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FBI Ethics and Integrity Program Policy Guide



Federal Bureau of Investigation (FBI)

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General Information:

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Supersession Information:

Policy Directive 0454D, *FBI Ethics and Integrity Program Policy*, and the
FBI Ethics and Integrity Program Policy Guide, 0454PG

For archival reference to prior versions of the guide, contact the OIC point of contact listed above.

HISTORY

The original version of this Guide was published on December 6, 2007, per FBI Directive 0019D.
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Per the directive, Change 1 approved on June 3, 2009, updating the Manual and redesignating the document as a Policy Guide (0205PG).

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Legend

Black font: Statutory, Office of Government Ethics and other Agency Policy and Procedures

Blue font: DOJ Policy and Procedures

Red font: FBI Policy and Procedures

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Preamble: A Message from the Director

A Commitment to Institutional and Individual Integrity

Uncompromising institutional and individual integrity are core values of the FBI. In fact, integrity is the value that binds together the very fabric of our institutional identity. It defines us and what we stand for; it is how we operate and how we measure our success. In short, integrity is the touchstone for everything we do.

It is our policy to comply fully with all laws, regulations, and rules governing our operations, programs and activities. We cannot and do not countenance disregard for the law for the sake of expediency in anything we do. The FBI expects its personnel to ascertain what laws and regulations govern the activities in which they engage, to acquire sufficient knowledge of those laws to permit each employee to understand what the law requires, and to conform their personal and professional conduct accordingly. Further, the FBI requires its employees to report to proper authority any known or suspected failures to adhere to the law by themselves or others.

Additionally, as individual FBI employees, it is our policy to adhere to the highest standards of ethical conduct. In this regard, I believe that all FBI employees want to do the "right thing" but determining what is "right" is sometimes difficult to discern. This Manual brings together relevant rules from the Office of Government Ethics, the Department of Justice, and the FBI and organizes them by subject to make it easier for FBI personnel and those who advise them to find and apply the standards governing individual ethical conduct.

While some of these rules are complex, they all are based on one fundamental precept: Public service is a public trust. Those of us lucky enough to serve the public in and through this great organization must adhere to that principle in everything we do. We have many extremely difficult challenges ahead of us. We cannot meet those challenges without the trust and support of the American people. We understand that their trust is earned not given. We are committed to earning it. Adherence to the standards and values set forth in this Manual is an important step in that direction.

James B. Comey
Director

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1. Scope

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1.1. Purpose

The purpose of this Policy Guide is to establish and describe the FBI Ethics and Integrity Program as well as to implement the Standards of Ethical Conduct for Employees of the Executive Branch and related requirements. This Guide intended to provide in depth legal guidance, policy, and procedures for CDCs, ADCs, and other Bureau legal staff, in one document, regarding the the Ethics Standards established by Federal statutes, Office of Government Ethics regulations, DOJ requirements, the FBI Core Values, the Code of Conduct, and related FBI policies and procedures related to these standards.

Special missions and needs of the Department of Justice and the FBI have led to the establishment of Departmental and FBI-specific regulations and policies. The FBI Ethics and Integrity Program is designed to create an environment where all employees are capable of readily recognizing and resolving ethical issues. This is accomplished by making available effective training and advice; by providing correct, consistent, and authoritative determinations when needed; and by ensuring that all violations of ethics and related requirements are promptly and appropriately addressed.

For guidance on recordkeeping related to the matters covered by this PG, please go to the Records Management Division (RMD) Intranet site and see Classification 319, Managing the FBI's Records.

1.2. Applicability

This Guide applies to all FBI employees, including employees on detail with the FBI and Special Government Employees as described herein. Applicability of Office of Government Ethics (OGE) Regulations and the Department's supplementary regulations are governed by Office of Government Ethics regulation. (See 5 C.F.R. §2635.104, as modified by 5 C.F.R. §3801.101).

"Employees" is defined by OGE, and we have incorporated its definition. (See section 4.1.1.2.(h).) Contractors are not subject to the standards or to almost everything else covered in this PG. Specific sections to the contrary are noted. This Guide is binding on and for all FBI employees. Its provisions are not binding on nonemployees, unless specifically noted otherwise. It may, and often should, be used for guidance in the areas it covers for all personnel. Any questions about the extent to which an individual is covered by this Guide must be referred to the Office of Integrity and Compliance.

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Certain types of conduct pertaining to these conflicts constitute criminal violations of Federal law. Willful or culpably negligent violations of the other standards or the Code of Conduct discussed in this Guide may be addressed as misconduct or performance matters warranting adverse personnel action.

1.3. How to Use this Guide

This Guide is divided into chapters and subchapters by subject matter. We have attempted to reference all generally applicable policies related to each topic discussed. For purposes of clarity, this Guide contains color-coded fonts that are associated with the source of the policy addressed within each chapter. This Guide is specifically formatted, therefore, to be read by users viewing the Guide online and/or in color print form. The following key is used throughout the Guide:

Legend

Black font: Statutory, Office of Government Ethics and other Agency Policy and Procedures

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Users are invited to bring to our attention any relevant source materials that would help shed light on policies within the addressed topic areas or to suggest the inclusion of new topic areas to be developed within this Guide. Such suggestions and recommendations should be directed to the Office of Integrity and Compliance point of contact, noted on the cover of this Guide.

1.4. Intended Audience

This Guide is for all FBI Employees. For a quick reference to ethics guidance, please refer to the **Ethics Pocket Guide**.

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2. Roles and Functional Responsibilities

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This section describes and defines the roles and responsibilities of the various entities involved in the administration of the FBI Ethics and Integrity Program.

2.1. Authorities External to the FBI, the U.S. Office of Government Ethics

2.1.1. 5 C.F.R. §2638.102 General policies

The Office of Government Ethics [OGE] provides overall direction and leadership concerning executive branch policies related to preventing conflicts of interest. The Head of each Agency has primary responsibility for the administration of the "ethics in Government" program within his or her agency, [OGE] carries out its leadership role by:

- (1) Providing information on and promoting ethical standards in executive agencies;
- (2) Consulting with agencies regarding their agency ethics programs and assisting them in interpreting ethics rules and regulations;
- (3) Developing rules and regulations pertaining to conflicts of interests and standards of conduct;
- (4) Monitoring compliance with the public and confidential financial disclosure requirements;
- (5) Establishing a formal advisory opinion service; and,
- (6) Evaluating the effectiveness of programs designed to prevent conflicts of interests.

2.1.2. 5 C.F.R. §2638.203 Duties of the Designated Agency Ethics Official

The Department of Justice's Designated Agency Ethics Official (DAEO) shall coordinate and manage the Agency's Ethics Program. The Program consists generally of:

- (1) Liaison with the Office of Government Ethics;
- (2) Review of financial disclosure reports;
- (3) Initiation and maintenance of ethics education and training programs; and,
- (4) Monitoring administrative actions and sanctions.

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2.2. FBI Agency Ethics Officials

2.2.1. The FBI Deputy Designated Agency Ethics Official (DDAEO)

The FBI's Deputy Designated Agency Ethics Official (DDAEO), *see* 5 C.F.R. § 2638.203, is the Assistant Director of the Integrity and Compliance Office, and is responsible to the Director and the DAEO of the Department of Justice (DOJ) for the administration of the FBI's Government Ethics Program. The DOJ DAEO appoints the FBI DDEAO, delegating the responsibility and the authority to administer all aspects of the FBI Ethics and Integrity Program. The FBI DDEAO:

- (a) Maintains close liaison with the Department of Justice and the Office of Government Ethics concerning the FBI's Ethics Program.
- (b) Administers an effective system and procedure for the collection, filing, review, and, when applicable, public inspection of the financial disclosure reports.
- (c) Administers and supervises a training program for FBI employees concerning all ethics and standards of conduct as required by 5 C.F.R. §2638. This includes developing a written plan each year for the FBI's annual training program in accordance with this regulation.
- (d) Administers, develops, and conducts a formal and informal counseling program for FBI employees concerning all ethics and standards of conduct matters, including post employment matters.
- (e) Ensures that appropriate records are kept on advice rendered.
- (f) Ensures that prompt and effective action is undertaken to remedy violations or potential violations of Government ethics requirements.
- (g) Ensures that the FBI's Ethics Program, policies, and procedures are evaluated periodically to determine their adequacy and effectiveness in relation to current FBI responsibilities.

2.2.2. The FBI Office of Integrity and Compliance

The Office of Integrity and Compliance administers the day-to-day operation of all aspects of the FBI Ethics and Integrity Program, under the supervision of the DDEAO. The Office of Integrity and Compliance:

- (a) Provides necessary support to the DDAEO in the functions listed above.
- (b) Provides ethics counseling and training to FBI management and employees assigned to FBI Headquarters Divisions.
- (c) Provides expert advice to Chief Division Counsel (CDC) and other designated ethics counselors throughout the FBI.
- (d) Maintains a library of appropriate and useful guidance and training materials.
- (e) Oversees and administers the Ethics and Integrity Training Program to ensure compliance with all regulations and FBI policies.

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2.2.3. Designation and Responsibilities of FBI Ethics Counselors

(a) The following personnel may act as FBI Ethics Counselors:

- (1) Personnel so designated by the DDEAO and assigned to the Office of Integrity and Compliance, and all Chief Division Counsel (CDC).
- (2) Such additional personnel as may be designated in writing by the DDEAO. Ethics counselors designated in writing by this provision must obtain at least four hours per rating year of ethics-related training approved by the Office of Integrity and Compliance.

(b) Ethics Counselor Responsibilities. Regardless of how designated, all Ethics Counselors:

- (1) Are appointed to provide responsive and appropriate advice regarding Ethics and Standards of Conduct issues to current and former FBI employees within their areas of responsibility, including oral and written ethics advice and counsel, excluding formal ethics determinations. [See DOJ Order 1200.1, Part 11, Ethics].
- (2) May act as qualified instructors to provide required ethics training. [See 5 C.F.R. § 2638.701 et seq.]
- (3) Are aware that, although advice is provided to individuals with Ethics or Standards of Conduct questions, the FBI, not the individual employee, remains the exclusive client, and any communication made with this designation is not protected by the attorney-client privilege. This concept must be explained to individual employees seeking advice when required or prudent.
- (4) Must channel questions requiring formal ethics determinations to the DDAEO.
- (5) Send a copy to the DDAEO on any written advice (including e-mail) and apprise the DDAEO and the Office of Integrity and Compliance of any significant verbal advice.
- (6) Consult with the DDAEO before rendering advice on any matter that involves FBI or other agency senior officials, appears sensitive or controversial, has potential media or congressional interest, impacts other FBI divisions, involves novel issues, will set a new precedent, or otherwise where prudence dictates that prior coordination with the DDAEO is indicated.
- (7) Seek pre-approval by the Office of Integrity and Compliance of all training videos, PowerPoint, lesson plans, or other materials used for required annual, entry-on-duty, or other ethics training.

2.2.4. Chief Division Counsel

In addition to serving as Ethics Counselors for his/her division, each CDC is responsible under the general oversight of the DDAEO for managing the FBI Ethics and Integrity Program within his/her division to ensure that training, record keeping, and other program requirements are met.

