act may not receive outside earned income that exceeds 15 percent of annual income. 5 CFR 2635.804.

Expert witness. Employees shall not serve, other than on behalf of the United States, as expert witnesses, with or without compensation, in a U.S. court or agency proceeding in which the U.S. is a party or has a direct and substantial interest. However, the designated agency ethics official may authorize service as an expert witness (1) as being in the Government's interest, after consulting with the Federal agency representing the Government or the agency with the most direct and substantial interest, or (2) because the subject matter of the testimony does not relate to the employee's official duties. Employees are not prohibited from serving as fact witnesses under subpoena.

- Special Government employees who are appointed by the President, who serve on a statutorily-established commission, or who serve more than 60 days in a 365-day period shall not serve as expert witnesses in Federal proceedings in which their employing agency is a party or has a direct and substantial interest unless authorized by the designated agency ethics official. 5 CFR 2635. 805.



Teaching, speaking, and writing. Employees, including special Government employees, shall not receive compensation from a nongovernment source for teaching, speaking, or writing that relates to their official duties. Official duties are those:

1. Undertaken as part of official duties'
2. Where the invitation to engage in the activity was primarily extended because of the employee's official position rather than the employee's expertise;
3. Where the invitation was extended, directly or indirectly, by a person with interests that may be substantially affected by the performance or nonperformance of the employee's duties;
4. Where the information conveyed through the activity draws substantially on ideas or official data that are nonpublic information; or
5. Where the subject matter focuses specifically on (a) any matter to which the employee is presently assigned to or which the employee had been assigned to during the previous year, (b) any ongoing or announced policy, program, or operation of the agency, or (c) in the case of a noncareer employee, the general subject matter area, industry, or economic sector primarily affected by the programs and operations of the agency.

- This provision prohibits career employees from accepting compensation when teaching, speaking, or writing about agency policies, programs, and operations or on specific matters to which they are assigned or were assigned during the previous year. The prohibition applies only where the activity deals in significant part with the agency's policies, programs or operations. It would not prohibit, for example, compensation for a speech on a general subject matter, such as nuclear power, as long as the speech only incidentally touches on agency responsibilities, programs, or operations.

- Employees (other than covered noncareer employees) are not prohibited from receiving compensation for teaching, speaking or writing on a subject within their discipline or inherent area of expertise based on their educational background or experience even though the activity generally deals with a subject within the agency's mission.

- Special Government employees are not barred from speaking, teaching, writing, on any ongoing agency policy, program or operation. Special Government employees who have not served the Government more than 60 days in the preceding 365 days are not barred from receiving compensation for activities pertaining to particular matters involving specific parties in which they participated personally and substantially.

- Teaching courses: Employees are not prohibited from receiving compensation for teaching a course requiring multiple presentations that is part of the regularly established curriculum of an institution of higher learning or an elementary or secondary school or part of an education or training program sponsored and funded by a Federal, state, or local government even if the subject matter of the course focuses on the agency's responsibilities, programs, or operations. (NRC's supplemental conduct regulation on outside employment would require prior written approval for employment for teaching at an educational institution which has an NRC or agreement State license.)

- "Compensation" for teaching, writing, and speaking includes any form of consideration, remuneration, or income, including royalties. It does not include meals, free attendance, publications, or travel expenses.

- Use of title or position. Employees engaged in nongovernmental teaching, speaking, or writing shall not use their official title or position to identify themselves in connection with that activity or to promote a book or course. However, employees may include their title as part of biographical information (provided that it is not given greater prominence than other biographical information) or when coupled with an appropriate disclaimer in a scholarly article in professional journals that the views expressed do not necessarily represent the views of the agency. 5 CFR 2635.807.

Fundraising activities. Fundraising means raising of funds for a nonprofit organization (other than a political organization) through the solicitation of funds or sale of items or participation in the conduct of an event where any portion of the cost of attendance or participation may be taken as a charitable tax deduction.

- Employees shall not use their official title or position to raise funds for any organization unless specifically authorized by statute, executive order, or regulation (such as the Combined Federal Campaign). Employees can be authorized to speak in an official capacity at an event that may also serve a fundraising purpose, if the speech relates to official duties and the employee does not request donations or other support for the group. They can attend a fundraising event as long as, to their knowledge; their attendance is not used to promote the event.

- Employees may raise funds in their personal capacities, but shall not solicit funds or other support from subordinates or anyone they know is a prohibited source. They also cannot use their official title, position, official time, Government resources, or authority in connection with private fundraising, although an employee who is ordinarily addressed by a general term, such as, "The Honorable," or a rank, such as military or ambassadorial rank, may use or permit the use of that term of address or rank. 5 CFR 2635.808.

Just financial obligations. Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those imposed by law, such as Federal, state and local taxes. 5 CFR 2635.809.

Gambling. The Office of Personnel Management regulations prohibit employees from conducting or participating in any gambling activity on Government property or while on official duty. This prohibition includes operating a gambling device, conducting a lottery or pool, a game for money or property, or selling or purchasing a numbers slip or ticket. There is an exception for such activities if sponsored by an employee recreation association under policies and procedures approved by the head of the relevant agency. 5 CFR 735.201.

**SUBPART I -- RELATED STATUTORY AUTHORITIES**

This Subpart lists 38 significant statutes that establish standards to which employee conduct must conform. These include the following:

- Criminal conflict of interest statutes (18 U.S.C. 201-209), which prohibit bribery, supplementation of salary, representing other to the Government, and post-employment restrictions;
- Procurement Integrity Act (41 U.S.C. 423), which prohibits certain actions by procurement officials;
- The Foreign Gifts and Decorations Act (5 U.S.C. 7342), and the Foreign Agents Registration Act (22 U.S.C. 611-621);
- prohibition on misuse of a Government vehicle (31 U.S.C. 1344);
- prohibition on misuse of the franking privilege (18 U.S.C. 1719);
- the criminal statute prohibiting fraud or false statements in a Government matter (18 U.S.C. 1101); and
- prohibitions on disclosure of classified, proprietary, certain procurement, or confidential information (18 U.S.C. 798 and 1905, 41 U.S.C. 423).