2.2.5. Ethics Points of Contact – No CDC in the Division

For those divisions with no designated CDC (primarily headquarters divisions) the division head must designate an ethics point of contact. This POC is not an authorized ethics counselor. The POC is responsible, under the general oversight of the DDAEO, for managing the FBI Ethics and

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Integrity Program within his/her division to ensure that training, recordkeeping, and other program requirements are met.

Branch heads must also designate a POC responsible for management of the program for the branch executive office/staff. Branches may consolidate all Ethics and Integrity Program management for the branch and subordinate divisions with one POC for the entire branch.

Divisions and Branches must report to OIC the name of the designated ethics POC via the OIC Intranet home page link "[Email Update to Ethics POC List](#)." All changes to the ethics POC designation must be promptly report to OIC via the same link.

2.2.6. FBI ADICs, Assistant Directors, and SACs

All FBI Assistant Directors in Charge (ADIC), Assistant Directors (AD), and Special Agents in Charge (SAC) are responsible for ensuring that FBI Ethics and Integrity Program requirements are met within their respective divisions, including any division-specific needs for training or guidance, and for appropriately addressing compliance problems as they arise according to applicable administrative and disciplinary procedures. If no CDC is assigned, each ADIC, AD, or SAC must designate a point of contact to administrate the Ethics and Integrity program within the Division. ADICs, ADs, and SACs may consult the DDEAO regarding any programmatic questions related to the FBI Ethics and Integrity Program or for advice relating to ethical concerns.

2.2.7. FBI Employees

Each employee is responsible for compliance with all applicable ethics laws and regulations and may be held accountable for any breach of the policies, regulations, or statutes discussed in this Guide. Each FBI employee must maintain a sufficiently thorough knowledge of all ethical requirements, and of the FBI Ethics and Integrity program, to identify potential ethics issues as they arise, and to seek counseling when advice is needed. Additionally, each FBI employee is responsible for adhering to the FBI Code of Conduct and accountable for any willful or culpably negligent failure to do so.

2.3. Ethics Counseling and its Effect on Disciplinary Action

(a) The FBI expects its employees to behave in such a way that their activities both on and off duty will not discredit either themselves or the Bureau. Failure by an employee to follow the guidelines set forth in this Guide may result in appropriate administrative or disciplinary action.

(b) Employees who have questions about the application of the Office of Government Ethics (OGE) standards of conduct or any supplemental agency regulations to a particular situation or circumstance should contact the ethics counselors identified for their organizations. Those counselors will coordinate their response to the ethics issue with the Office of Integrity and Compliance and the DDEAO, as required by the circumstances.

(c) Disciplinary action for violating the OGE standards of conduct, or the Department's supplemental regulation in 5 C.F.R. §3801, is generally not taken against an employee who establishes that he or she engaged in such conduct in good faith relied upon the advice of an agency ethics counselor, provided that the employee, in seeking such advice, made full

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disclosure of all relevant facts and circumstances. However, reliance on an agency ethics counselor's advice may not protect the employee from prosecution if the employee's conduct violates a criminal statute. Good faith reliance on the informal advice of an agency ethics counselor, however, may be taken into account by the Department of Justice in the selection of cases for prosecution.

(d) An employee's disclosures to an agency ethics counselor are not protected by an attorney-client privilege. Title 28 U.S.C. §535 requires an agency ethics counselor to report any information the official receives relating to a violation of the criminal code, including the standards of conduct provisions in Title 18 of the United States Code.

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3. Code of Conduct

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3.1. FBI Code of Conduct

The statement, "Public service is a public trust," underlies all aspects of Government service. The many ethics statutes and regulations discussed in this Guide have one fundamental purpose: to ensure that every U.S. citizen can be confident in the integrity of the Federal Government and those in its employ. To this end, FBI employees have a responsibility, both to the United States and to its citizens, to place loyalty to the Constitution and public service above private gain.

The FBI enjoys a reputation as one of the finest law enforcement organizations in the world. This reputation is largely dependent upon how each of us conducts ourselves, both in our official and personal capacities. All FBI employees are expected, therefore, to act in accordance with the highest standards of personal honor and integrity. Although there are many aspects to this requirement, they may be distilled down to the following "Code of Conduct." FBI employees shall:

1. Ascertain and understand what laws, regulations, and rules govern their official activities and conform their professional conduct accordingly.
2. Apply the Principles of Ethical Conduct, the FBI motto and the FBI Core Values in the daily conduct of their personal and professional activities.
3. Obey the Standards of Ethical Conduct for the Executive Branch and pertinent DOJ and FBI regulations and policies.
 - For example, DOJ/FBI employees are prohibited from soliciting, procuring or accepting commercial sex, even if legal. (*See Ethics Guide Reference Library*) for the DOJ Memo titled Prohibition on the Solicitation of Prostitution, dated April 10, 2015)
4. Conduct their personal activities in a manner that does not impede their professional performance or tarnish the reputation of the FBI.
5. Report to proper authority any violations of law and regulation by themselves or others.
6. Refrain from retaliating against employees who, reasonably believing them to be true, report the violation of laws and regulations.
7. Tell the truth in all matters.

The bedrock principles from which this Code of Conduct is derived are set forth below.

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3.2. Executive Order 12674 "Principles of Ethical Conduct for Government Officers and Employees"

"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:

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.

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(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."

3.3. 28 C.F.R. § 45 Employee responsibilities (DOJ Employee Conduct Regulations)

§ 45.1 Cross-reference to ethical standards and financial disclosure regulations.

Employees of the Department of Justice are subject to the executive branch-wide Standards of Ethical Conduct at 5 C.F.R. part 2635, the Department of Justice regulations at 5 C.F.R. part 3801 which supplement the executive branch-wide standards, the executive branch-wide financial disclosure regulations at 5 C.F.R. part 2634 and the executive branch-wide employee responsibilities and conduct regulations at 5 C.F.R. part 735.

§ 45.2 Disqualification arising from personal or political relationship.

(a) Unless authorized under paragraph (b) of this section, no employee shall participate in a criminal investigation or prosecution if he has a personal or political relationship with:

- (1) Any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution; or
- (2) Any person or organization which he knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.

(b) An employee assigned to or otherwise participating in a criminal investigation or prosecution who believes that his participation may be prohibited by paragraph (a) of this section shall report the matter and all attendant facts and circumstances to his supervisor at the level of section chief or the equivalent or higher. If the supervisor determines that a personal or political relationship exists between the employee and a person or organization described in paragraph (a) of this section, he shall relieve the employee from participation unless he determines further, in writing, after full consideration of all the facts and circumstances, that:

- (1) The relationship will not have the effect of rendering the employee's service less than fully impartial and professional; and
- (2) The employee's participation would not create an appearance of a conflict of interest likely to affect the public perception of the integrity of the investigation or prosecution.

(c) For the purposes of this section:

- (1) Political relationship means a close identification with an elected official, a candidate (whether or not successful) for elective, public office, a political party, or a campaign organization, arising from service as a principal adviser thereto or a principal official thereof; and
- (2) Personal relationship means a close and substantial connection of the type normally viewed as likely to induce partiality. An employee is presumed to have a personal relationship with his father, mother, brother, sister, child and spouse. Whether relationships (including friendships) of an employee to other persons or organizations are "personal" must be judged on an individual basis with due regard given to the subjective opinion of the employee.

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(d) This section pertains to agency management and is not intended to create rights enforceable by private individuals or organizations.

§ 45.3 Disciplinary proceedings under 18 U.S.C. 207(j).

(a) Upon a determination by the Assistant Attorney General in charge of the Criminal Division (Assistant Attorney General), after investigation, that there is reasonable cause to believe that a former officer or employee, including a former special Government employee, of the Department of Justice (former departmental employee) has violated 18 U.S.C. 207(a), (b) or (c), the Assistant Attorney General shall cause a copy of written charges of the violation(s) to be served upon such individual, either personally or by registered mail. The charges shall be accompanied by a notice to the former departmental employee to show cause within a specified time of not less than 30 days after receipt of the notice why he or she should not be prohibited from engaging in representational activities in relation to matters pending in the Department of Justice, as authorized by 18 U.S.C. 207(j), or subjected to other appropriate disciplinary action under that statute. [Editor's Note: The remainder of this section is procedural and is not included in the section.]

§ 45.4 Personal use of Government property.

(a) Employees may use Government property only for official business or as authorized by the Government. See 5 C.F.R. 2635.101(b)(9), 2635.704(a). The following uses of Government office and library equipment and facilities are hereby authorized:

- (1) Personal uses that involve only negligible expense (such as electricity, ink, small amounts of paper, and ordinary wear and tear); and
- (2) Limited personal telephone/fax calls to locations within the office's commuting area, or that are charged to non-Government accounts.

(b) The foregoing authorization does not override any statutes, rules, or regulations governing the use of specific types of Government property (e.g. internal Departmental policies governing the use of electronic mail; and 41 C.F.R. (FPMR) 101-35.201, governing the authorized use of long-distance telephone services), and may be revoked or limited at any time by any supervisor or component for any business reason.

(c) In using Government property, employees should be mindful of their responsibility to protect and conserve such property and to use official time in an honest effort to perform official duties. See 5 C.F.R. 2635.101(b)(9), 2635.704(a), 2635.705(a).

§ 45.10 Procedures to promote compliance with crime victims' rights obligations.

[Editor's Note: This section implements the provisions of the Justice for All Act that relate to protection of the rights of crime victims. See 18 U.S.C. 3771 and is not included in this section.]

§ 45.11 Reporting to the Office of the Inspector General.

Department of Justice employees have a duty to, and shall, report to the Department of Justice Office of the Inspector General, or to their supervisor or their component's internal affairs office for referral to the Office of the Inspector General:

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- (a) Any allegation of waste, fraud, or abuse in a Department program or activity;
- (b) Any allegation of criminal or serious administrative misconduct on the part of a Department employee (except those allegations of misconduct that are required to be reported to the Department of Justice Office of Professional Responsibility pursuant to § 45.12); and
- (c) Any investigation of allegations of criminal misconduct against any Department employee.

[For additional information, FBI employees can go to www.justice.gov/oig/]

§ 45.12 Reporting to the Department of Justice Office of Professional Responsibility.

Department employees have a duty to, and shall, report to the Department of Justice Office of Professional Responsibility (DOJ-OPR), or to their supervisor, or their component's internal affairs office for referral to DOJ-OPR, any allegations of misconduct by a Department attorney that relate to the exercise of the attorney's authority to investigate, litigate or provide legal advice, as well as allegations of misconduct by law enforcement personnel when such allegations are related to allegations of attorney misconduct within the jurisdiction of DOJ-OPR.

§ 45.13 Duty to cooperate in an official investigation.

Department employees have a duty to, and shall, cooperate fully with the Office of the Inspector General and Office of Professional Responsibility, and shall respond to questions posed during the course of an investigation upon being informed that their statement will not be used to incriminate them in a criminal proceeding. Refusal to cooperate could lead to disciplinary action.

3.4. FBI Core Values

(a) The FBI's Core values are:

- Rigorous obedience to the Constitution of the United States;
- Respect for the dignity of all those we protect;
- Compassion;
- Fairness;
- Uncompromising personal and institutional integrity; and
- Accountability by accepting responsibility for our actions and decisions and their consequences;
- Leadership, by example, both personal and professional; and
- Diversity.

(b) The FBI Core values have been promulgated by the Director, upon the recommendation of a representative group of FBI personnel, as follows:

The strategic plan for accomplishing the FBI's mission must begin by identifying the core values which need to be preserved and defended by the FBI in performing its statutory mission. Those values are: rigorous obedience to the Constitution of the United States; respect for the dignity of all those we protect; compassion; fairness; uncompromising personal and institutional integrity; accountability by accepting responsibility for our actions and decisions and their consequences; and leadership, by example, both personal and professional. These values do

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not exhaust the many goals which we wish to achieve, but they capsule them as well as can be done in a few words. Our values must be fully understood, practiced, shared, vigorously defended and preserved.

Observance of these core values is our guarantee of excellence and prosperity in performing the FBI's national security and criminal investigative functions. Rigorous obedience to constitutional principles ensures that individually and institutionally we always remember that constitutional guarantees are more important than the outcome of any single interview, search for evidence, or investigation. Respect for the dignity of all whom we protect reminds us to wield law enforcement powers with restraints and to recognize the natural human tendency to be corrupted by power and to become callous in its exercise. Fairness and compassion ensure that we treat everyone with the highest regard for constitutional, civil and human rights. Personal and institutional integrity reinforce each other and are owed to the Nation in exchange for the sacred trust and great authority conferred upon us.

We who enforce the law must not merely obey it. We have an obligation to set a moral example which those whom we protect can follow. Because the FBI's success in accomplishing its mission is directly related to the support and cooperation of those we protect, these core values are the fiber which holds together the vitality of the institution.

3.5. FBI Motto

The FBI's Code of Conduct and Core Values are reflected in our Motto:

"Fidelity, Bravery and Integrity."

These terms are defined in *Merriam-Webster Dictionary*, © 2006-7 by Merriam-Webster, Inc., as follows:

- (a) **Fidelity:** "The quality or state of being faithful" and "strict and continuing faithfulness to an obligation, trust, or duty."
- (b) **Bravery:** "The quality or state of being brave; courage." The term "brave" is defined as "having or showing courage." "Courage" is defined as "mental or moral strength to venture, persevere, and withstand danger, fear, or difficulty."
- (c) **Integrity:** "Firm adherence to a code of especially moral and artistic values" and "trustworthiness and incorruptibility to a degree that one is incapable of being false to a trust, responsibility, or pledge."

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4. Standards of Conduct

Legend

Black font: Statutory, Office of Government Ethics and other Agency Policy and Procedures

Blue font: DOJ Policy and Procedures

Red font: FBI Policy and Procedures

4.1. Standards of Conduct General Provisions

4.1.1. Office of Government Ethics Regulations

4.1.1.1. 5 C.F.R. §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.

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(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.

(See also Section 3.2., Executive Order 12674 "Principles of Ethical Conduct for Government Officers and Employees.")

(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.

4.1.1.2. 5 C.F.R. §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

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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.

DOJ and FBI Ethics Designees

The Attorney General has designated the Assistant Attorney General for Administration (AAG/A) to be the Designated Agency Ethics Official (DAEO) for the Department of Justice. See 5 C.F.R. §2638.202.

The AAG/A has designated the Assistant Director of the FBI's Office of Integrity and Compliance to be the Deputy Designated Agency Ethics Official (DDAEO) for the FBI.

(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 [DOJ DAEO or FBI DDAEO].

(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

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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.

4.1.1.3. 5 C.F.R. §2635.103 Applicability to members of the uniformed services.

Editor's Note: This section does not apply to the FBI and is, therefore, omitted.

4.1.1.4. 5 C.F.R. §2635.104 Applicability to employees on detail/assignment.

(a) Details/assignments 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.

Application of Ethics Rules to Personnel Detailed or Assigned to Another Agency from the FBI

Professional Staff Employees: FBI professional staff employees who are detailed or assigned to another agency for a period in excess of 30 calendar days are subject to ethics rules and regulations of the receiving agency.

Special Agents: FBI Special Agents remain subject to the ethics rules and regulations applicable to all FBI employees, including the Standards of Conduct (SOC) and all policies expressed in this Guide notwithstanding a detail or assignment to another agency. *See* Section 4.1.4, Supplemental Standards of Conduct for DOJ Employees.

All FBI Employees: All FBI employees detailed or assigned to another agency remain subject to:

- More extensive restrictions on their political activities under the Hatch Act (5 U.S.C. §§7321-7326) *See* Section 7.1.; and
- FBI conditions of employment (e.g., prepublication review requirements). *See* Section 6.5, Prepublication Review.

Application of Ethics Rules to Personnel Detailed or Assigned to the FBI

All Federal employees detailed/assigned to work in the FBI for 30 calendar days or more from other agencies must comply with the:

- Ethics rules and regulations applicable to FBI employees, including the Standards of Conduct and all policies expressed in this Guide.

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- Standards and conditions of employment, including prepublication review requirements of the FBI and are subject to 5 C.F.R. §3801. *See* Section 4.1.4, *Supplemental Standards of Conduct for DOJ Employees*.

(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.

4.1.1.5. 5 C.F.R. §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.

Note: DOJ's supplemental regulations can be found in Section 4.14., *Supplemental Standards of Conduct for DOJ Employees*.

(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.

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(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.

4.1.1.6. 5 C.F.R. §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 Government wide regulations or agency procedures. Such action may be in addition to any action or penalty prescribed by law.

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

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

4.1.1.7. 5 C.F.R. §2635.107 Ethics advice.

(a) As required by §§ 2638.201 and 2638.202(b), each agency has a designated agency ethics official [AAG for Administration] 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 to delegate certain responsibilities, including that of

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providing ethics counseling regarding the application of this part, to one or more deputy ethics officials [FBI AD, Office of Integrity and Compliance].

(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 [FBI DDAEO or FBI Ethics Counselor]. 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.

4.1.2. 5 C.F.R. §735 Employee Responsibilities and Conduct (Office of Personnel Management Regulations)

4.1.2.1. OPM Regulation – 5 C.F.R. §735.103

In addition to the standards of conduct in Subpart B [Gambling, Conduct that Safeguard the Examination Process, Conduct Prejudicial to the Government] of this part, an employee shall comply with the standards of ethical conduct in 5 C.F.R. 2635, as well as any supplemental regulation issued by the employee's agency under 5 C.F.R. 2635.105. An employee's violation of those regulations may cause the employee's agency to take disciplinary action or corrective action as that term is used in 5 C.F.R. part 2635. Such disciplinary action or corrective action may be in addition to any penalty prescribed by law.

4.1.3. 28 C.F.R. §45 Employee responsibilities (DOJ Employee Conduct Regulations)

[See also Section 3, Code of Conduct]

4.1.4. Supplement Standards of Ethical Conduct for DOJ Employees

4.1.4.1. DOJ Supplemental Regulation – 5 C.F.R. §3801.101

In accordance with §2635.105 of this title, the regulations in this part apply to employees of the Department of Justice and supplement the Standards of Ethical Conduct for Employees of the Executive Branch in part 2635 of this title. In addition to the regulations contained in part 2635 of this title and this part, employees are subject to the conduct regulations contained in part 735 of this title and 28 C.F.R. part 45.

4.1.4.2. DOJ Supplemental Regulation – 5 C.F.R. §3801.102

Notwithstanding a detail or assignment to another entity, any Special Agent of the Federal Bureau of Investigation or Drug Enforcement Administration who is subject to the regulations or standards of ethical conduct of that entity pursuant to §2635.104 of this title shall also remain subject to the regulations in this part.

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4.1.4.3. DOJ Supplemental Regulation – 5 C.F.R. §3801.103

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

- Antitrust Division
- Bureau of Prisons
- Civil Division
- Civil Rights Division
- Community Relations Service
- Criminal Division
- Drug Enforcement Administration
- Environment and Natural Resources Division
- Executive Office for Immigration Review
- Executive Office for United States Attorneys
- Executive Office for United States Trustees
- Federal Bureau of Investigation
- Foreign Claims Settlement Commission
- Immigration and Naturalization Service
- Independent Counsel appointed by the Attorney General
- INTERPOL
- National Drug Intelligence Center
- Justice Management Division (JMD)
- Office of Information and Privacy
- Office of Intelligence Policy and Review
- Office of Community Oriented Policing Services
- Office of Justice Programs
- Office of the Pardon Attorney
- Office of Policy Development
- Offices of the United States Attorney (94)
- Offices of the United States Trustee (21)
- Tax Division
- United States Marshals Service

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United States Parole Commission

(b) Employees serving in positions within the Department but outside of the components designated in paragraph (a) of this section must continue to treat the entire Department of Justice as their employing agency for purposes of the gift rules of subpart B of part 2635 of this title and the application of the teaching, speaking and writing provisions found in §2635.807 of this title.

4.2. Gifts from Outside Sources to Employees

The following rules concern gifts from outside sources to individual employees. They apply regardless of whether an FBI employee is on or off duty. The rules governing gifts between employees or gifts to the FBI are covered in Sections 4.3. and 4.4. respectively of this Guide.

4.2.1. Office of Government Ethics Regulations

4.2.1.1. 5 C.F.R. §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.

4.2.1.2. 5 C.F.R. §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.

Example 1: A local bus company offers free rides for one week, but only to FBI personnel assigned to the Headquarters building. Because the free rides are gifts and were only offered to FBI personnel, it is clear that such a gift was given as a result of the employee's official position. Acceptance of the free rides would be legally objectionable.

Example 2: This time the local bus company offers free rides to everybody who works in a particular building. An FBI Field Office rents some of the building's office space. While many people who work in the building are FBI personnel, other individuals work for private sector companies. In this scenario the free rides are not offered to FBI personnel because of their official position. Rather, the free rides were offered because these personnel work in a particular building; therefore, acceptance of the free rides by FBI employees would not be legally objectionable.

(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;

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(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; and

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

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

[57 FR 35041, Aug. 7, 1992; 57 FR 48557, Oct. 27, 1992, as amended at 62 FR 48747, Sept. 17, 1997]

4.2.1.3. 5 C.F.R. §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:

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(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;

Example: An FBI Special Agent in Charge (SAC) is invited to a meeting with the local chapter of the Association of the Chiefs of Police. While at the meeting, the SAC is presented with a Waterford crystal paperweight etched with her name valued at \$75. This is a gift covered by the rules. Mementos, utilitarian items, and the like are acceptable only if they have "little intrinsic value." While etching a person's name on an item may diminish its value that alone will not convert something of value, like the crystal here, into an item having "little intrinsic value".

(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;

Example 1: A national clothing store offers a "corporate" discount of 25% off retail to customers who work for firms or entities in the surrounding area. FBI personnel may take advantage of the offer because it is basically being offered to the public at-large.

Example 2: On another date, the same clothing store offers a "law enforcement" discount to all sworn Federal, state and local law enforcement officers. The discount is not offered to any other employees. In this instance, the discount is not offered to the general public or a broad enough class. FBI agents, therefore, may not take advantage of the offer.

(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;

Example 1: An FBI Special Agent in Charge (SAC) attends a law enforcement conference as part of his official duties. Related travel and registration fees are paid for by the FBI. The conference is only open to law enforcement personnel, and all conference attendees are automatically entered into a drawing for a door prize. The FBI SAC wins the prize, a digital camera valued at several hundred dollars. Because the contest was not open to the general public and entry into the contest was a consequence of conference registration, the SAC cannot keep the door prize for personal use. Receipt of the door prize should be refused or, if accepted, it must be given to the FBI's Asset Management Unit for disposition.

Example 2: At a later date, the same FBI SAC attends on his own time a trade show featuring technology solutions for businesses. The trade show is open to the public without qualification or entry fee. The SAC completes a door prize entry form and places it in a fish bowl located on a vendor's table. At the end of the event, the SAC's entry wins a flat screen TV. Because the opportunity to participate in the contest was open to the public and the SAC voluntarily entered into the drawing in his private capacity, the SAC can keep the TV. [See Office of Government Ethics Opinion 99 x 7 (Regarding Prizes as Gifts) of April 26, 1999.]

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(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;

Example: A Records Management Division (RMD) employee attends a conference hosted by the National Archives in her official capacity. After registering, she receives educational materials, pens, and books. These items are provided to all conference attendees as part of the registration fee. Because the registration fee was paid for by the FBI, such items are Government property. The employee may bring the items back to the Bureau for her official use, but they are not her personal property and should not be used for her personal purposes. If an employee cannot use a particular item in her official duties, she should contact the Asset Management Unit for disposition of the conference items.

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 C.F.R. §301-53. [See Section 4.2.1.6, Gifts from Outside Sources]

(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 take place away from his duty station. The agency's acceptance must be in accordance with the implementing regulations at 41 C.F.R. part 304-1; and

[See Section 4.4, Gifts to the Agency, for policy and procedures in accepting such travel expenses for the FBI.]

(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.

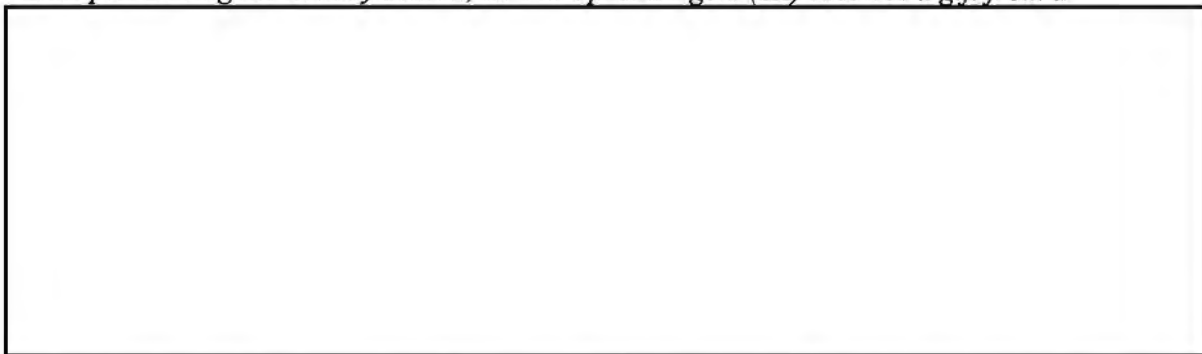
Example 2: A prohibited source has offered an employee a ticket to a charitable event consisting of a cocktail reception to be followed by an evening of chamber music. Even though the food, refreshments, and entertainment provided at the event may be worth only \$20, the market value of the ticket is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

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(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.

Example: During the holiday season, an FBI Special Agent (SA) receives a gift from a



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

NOTE: Gifts between employees are subject to the limitations set forth in subpart C of this part. [See Section 4.3., Gifts Between Employees]

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

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

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

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

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(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) 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.

[57 FR 35042, Aug. 7, 1992, as amended at 60 FR 51667, Oct. 3, 1995; 63 FR 69993, Dec. 18, 1998; 64 FR 2422, Jan. 14, 1999]

4.2.1.4. 5 C.F.R. §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 an employee's acceptance of a gift in accordance with one of those paragraphs will be deemed not to violate the principles set forth in §2635.101(b), including appearances. Even though acceptance of a gift may be permitted by one of the exceptions contained in paragraphs (a) through (l) of this section, it is never inappropriate and frequently prudent for an employee to decline a gift offered by a prohibited source or because of his official position.

(a) Gifts of \$20 or less. An employee may accept unsolicited gifts having an aggregate market value of \$20 or less per source per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph shall not exceed \$50 in a calendar year. This exception does 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.

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

Example 6: An FBI management program analyst receives several promotional items while attending a conference. Specifically, she receives an ABC Inc. T-shirt, an XYZ Co. ball cap, and an JKL LTD. pen set. None of these items were given as part of the conference registration fee; rather she collected them as she went from one vendor display to another. All three items are valued at \$15. As the three gifts clearly come from three separate sources, she may keep all of them even though they were given to the employee at the same conference. Contrast this with the acceptance of the three items from one vendor. Since the total value of the three items from the same vendor exceeds the \$20 per occasion rule, the employee may only retain one item.

(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.

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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.

Example 3: Over the last five (5) years, an FBI communications specialist has had frequent official dealings with the Vice President for Government Relations for XYZ movie company. The two recently discover that they attended the same college. The VP suggests getting together for lunch at a restaurant at the VP's expense. It would be legally objectionable for the communications specialist to accept the offer of lunch if the cost exceeds \$20. While there is an extended history of official dealings between the communications specialist and the VP, there is no suggestion of a personal friendship in this instance, the old school ties notwithstanding.

(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.

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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.

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(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 in connection with political activities permitted by the Hatch Act Reform Amendments. An employee who, in accordance with the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323, may take an active part in political management or in political campaigns, may accept meals, lodgings, transportation and other benefits, including free attendance at events, when provided, in connection with such active participation, by a political organization described in 26 U.S.C. 527(e). Any other employee, such as a security officer, whose official duties require him to accompany an employee to a political event may accept meals, free attendance and entertainment provided at the event by such an organization.

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

(g) Widely attended gatherings and other events—

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

(2) Widely attended gatherings. When there has been a determination that his attendance is in the interest of the agency because it will further agency programs and operations, an employee may accept an unsolicited gift of free attendance at all or appropriate parts of a widely attended gathering of mutual interest to a number of parties from the sponsor of the event or, if more than 100 persons are expected to attend the event and the gift of free attendance has a market value of \$375 or less, from a person other than the sponsor of the event. A gathering is widely attended if it is expected that a large number of persons will attend and that persons with a diversity of views or interests will be present, for example, if it is open to members from throughout the interested industry or profession or if those in attendance represent a range of persons interested in a given matter. For employees subject to a leave system, attendance at the event shall be on the employee's own time or, if authorized by the employee's agency, on excused absence pursuant to applicable guidelines for granting such absence, or otherwise without charge to the employee's leave account.

FBI Policy and Processing of Widely Attended Gatherings (WAG) Requests

(a) All WAG requests must be sent to the FBI DDAEO (send requests to the Office of Integrity and Compliance in HQ) through the requesting employee's supervisor. To forward a request, the supervisor must have made a determination that the employee's attendance is in the interest of the FBI (e.g., making a finding that attendance will further FBI programs and operations). The FBI DDAEO will determine whether any appearance of impropriety created by acceptance of the gift would be outweighed by the benefit to the FBI mission and the taxpayer.

(b) Processing WAG determination Requests. All requests for approval of a WAG shall be forwarded to the DDAEO and should, to the maximum extent possible, contain the following information:

- (1) Name of event:
- (2) Date of event:
- (3) Name of event sponsor:
- (4) Name of person or entity extending the invitation:
- (5) Event topic/details of interest to the FBI:
- (6) If the event is a fundraiser, note the fact and tell how the FBI employee will be expected to participate in any fundraising portion of the event:

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(7) Expected types of attendees:

- Total estimate:
- Estimate of Federal Government attendees:
- Estimate of state and local law enforcement attendees:
- Non-Government attendees:

(8) Note if the invitation extends to spouse/guest or other family member of employee and if other attendees will be attending with their spouses/guests.

(9) Cost of event (e.g., ticket price, fair market value):

(10) Note if the FBI employee will speak or participate in the event (e.g., award recipient) other than as an attendee, give details:

(11) Note if the FBI employee will sit at a head table or on a "dais," give details:

(12) Note if and how the FBI employee's attendance will be advertised by the organization:

(13) Information regarding supervisor approval:

- Name/Position of relevant supervisor:

(14) Note how participation advance the interest(s) or mission of the FBI?:

(15) Results of indices check on the event sponsor and on person /entity extending invitation:

(c) If approved as a WAG, all attendees must be aware that they must:

(1) Not use Government transportation to conduct the activity, unless it is pre-determined by the approving supervisor that an operational reason exists for the use, and

(2) Attend the event on their own time, unless they are properly granted flex time, compensatory time or administrative leave (excused absence) in accordance with the Time and Attendance Policy Guide and the Leave Policy Guide)

Example: An employee had a WAG approved by the DDAEO and his supervisor. The event is scheduled for lunchtime, and the employee is a Special Agent. Even though attendance at the WAG is on the employee's personal time, his supervisor may authorize him to use the BuCar to attend the event so that his ability to respond to an emergency will not be hampered.

(d) FBI employees must also not associate or appear to associate themselves, their official title, the FBI or DOJ with any entity, event, person, cause, fundraising effort, etc. in a manner that would appear to be an official endorsement.

(e) **Sporting Events Generally Fail to Qualify as a WAG.** Generally speaking, sporting events and golf outings do not meet the requirements of a WAG and offers to attend or participate in such activities will not be approved.

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

(i) If the person who has extended the invitation has interests that may be substantially affected by the performance or nonperformance of an employee's official duties or is an association or organization the majority of whose members have such interests, the

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employee's participation may be determined to be in the interest of the agency only where there is a written finding by the agency designee that the agency's interest in the employee's participation in the event outweighs the concern that acceptance of the gift of free attendance may or may appear to improperly influence the employee in the performance of his official duties. Relevant factors that should be considered by the agency designee include the importance of the event to the agency, the nature and sensitivity of any pending matter affecting the interests of the person who has extended the invitation, the significance of the employee's role in any such matter, the purpose of the event, the identity of other expected participants and the market value of the gift of free attendance.

(ii) A blanket determination of agency interest [by the FBI DDAEO] may be issued to cover all or any category of invitees other than those as to whom the finding is required by paragraph (g)(3)(i) of this section. Where a finding under paragraph (g)(3)(i) of this section is required, a written determination of agency interest, including the necessary finding, may be issued to cover two or more employees whose duties similarly affect the interests of the person who has extended the invitation or, where that person is an association or organization, of its members.

(4) Free attendance. For purposes of paragraphs (g)(1) and (g)(2) of this section, free attendance may include waiver of all or part of a conference or other fee or the provision of food, refreshments, entertainment, instruction and materials furnished to all attendees as an integral part of the event. It does not include travel expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees. Where the invitation has been extended to an accompanying spouse or other guest (see paragraph (g)(6) of this section), the market value of the gift of free attendance includes the market value of free attendance by the spouse or other guest as well as the market value of the employee's own attendance.

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

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

(6) Accompanying spouse or other guest. When others in attendance will generally be accompanied by a spouse or other guest, and where the invitation is from the same person who has invited the employee, the agency designee may authorize an employee to accept an unsolicited invitation of free attendance to an accompanying spouse or to another accompanying guest to participate in all or a portion of the event at which the employee's free attendance is permitted under paragraph (g)(1) or (g)(2) of this section. The authorization required by this paragraph may be provided orally or in writing.

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Example 1: An aerospace industry association that is a prohibited source sponsors an industry wide, two-day seminar for which it charges a fee of \$400 and anticipates attendance of approximately 400. An Air Force contractor pays \$2,000 to the association so that the association can extend free invitations to five Air Force officials designated by the contractor. The Air Force officials may not accept the gifts of free attendance. Because the contractor specified the invitees and bore the cost of their attendance, the gift of free attendance is considered to be provided by the company and not by the sponsoring association. Had the contractor paid \$2,000 to the association in order that the association might invite any five Federal employees, an Air Force official to whom the sponsoring association extended one of the five invitations could attend if his participation were determined to be in the interest of the agency. The Air Force official could not in any case accept an invitation directly from the nonsponsor contractor because the market value of the gift exceeds \$375.

Example 2: An employee of the Department of Transportation is invited by a news organization to an annual press dinner sponsored by an association of press organizations. Tickets for the event cost \$375 per person and attendance is limited to 400 representatives of press organizations and their guests. If the employee's attendance is determined to be in the interest of the agency, she may accept the invitation from the news organization because more than 100 persons will attend and the cost of the ticket does not exceed \$375. However, if the invitation were extended to the employee and an accompanying guest, her guest could not be authorized to attend for free since the market value of the gift of free attendance would be \$750 and the invitation is from a person other than the sponsor of the event.

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

Example 4: An employee of the Department of the Treasury authorized to participate in a panel discussion of economic issues as part of a one-day conference may accept the sponsor's waiver of the conference fee. Under the separate authority of §2635.204(a), he may accept a token of appreciation for his speech having a market value of \$20 or less.

Example 5: An Assistant U.S. Attorney is invited to attend a luncheon meeting of a local bar association to hear a distinguished judge lecture on cross-examining expert witnesses. Although members of the bar association are assessed a \$15 fee for the meeting, the Assistant U.S. Attorney may accept the bar association's offer to attend for free, even without a

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determination of agency interest. The gift can be accepted under the \$20 de minimis exception at §2635.204(a).

Example 6: An employee of the Department of the Interior authorized to speak on the first day of a four-day conference on endangered species may accept the sponsor's waiver of the conference fee for the first day of the conference. If the conference is widely attended, he may be authorized, based on a determination that his attendance is in the agency's interest, to accept the sponsor's offer to waive the attendance fee for the remainder of the conference.

Example 7: The BFP Accounting Firm is hosting a holiday party in a Washington hotel ballroom. Invitations have gone out to a variety of types of organizations with a diversity of viewpoints such as legislative and executive branch employees, employees of non-Governmental organizations, suppliers, and accounting firm customers. An FBIHQ Executive Assistant Director (EAD) has been invited to attend. Because the invitation list appears sufficiently diverse, it is likely that the FBI DDAEO will approve such an event as a WAG. It must first, however, be determined that it is in the Bureau's best interest for the EAD to attend.

Example 8: After arriving at the holiday party, one of the firm's principals invites the EAD to a small post-reception gathering and offers the EAD use of a hotel room for the evening. While the EAD's attendance at the firm's holiday party has been approved as a WAG, the WAG exception does not extend to acceptance of free transportation, lodging, entertainment collateral to the event or meals taken other than in a group setting with all other attendees.

(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 C.F.R. 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

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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. [See also Section 4.2.2.2, Foreign Gifts and Decorations Act.]

(j) Gifts to the President or Vice President.

Editor's Note: The remainder of this section does not apply to FBI employees and is, therefore, omitted.

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

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

(1) Free attendance, course or meeting materials, transportation, lodgings, food and refreshments or reimbursements therefore incident to training or meetings when accepted by the employee under the authority of 5 U.S.C. 4111 from an organization with tax-exempt status under 26 U.S.C. 501(c)(3) or from a person to whom the prohibitions in 18 U.S.C. 209 do not apply. The employee's acceptance must be approved by the agency in accordance with part 410 of this title; or

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

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

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(3) Gifts of travel expenses from a non-federal source. Under 31 U.S.C. 1353, the FBI may accept payment of travel expenses from a non-federal source for official travel to a meeting under certain circumstances. Pre-authorization is obtained through the submission of an FD-934. *See* Section 4.4, Gifts to the Agency.

[57 FR 35041, Aug. 7, 1992; 57 FR 48557, Oct. 27, 1992; 61 FR 42969, Aug. 20, 1996; 61 FR 48733, Sept. 16, 1996; 61 FR 50691, Sept. 27, 1996; 62 FR 48747, Sept. 17, 1997; 63 FR 69993, 69994, Dec. 18, 1998; 65 FR 69657, Nov. 20, 2000; 67 FR 61762, Oct. 2, 2002; 70 FR 12112, March 11, 2005]

4.2.1.5. 5 C.F.R. §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. [*See also* Section 4.2.1.3., 5 C.F.R. §2635.203 (f)(2)].

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 C.F.R. part 101-49 [cross-referenced to 41 C.F.R. Part 102-42], and dispose of materials received in conjunction with official travel in accordance with 41 C.F.R. 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.

(a) 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

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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.

4.2.2. Federal Travel Regulations

Editor's Note: This regulation is not completely quoted; only pertinent information is included in this Guide.

4.2.2.1. 41 C.F.R. §301-53.2 What may I do with promotional benefits or materials I receive from a travel service provider?

Any promotional benefits or materials received from a travel service provider in connection with official travel may be retained for personal use, if such items are obtained under the same conditions as those offered to the general public and at no additional cost to the Government.

Example: An FBI employee travels several times a year on TDY and signs up with the contract carrier's "frequent flyer" program. After a year of TDY the employee amasses enough points for a free round trip ticket and uses it to travel to visit family at the holidays. This is authorized.

Note to § 301-53.2: Promotional benefits or materials you receive from a travel service provider in connection with your planning and/or scheduling an official conference or other group travel (as opposed to performing official travel yourself) are considered property of the Government, and you may only accept the benefits or materials on behalf of the Federal Government (See § 301-74.1(d) of this chapter).

4.2.2.2. 41 C.F.R. §301-53.3 How may I use promotional materials and frequent traveler benefits?

Promotional materials and frequent traveler benefits may be used as follows:

(a) You may use frequent traveler benefits earned on official travel to obtain travel services for a subsequent official travel assignment(s); however, you may also retain such benefits for your personal use, including upgrading to a higher class of service while on official travel.

(b) If you are offered such benefits as a result of your role as a conference planner or as a planner for other group travel, you may not retain such benefits for your personal use (See § 301-53.2 of this chapter). Rather, you may only accept such benefits on behalf of the Federal Government. Such accepted benefits may only be used for official Government business.

Example: An FBI employee arranges for a conference to be hosted at a local hotel. As a result, she is offered a complimentary room good at any hotel within the chain for one year. She may not use this "comp" room for personal travel as it is the property of the FBI. She should consult Finance Division to discuss how to best use this promotional benefit.

4.2.2.3. 41 C.F.R. §301-53.4 May I select travel service providers for which my agency is not a mandatory user in order to maximize my frequent traveler benefits?

No, you may not select a traveler service provider based on whether it provides frequent traveler benefits. You must use the travel service provider for which your agency is a mandatory user. This includes contract passenger transportation services and travel management services. You may not choose a travel service provider to gain frequent traveler benefits for personal use. (Also See §§ 301-10.109 and 301-10.110 of this chapter.)

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4.2.2.4. 41 C.F.R. §301-53.6 Is a denied boarding benefit considered a promotional item for which I may retain compensation received from an airline whether voluntary or involuntary?

A denied boarding benefit (e.g., cash, free ticket coupon) is not a promotional item given by an airline. See the provisions of § 301-10.116 of this chapter when an airline denies you a seat (involuntary) and § 301-10.117 of this chapter when you vacate your seat (voluntary).

4.2.2.5. 41 C.F.R. §301-10.116 What must I do with compensation an airline gives me if it denies me a seat on a plane?

If you are performing official travel and a carrier denies you a confirmed reserved seat on a plane, you must give your agency any payment you receive for liquidated damages. You must ensure the carrier shows the "Treasurer of the United States" as payee on the compensation check and then forward the payment to the appropriate agency official.

4.2.2.6. 41 C.F.R. §301-10.117 May I keep compensation an airline gives me for voluntarily vacating my seat on my scheduled airline flight when the airline asks for volunteers?

Yes:

- (a) If voluntarily vacating your seat will not interfere with performing your official duties; and
- (b) If additional travel expenses, incurred as a result of vacating your seat, are borne by you and are not reimbursed; but
- (c) If volunteering delays your travel during duty hours, your agency will charge you with annual leave for the additional hours.

FBI Examples Regarding Accepting Free Airline Tickets when "Bumped" From an Official Duty/TDY Flight

Example 1: An FBI Intelligence Analyst (IA) has a flight back to headquarters city after a meeting. The airline involuntarily "bumps" the IA, but gives her another reservation for an alternate flight. Any compensation received from that airline because of the inconvenience becomes property of the U.S. Government. For example, any reimbursement checks for the flight must be made out to the "Treasurer of the United States" or signed over and forwarded to the Finance Division for processing. Complimentary travel vouchers, which are generally issued in the affected employee's name, can be retained by the employee but may only be used to offset the cost of future official business travel.

NOTE: In this scenario, the "bumped" IA is still in an official travel status until she completes her TDY. Free hotel room or meal vouchers issued to the IA because of the airline's action should be used to reduce the IA's expenses. Of course, while in a TDY status for this additional time, the IA is entitled to normal travel per diem and expenses, less any meals and lodging that the airline provides.

Example 2: If the same IA voluntarily gives up a seat on an airplane in response to a request by the airlines to deal with an overbooked flight, any compensation received from that airline becomes her property and may be used for personal travel. Employees, however, may not

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volunteer to give up a seat if doing so will interfere with the performance of official duties or will cost the FBI money.

NOTE: In this scenario, the IA is not entitled to any additional TDY per diem and travel expenses created by her voluntary choice. She must also take annual leave to cover any delay that extends the travel time during normal duty hours. For example, if the IA is scheduled to return to her duty station at 3:00 p.m. on a normal workday, and she wants to give up her seat causing her to return late that evening, she will be required to obtain approval from her supervisor and take annual leave beginning at 3:00 p.m. until the end of her normal workday.

4.2.3. Other Constitution and Statutory Considerations Related to the Acceptance of Gifts from Outside Sources

4.2.3.1. Article I, §9, cl. 8 (Emoluments Clause, United States Constitution)

The Emoluments Clause 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. Specifically, it states:

No Person holding *any Office of Profit or Trust under [the United States]*, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State

4.2.3.2. 5 U.S.C. §7353 (Gifts to Federal Employees)

(a) Except as permitted by subsection (b), no Member of Congress or officer or employee of the executive, legislative, or judicial branch shall solicit or accept anything of value from a person--

(1) seeking official action from, doing business with, or (in the case of executive branch officers and employees) conducting activities regulated by, the individual's employing entity; or

(2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.

(b)(1) Each supervising ethics office is authorized to issue rules or regulations implementing the provisions of this section and providing for such reasonable exceptions as may be appropriate.

(2)(A) Subject to subparagraph (B), a Member, officer, or employee may accept a gift pursuant to rules or regulations established by such individual's supervising ethics office pursuant to paragraph (1).

(B) No gift may be accepted pursuant to subparagraph (A) in return for being influenced in the performance of any official act.

(3) Nothing in this section precludes a Member, officer, or employee from accepting gifts on behalf of the United States Government or any of its agencies in accordance with statutory authority.

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(4) Nothing in this section precludes an employee of a private sector organization, while assigned to an agency under chapter 37, from continuing to receive pay and benefits from such organization in accordance with such chapter.

(c) A Member of Congress or an officer or employee who violates this section shall be subject to appropriate disciplinary and other remedial action in accordance with any applicable laws, Executive orders, and rules or regulations.

(d) For purposes of this section--

(1) the term "supervising ethics office" means--

(A) the Committee on Standards of Official Conduct of the House of Representatives or the House of Representatives as a whole, for Members, officers, and employees of the House of Representatives;

(B) the Select Committee on Ethics of the Senate, or the Senate as a whole, for Senators, officers, and employees of the Senate;

(C) the Judicial Conference of the United States for judges and judicial branch officers and employees;

(D) the Office of Government Ethics for all executive branch officers and employees; and

(E) in the case of legislative branch officers and employees other than those specified in subparagraphs (A) and (B), the committee referred to in either such subparagraph to which reports filed by such officers and employees under title I of the Ethics in Government Act of 1978 are transmitted under such title, except that the authority of this section may be delegated by such committee with respect to such officers and employees; and

(2) the term "officer or employee" means an individual holding an appointive or elective position in the executive, legislative, or judicial branch of Government, other than a Member of Congress.

4.2.3.3. Gifts Offered to an FBI Employee or to the FBI

(a) There are two kinds of gifts that an employee may accept from a foreign government. First, there are gifts that an employee may accept and keep. Second, there are gifts that an employee may accept on behalf of the Government and that become the property of the Government when an employee accepts them. While the latter types of gifts will be discussed in Section 4.4., Gifts to the Agency, the former types of gifts are governed by the Foreign Gifts and Decorations Act (FGDA) and are discussed below.

(b) The FGDA permits Federal employees to receive and retain gifts from foreign governments that are offered as a "mark of courtesy" to the FBI employee. The gift, however, must be of minimal value. "Minimal value" is presently set at \$375 or less (effective January 1, 2014, for a three-year period). Thus, it does not matter if the offeror is a "prohibited source" or if the gift is offered to an FBI employee because of his/her official position. All that matters is that the gift is from a foreign government, or its representative as defined in the act.

4.2.3.4. 5 U.S.C. §7342 (Foreign Gifts and Decorations Act)

Editor's Note: This statute is not completely quoted; only pertinent information is included in this Guide.

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(a) For the purpose of this section--

(1) "employee" means--

(A) an employee as defined by section 2105 of this title and an officer or employee of the United States Postal Service or of the Postal Regulatory Commission;

(B) an expert or consultant who is under contract under section 3109 of this title with the United States or any agency, department, or establishment thereof, including, in the case of an organization performing services under such section, any individual involved in the performance of such services;

(C) an individual employed by, or occupying an office or position in, the government of a territory or possession of the United States or the government of the District of Columbia;

(D) a member of a uniformed service;

(E) the President and the Vice President;

(F) a Member of Congress as defined by section 2106 of this title (except the Vice President) and any Delegate to the Congress; and

(G) the spouse of an individual described in subparagraphs (A) through (F) (unless such individual and his or her spouse are separated) or a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986) of such an individual, other than a spouse or dependent who is an employee under subparagraphs (A) through (F);

(2) "foreign government" means--

(A) any unit of foreign governmental authority, including any foreign national, State, local, and municipal government;

(B) any international or multinational organization whose membership is composed of any unit of foreign government described in subparagraph (A); and

(C) any agent or representative of any such unit or such organization, while acting as such;

Example: An FBI legat operations assistant (LOA) has recently arrived at the Madrid Legat Office. While attending a welcome reception, the mayor of Madrid offers her a silver tray. The tray is a gift from a foreign government. Similarly, a NATO official gives her a bronze plaque. Because NATO is a multinational organization whose members are foreign governments, the plaque is a gift from a foreign government.

(3) "gift" means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government;

FBI Exception to FGDA "Gift" Definition - Monetary Gift Approval Requirements

(a) Although monetary payments (e.g., currency, checks, or any negotiable financial instrument) are technically acceptable under the FGDA, acceptance of any monetary payment by FBI employees is generally prohibited. Acceptance of such gifts can only be authorized by the employee's supervisor with the concurrence of the FBI's DDAEO. Either the supervisor or the DDAEO may contact the appropriate Legat for input.

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(4) "decoration" means an order, device, medal, badge, insignia, emblem, or award tendered by, or received from, a foreign government;

(5) "minimal value" means a retail value in the United States at the time of acceptance of or less [the current minimum value is \$375 as of January 2014], except that--

(A) on January 1, 1981, and at 3 year intervals thereafter, "minimal value" shall be redefined in regulations prescribed by the Administrator of General Services, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period; and

(B) regulations of an employing agency may define "minimal value" for its employees to be less than the value established under this paragraph; and

FBI Policy for Aggregating Gifts Accepted Pursuant to FGDA Authority

(a) In determining value of the purposes of the FGDA, gifts from the same foreign government shall be aggregated "per occasion."

Example 1: The Chief of Mission for Pretoria is hosting a going away party for the outgoing Legat. At the party, the Legat receives a watch (valued at \$200) from South Africa's Chief Law Enforcement Officer, a crystal Waterford vase (valued at \$100) from South Africa's Defense Minister and a bottle of cologne (valued at \$75) from Pretoria's mayor. Because the total value of the gifts received is in excess of the minimal value, the Legat can only retain two of the gifts.

Example 2: Same scenario as above but the outgoing Legat receives the bottle of cologne (valued at \$75) from Pretoria's mayor during a luncheon a day after his going away party. Since the cologne was given at a separate event, the total value of the gifts received does not have to be aggregated and the Legat can retain the cologne and the other gifts.

(b) Under the FGDA, there is no specific aggregate annual limit to the value of the gifts given by the same government. Gift acceptance, however, should not be so frequent as to cause a reasonable person to question the impartiality of the employee.

(6) "employing agency" means--

...

(D) the department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees.

(b) An employee may not--

(1) request or otherwise encourage the tender of a gift or decoration; or

(2) accept a gift or decoration, other than in accordance with the provisions of subsections (c) and (d).

(c)

(1) The Congress consents to--

(A) the accepting and retaining by an employee of a gift of minimal value tendered and received as a souvenir or mark of courtesy; and

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(B) the accepting by an employee of a gift of more than minimal value when such gift is in the nature of an educational scholarship or medical treatment or when it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States, except that--

(i) a tangible gift of more than minimal value is deemed to have been accepted on behalf of the United States and, upon acceptance, shall become the property of the United States; and

(ii) an employee may accept gifts of travel or expenses for travel taking place entirely outside the United States (such as transportation, food, and lodging) of more than minimal value if such acceptance is appropriate, consistent with the interests of the United States, and permitted by the employing agency and any regulations which may be prescribed by the employing agency.

Example 1: An FBI assistant legal attache (ALAT) is traveling in a foreign area on official FBI business for three days to perform training for a host country police force. The host country offers him free lodging and meals during his stay. The ALAT may only accept the offer of lodging and meals if the total value of the three day stay is equal to or less than the FGDA minimal value (and the employee does not claim the costs in a travel voucher) or if the FBI authorizes acceptance of the travel expenses as a gift to the FBI. See Section 4.4, Gifts to the Agency.

Example 2: An FBI ALAT is traveling in a foreign area on official FBI business for two days to interview witnesses as part of a joint investigation with the host country's national police force. An employee of that police force is traveling with the ALAT. The host country employee has offered to drive the FBI ALAT in the host country's government vehicle. In addition, the host country offers the FBI ALAT free lodging and meals at a police barracks. The FBI ALAT may accept the host country's offer because such offer is not a gift, rather it is a contribution to a joint investigation. Of course, the ALAT's travel voucher must be reduced accordingly.

(2) Within 60 days after accepting a tangible gift of more than minimal value (other than a gift described in paragraph (1)(B)(ii) [gift of travel]), an employee shall--

(A) deposit the gift for disposal with his or her employing agency; or

(B) subject to the approval of the employing agency, deposit the gift with that agency for official use.

(3) When an employee deposits a gift of more than minimal value for disposal or for official use pursuant to paragraph (2), or within 30 days after accepting travel or travel expenses as provided in paragraph (1)(B)(ii) unless such travel or travel expenses are accepted in accordance with specific instructions of his or her employing agency. *See Example 1 to B (ii) above; see also Section 4.4, Gifts to the Agency*, the employee shall file a statement with his or her employing agency or its delegate.

(d) The Congress consents to the accepting, retaining, and wearing by an employee of a decoration tendered in recognition of active field service in time of combat operations or awarded for other outstanding or unusually meritorious performance, subject to the approval of the employing agency of such employee. Without this approval, the decoration is deemed to have been accepted on behalf of the United States, shall become the property of the United States, and shall be deposited by the employee, within sixty days of acceptance, with the employing agency

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for official use, for forwarding to the Administrator of General Services for disposal in accordance with subsection (e)(1), or for disposal in accordance with subsection (e)(2).

(e)

(1) Except as provided in paragraph (2), gifts and decorations that have been deposited with an employing agency for disposal shall be (A) returned to the donor, or (B) forwarded to the Administrator of General Services for transfer, donation, or other disposal in accordance with the provisions of subtitle I of title 40 and title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.). However, no gift or decoration that has been deposited for disposal may be sold without the approval of the Secretary of State, upon a determination that the sale will not adversely affect the foreign relations of the United States. Gifts and decorations may be sold by negotiated sale.

...

(g)

(1) Each employing agency shall prescribe such regulations as may be necessary to carry out the purpose of this section. For all employing agencies in the executive branch, such regulations shall be prescribed pursuant to guidance provided by the Secretary of State. These regulations shall be implemented by each employing agency for its employees.

...

(h) The Attorney General may bring a civil action in any district court of the United States against any employee who knowingly solicits or accepts a gift from a foreign government not consented to by this section or who fails to deposit or report such gift as required by this section. The court in which such action is brought may assess a penalty against such employee in any amount not to exceed the retail value of the gift improperly solicited or received plus \$5,000.

(i) The President shall direct all Chiefs of a United States Diplomatic Mission to inform their host governments that it is a general policy of the United States Government to prohibit United States Government employees from receiving gifts or decorations of more than minimal value.

(j) Nothing in this section shall be construed to derogate any regulation prescribed by any employing agency which provides for more stringent limitations on the receipt of gifts and decorations by its employees.

(k) The provisions of this section do not apply to grants and other forms of assistance to which section 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies.

4.2.3.5. 41 C.F.R. §102-42.5 What does this part cover? (GSA Federal Property Management Regulations)

This part covers the acceptance and disposition of gifts of more than minimal value and decorations from foreign governments under 5 U.S.C. 7342. If you receive gifts other than from a foreign government, you should refer to §102-36.405 of this subchapter B.

[71 FR 28778, May 18, 2006]

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Editor's Note: This regulation is not completely quoted; only pertinent information is included in this Guide.

4.2.3.6. 41 C.F.R. §102-42.10 What definitions apply to this part? (GSA Federal Property Management Regulations)

The following definitions apply to this part:

Decoration means an order, device, medal, badge, insignia, emblem, or award offered by or received from a foreign government.

Employee means:

(1) An employee as defined by 5 U.S.C. 2105 and an officer or employee of the United States Postal Service or of the Postal Rate Commission;

(2) An expert or consultant who is under contract under 5 U.S.C. 3109 with the United States or any agency, department, or establishment thereof, including, in the case of an organization performing services under that section, any individual involved in the performance of such services;

(3) An individual employed by or occupying an office or position in the government of a territory or possession of the United States or the government of the District of Columbia;

(4) A member of a uniformed service as specified in 10 U.S.C 101;

(5) The President and the Vice President;

(6) A Member of Congress as defined by 5 U.S.C. 2106 (except the Vice President) and any Delegate to the Congress; and

(7) The spouse of an individual described in paragraphs (1) through (6) of this definition of employee (unless this individual and his or her spouse are separated) or a dependent (within the meaning of section 152 of the Internal Revenue Code of 1986 (26 U.S.C. 152)) of this individual, other than a spouse or dependent who is an employee under paragraphs (1) through (6) of this definition of employee.

Employing agency means:

(1) The department, agency, office, or other entity in which an employee is employed, for other legislative branch employees and for all executive branch employees;

(2) The Committee on Standards of Official Conduct of the House of Representatives, for Members and employees of the House of Representatives, except that those responsibilities specified in 5 U.S.C. 7342(c)(2)(A), (e)(1), and (g)(2)(B) must be carried out by the Clerk of the House;

(3) The Select Committee on Ethics of the Senate, for Senators and employees of the Senate, except that those responsibilities (other than responsibilities involving approval of the employing agency) specified in 5 U.S.C. 7342(c)(2), (d), and (g)(2)(B) must be carried out by the Secretary of the Senate; and

(4) The Administrative Offices of the United States Courts, for judges and judicial branch employees.

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Foreign government means:

- (1) Any unit of foreign government, including any national, State, local, and municipal government and their foreign equivalents;
- (2) Any international or multinational organization whose membership is composed of any unit of a foreign government; and
- (3) Any agent or representative of any such foreign government unit or organization while acting as such.

Gift means a monetary or non-monetary present (other than a decoration) offered by or received from a foreign government. A monetary gift includes anything that may commonly be used in a financial transaction, such as cash or currency, checks, money orders, bonds, shares of stock, and other securities and negotiable financial instruments.

Minimal value means a retail value in the United States at the time of acceptance of \$375 or less, except that GSA will adjust the definition of minimal value in regulations prescribed by the Administrator of General Services every three years, in consultation with the Secretary of State, to reflect changes in the consumer price index for the immediately preceding 3-year period.

[65 FR 45539, July 24, 2000, as amended at 68 FR 56496, Sept. 4, 2002; 70 FR 2318, Jan. 12, 2005; 71 FR 28778, May 18, 2006; 73 FR 7475, Feb. 8, 2008]

4.2.3.7. 41 C.F.R. §102-42.15 Under what circumstances may an employee retain a foreign gift or decoration? (GSA Federal Property Management Regulations)

Employees, with the approval of their employing agencies, may accept and retain:

- (a) Gifts of minimal value received as souvenirs or marks of courtesy. When a gift of more than minimal value is accepted, the gift becomes the property of the U.S. Government, not the employee, and must be reported.

FBI personnel who accept foreign gifts must

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- (b) Decorations that have been offered or awarded for outstanding or unusually meritorious performance. If the employing agency disapproves retention of the decoration by the employee, the decoration becomes the property of the U.S. Government.

4.2.3.8. 41 C.F.R. §102-42.20 What is the typical disposition process for gifts and decorations that employees are not authorized to retain? (GSA Federal Property Management Regulations)

- (a) Non-monetary gifts or decorations. When an employee receives a non-monetary gift above the minimal value or a decoration that he/she is not authorized to retain:

- (1) The employee must report the gift or decoration to his/her employing agency within 60 days after accepting it.
- (2) The employing agency determines if it will keep the gift or decoration for official use.

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(3) If it does not return the gift or decoration to the donor or keep it for official use, the employing agency reports it as excess personal property to GSA for Federal utilization screening under §102-42.95.

(4) If GSA does not transfer the gift or decoration during Federal utilization screening, the employee may purchase the gift or decoration (*See* §102-42.140).

(5) If the employee declines to purchase the gift or decoration, and there is no Federal requirement for either, GSA may offer it for donation through State Agencies for Surplus Property (SASP) under part 102-37 of this subchapter B.

(6) If no SASP requests the gift or decoration for donation, GSA may offer it for public sale, with the approval of the Secretary of State, or will authorize the destruction of the gift or decoration under part 102-38 of this subchapter B.

(b) Monetary gifts. When an employee receives a monetary gift above the minimal value:

(1) The employee must report the gift to his/her employing agency within 60 days after accepting it.

(2) The employing agency must:

(i) Report a monetary gift with possible historic or numismatic (i.e., collectible) value to GSA; or

(ii) Deposit a monetary gift that has no historic or numismatic value with the Department of the Treasury.

[65 FR 45539, July 24, 2000, as amended at 71 FR 28778, May 18, 2006]

4.2.3.9. 41 C.F.R. §102-42.25 Who retains custody of gifts and decorations pending disposal? (GSA Federal Property Management Regulations)

(a) The employing agency retains custody of gifts and decorations that employees have expressed an interest in purchasing.

(b) GSA will accept physical custody of gifts above the minimal value, which employees decline to purchase, or decorations that are not retained for official use or returned to donors.

Note to §102-42.25(b): GSA will not accept physical custody of foreign gifts of firearms. Firearms reported by the agency as excess must be disposed of in accordance with part 101-42 of this title.

4.2.3.10. 41 C.F.R. §102-42.30 Who is responsible for the security, care and handling, and delivery of gifts and decorations to GSA, and all costs associated with such functions? (GSA Federal Property Management Regulations)

The employing agency is responsible for the security, care and handling, and delivery of gifts and decorations to GSA, and all costs associated with such functions.

4.2.3.11. 41 C.F.R. §102-42.40 When is an appraisal necessary? (GSA Federal Property Management Regulations)

An appraisal is necessary when—

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(a) An employee indicates an interest in purchasing a gift or decoration. In this situation, the appraisal must be obtained before the gift or decoration is reported to GSA for screening (See 102–42.20); or

(b) GSA requires the employing agency to obtain an appraisal of a gift or decoration that the agency has retained for official use and no longer needs before accepting the agency's report of the item as excess personal property; or

(c) The policy of one's own agency requires it, pursuant to 5 U.S.C. 7342(g).

Note to §102–42.40 paragraphs (a) and (b): Refer to §102–42.50 for how appraisals under these two situations are handled.

4.2.3.12. 41 C.F.R. §102–42.45 What is my agency's responsibility for establishing procedures for obtaining an appraisal? (GSA Federal Property Management Regulations)

The employing agency is responsible for establishing its own procedure for obtaining an appraisal that represents the value of the gift in the United States.

This applies to all gifts, even when the recipient wishes to retain and/or purchase the gift. Appraisals are required for gifts that are personalized (e.g., Books signed by the author, Gifts personally labeled).

4.2.3.13. 41 C.F.R. §102–42.50 What types of appraisals may my agency consider? (GSA Federal Property Management Regulations)

Your agency may allow—

(a) Written commercial appraisals conducted by an appraisal firm or trade organization; and

(b) Retail value appraisals where the value of the gift may be ascertained by reviewing current and reliable nondiscounted retail catalogs, retail price lists, or retail Web site valuations.

4.2.3.14. DOJ Order 2400.3A, CHAPTER 6. Gifts, Justice Property Management Order

[Note: This chapter is not completely quoted; only information pertinent to this section is provided.]

3. Gifts from Foreign Governments to Department Employees

(a) Pursuant to the Foreign Gifts and Decorations Act, 5 U.S.C. 7342, a Department employee generally may accept and retain:

(1) Any foreign gift of less than minimal value, as defined by GSA in 41 C.F.R. § 102.42.10 [currently at \$375 as of January 2014]; and

(2) Any foreign decoration (regardless of value), the receipt of which is approved by the Attorney General.

(b) Any Department employee who receives a foreign gift of more than minimal value from a foreign government or a foreign decoration, the receipt of which is not approved by the Attorney General, shall either return the gift in a reasonable time frame (usually within 15 calendar days), documenting the details of the return, or report the gift to the component property management

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officer (PMO). (FBI employees must notify OIC.) The employing component shall physically take custody of, and be responsible for, reported gifts pending final disposition. Whenever the retail value of a gift is not readily determinable, an appraisal shall be made by an appraiser outside the Department. The cost of such an appraisal will be paid for by the employing component. Foreign gifts above minimal value and foreign decorations, the receipt of which are not approved, if not desired for official use, will be reported as excess.

(c) As soon as possible, components shall provide Facilities and Administrative Services Staff/Logistics Management Services (FASS/LMS) with a memorandum that describes, in detail, the name and position of the recipient, the name and address of the donor, the nature of the gift or decoration, the estimated value (in the case of a gift), the date and circumstances under which the gift or decoration was presented, the present location of the item, and the disposition recommended by the head of the employing component. (See 5 U.S.C. §7342(a).)

(d) The Assistant Attorney General of Administration (AAG/A) is responsible for determining whether the agency will keep the item for official use or report it as excess to GSA.

(e) JMD/FASS also sends out a memorandum annually that asks employees to report on foreign gifts, as appropriate.

4. Gifts from Foreign Governments to Department Employees

Firearms Received as Gifts. Firearms received as gifts from foreign governments are also subject to 41 C.F.R. § 101.42. 1102-10.

FBI Policy on the Proper Disposition of Gifts under the FGDA

FBI personnel who accept any foreign gifts must

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FBI employees who choose not to retain a gift acceptable under the FGDA or who receive a gift of more than minimum value must:

- (a) Return the item to the offeror within a reasonable time frame (usually within 15 calendar days), or
- (b) Process acceptance of the item as a gift to the FBI. *See* Section 4.4., Gifts to the Agency.

4.2.4 Lobbyist Gift Ban – FBI Director ONLY

Executive Order 13490 requires all full-time, noncareer appointees who were appointed on or after January 20, 2009, to sign an Ethics Pledge titled “Lobbyist Gift Ban,” which sets out an appointee’s agreement not to accept gifts from registered lobbyists or lobbying organizations for the duration of his or her service as an appointee. The Pledge prohibits accepting gifts that are “registered” under the Lobbying Disclosure Act (LDA), 2 U.S.C. §1601, et seq. from lobbyists and lobbying organizations. There are, however, several exceptions to the Lobbyist Gift Ban. (See Ethics Guide Reference Library for OGE’s Lobbyist Gift Ban Guidance for additional information.)

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4.3. Gifts Between Employees

4.3.1. Office of Government Ethics Regulations Related to Gifts Between Employees – 5 C.F.R. §2635.301-304

4.3.1.1. 5 C.F.R. §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.

4.3.1.2. 5 C.F.R. §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.

Example 1: Two FBI employees joined the Bureau together after having attended the same college and fraternity. They have been friends for fifteen years. One of the employees is promoted to supervise the other. The subordinate employee purchases baseball tickets for \$150 but cannot use them due to a family conflict and offers them to his friend, the new supervisor. As the supervisor is now the "official superior" to the subordinate employee, the supervisor may not accept the free tickets under this "personal relationship" exception. He may pay face value for them, but he should be mindful of appearances since other subordinates may question the propriety of the transaction. A supervisor should always be careful in any pecuniary dealings with subordinates.

(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.

4.3.1.3. 5 C.F.R. §2635.303 Definitions

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

(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, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. Gifts do not include such things as modest items of food and refreshments offered other than as part of a meal, items with little intrinsic value such as greeting cards, plaques, certificates and trophies, loans from banks at

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market rates, discounts available to all Government employees, and rewards and prizes from contests.

(b) 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. An employee is considered to be the subordinate of any of his official superiors.

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

(d) Voluntary contributions – means a contribution given freely, without pressure or coercion.

4.3.1.4. 5 C.F.R. §2635.304 Exceptions

(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 to an employee who is not an immediate supervisor.

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: An FBI Unit wishes to hold a gift exchange during their office holiday get together. The gift exchange requires each employee who wishes to participate to bring a wrapped gift of a value no greater than \$20. As the gift value is likely to be greater than \$10 and the holidays are not "special infrequent occasions" under the rules, an official superior cannot participate in the event.

Example 5: An FBI Assistant Director invites her subordinates to her home for a BBQ. An employee brings a \$22 bottle of wine as a hospitality gift for the AD. Other employees bring

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similar hospitality gifts. One employee, however, offers the AD a bottle of Dom Pérignon as a hospitality gift. Because the AD may accept hospitality gifts that are of a "type and value customarily given on such occasions," she may accept all of the hospitality gifts offered by her subordinates except the overly extravagant bottle of champagne.

Example 6: After considering the \$10 rule, seven employees get together and decide to give their Unit Chief an ABC coffee shop gift card for "Bosses Day." While each individual card has a value of \$10, all seven cards total \$70. Therefore, the Unit Chief should not accept the gift cards, as the total gift from his subordinates (on an occasion that does not qualify as a "special infrequent" occasion) exceeds the \$10 exception noted above. Subordinates may not combine in any manner to give a gift, or a group of gifts, to circumvent the exception.

Example 7: Under any of the scenarios listed in the above examples, if a gift is offered to any FBI employee by a contractor who works in the office, then the gift must be examined under the rules discussed in section 4.2.1., Gifts from Outside Sources, as the "gift between employees" rules in this section do not apply.

(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.

FBI Policy on Giving a Limited Value Gift to an Employee on an FBI Service Anniversary; Special Infrequent Occasion Determination

While wedding anniversaries and birthdays are not "special infrequent occasions" under the rules, certain FBI employment anniversary dates of significance receive official FBI recognition and occur at suitably infrequent intervals to qualify for the "special infrequent occasion" exception for gifts given to an official superior or from a person receiving less pay.

For FBI employees reaching their 10, 20, 25, 30, 35, 40, 45, 50, 55, and 60th anniversary dates, a gift "appropriate to the occasion" may be given to a supervisor or employee receiving more pay, provided that:

- (1) The gift is not cash and has an aggregate market value of \$100 or less.
- (2) Any gift given or accepted under this exception with an aggregate market value of more than \$100 will be presumed inappropriate unless approved in advance by the FBI DDAEO.
- (3) Any collection among employees to purchase the gift is properly conducted and approved per FBI authorization requirements. See Section 8.2.2.1, Fundraising.

Example: The FBI Assistant Section Chief for International Terrorism Operations has reached her 20th anniversary with the Bureau. To mark the occasion, a group of subordinate employees working in a unit under the Section Chief's supervision have decided to contribute toward taking her to lunch, which they estimate will cost \$39. They may do so if the collection is properly authorized and all contributions are completely voluntarily.

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(c) Voluntary contributions – An employee may solicit voluntary contributions [See Section 8.2.2.1, Fundraising, for FBI fundraising authorization requirements] 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 such as described above; or
- (2) On an occasional basis, for items such as food and refreshments to be shared in the office.

An employee may accept such gifts to which a subordinate or other employee receiving less pay than himself has contributed.

Example: 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.

FBI Limitations: "Gifts Appropriate to the Occasion" Exception to the "No Gifts Between Subordinates and Senior Employees" Rule

The following limitations shall apply to gifts from groups of FBI employees that include a subordinate and to voluntary contributions to gifts for superiors as discussed above:

Regardless of the number of FBI employees contributing to a gift, the value should reflect a gift both reasonable and "appropriate to the occasion." Employees must contact OIC prior to purchasing a gift valued over \$500.

- The cost of items excluded from the definition of a gift by 5 C.F.R. 2635.203(b) [See Section 4.2.1.3, Gifts from Outside Sources to Employees] and the cost of food, refreshments and entertainment provided to the FBI employee and his personal guests to mark the occasion for which the gift is given shall not be included in determining the value of a gift.
- The value of a gift or gifts from two or more donating groups will be aggregated and shall be considered to be from a single donating group if the FBI employee receiving the gift knows or has reason to know that one of his subordinates is a member of more than one of the donating groups.

Example 1: A departing Unit Chief of a unit with 30 persons is presented with a gift of a shadow box and food and refreshments from her subordinates at her retirement party. The shadow box, complete with a flag flown over the Field Office, her retired FBI credentials/badge and other FBI memorabilia costs \$215. The food and refreshments cost a total of \$300. Since the food and refreshments were shared by all participants, the actual value of the gift was \$215 and is considered both reasonable and appropriate to the occasion..

Example 2: A retiring Division Head of a HQ division of 2000 FBI employees receives a retirement gift of a flat screen TV that cost \$2995. Even though the average contribution from contributing employees was about \$2, the gift is neither reasonable nor appropriate to the occasion. It would, therefore, be improper for the departing Division Head to accept the gift.

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Example 3: An FBI Supervisor is celebrating his 50th birthday and 20 employees he supervises collect about \$4 per person to buy a custom birthday fruit basket to surprise him. Even though no supervisor solicited subordinates and no employees felt compelled to contribute to the collection, this gift is greater than the \$10 gift an official superior may receive from subordinates because birthdays are not "special infrequent occasions." As such, the gift must be returned to the office.

Proper Disposition of Unacceptable Gifts Between Employees

Consistent with section 4.2.1.5, when an official superior receives a gift from a subordinate or when an employee receives a gift from an employee or a group of employees receiving less pay that is not allowed under the rules, the proper disposition of such gifts is limited to the official superior/senior employee:

- (a) Returning the gift to the offeror, or
- (b) Paying actual market value for the gift. (Official superiors and senior employees should be mindful, however, of appearance issues as noted in the example to section 4.3.1.2).

Example: A group of new Special Agents takes up a collection for a gift card for their designated class counselor (an experienced agent of the FBI who acts as a mentor to new Special Agents). As the card is valued over \$10, the mentoring employee knows she may not accept the gift since it comes from employees receiving less pay. She decides, in the alternative, to use the card to purchase food for the new agents on their last day of class. While well intended and unselfish, she may not accept the card or exert control over it (which would constitute acceptance) under the rules. If she decides not to pay the face value of the card, she should return it to the group. The group of employees, however, may independently decide to use the card for their graduation party, in lieu of trying to return collected monies.

4.4. Gifts to the FBI/DOJ

4.4.1. General Gift Acceptance Authorities

4.4.1.1. Statutory Background of Gift Authorities

Although no particular statutory authority is necessary for the United States to receive and accept gifts, Federal agencies stand on a much different footing. See United States v. Burnison, 339 U.S.C. 87, 90 (1950) (Receipt of gifts, testamentary and nontestamentary, is within the ambit of federal powers). The rule is that a Federal agency may not accept gifts for its own use (i.e., for retention or credit to its own appropriations) absent specific statutory authority. To permit an agency to supplement its appropriations with funds derived from some other source usurps Congress' "power of the purse." See 31 U.S.C. § 3302(b) (Miscellaneous Receipts Act); 31 U.S.C. § 1301 (Anti-Deficiency Act). The authority of the Department of Justice to accept gifts is found in 28 U.S.C. § 524.

4.4.1.2. 28 U.S.C. § 524 (Availability of Appropriations)

[Editor's Note: The omitted paragraphs in this section do not apply to gifts to the FBI.]

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(d)(1) The Attorney General may accept, hold, administer, and use gifts, devises, and bequests of any property or services for the purpose of aiding or facilitating the work of the Department of Justice.

(2) Gifts, devises, and bequests of money, the proceeds of sale or liquidation of any other property accepted hereunder, and any income accruing from any property accepted hereunder -

(A) shall be deposited in the Treasury in a separate fund and held in trust by the Secretary of the Treasury for the benefit of the Department of Justice; and

(B) are hereby appropriated, without fiscal year limitation, and shall be disbursed on order of the Attorney General.

(3) Upon request of the Attorney General, the Secretary of the Treasury may invest and reinvest the fund described herein in public debt securities with maturities suitable for the needs of the fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States or comparable maturities.

(4) Evidences of any intangible personal property (other than money) accepted hereunder shall be deposited with the Secretary of the Treasury, who may hold or liquidate them, except that they shall be liquidated upon the request of the Attorney General.

(5) For purposes of federal income, estate, and gift taxes, property accepted hereunder shall be considered a gift, devise, or bequest to, or for the use of, the United States.

4.4.1.3. DOJ Order 2400.2, Solicitation and Acceptance of Gifts to the Department

1. **PURPOSE.** This order sets forth the Department's policies and procedures regarding the solicitation and acceptance of gifts, devises and bequests of property of all kinds (collectively, "gifts").

2. **SCOPE.** This order applies to the entire Department.

3. **POLICY.**

a. Solicitation of Gifts.

(1) No employee of the Department may solicit gifts or encourage the solicitation of gifts to the Department unless the solicitation has been approved in advance by the Attorney General or by the Deputy Attorney General.

(2) The authority of the Deputy Attorney General to approve the solicitation of gifts may not be redelegated.

(3) Nominating, or seeking the nomination of, a program administered by the Department for any award shall not constitute solicitation.

b. Acceptance of Gifts: Authority of the Assistant Attorney General for Administration.

(1) The Assistant Attorney General for Administration has the authority on behalf of the Department to accept gifts in accordance with the criteria set forth below. The authority of the Assistant Attorney General for Administration to accept gifts

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is exclusive and applies to gifts made to the Department as a whole as well as gifts made to any of the Department's components.

(2) In determining whether to accept a gift, the Assistant Attorney General for Administration and anyone to whom he redelegates acceptance authority shall consider the following criteria:

- (a) Whether the gift is appropriate for use (including liquidation) by the Department;
 - (b) Whether any condition the donor places on the Department's acceptance or use of the gift is acceptable to the Department;
 - (c) Whether any Department employee solicited the gift or encouraged its solicitation and, if so, whether the solicitation had the prior approval of the Attorney General or the Deputy Attorney General; and
 - (d) Whether acceptance of the gift is appropriate and advisable from the perspective of conflict of interest and government ethics guidelines, including whether acceptance of the gift would create the appearance of impropriety.
- c. Duties of the Assistant Attorney General for Administration. The Assistant Attorney General for Administration shall prepare an annual report for the Attorney General describing the gifts that have been accepted on behalf of the Department, identifying the donor of each gift, setting forth the disposition of all gifts, specifying the use the Department intends to make of the gift or the proceeds from the liquidation of the gift, and setting forth any restrictions the donor has placed on the gift's use. The Assistant Attorney General shall send a copy of this report to the respective Committees on Appropriations in the Senate and the House of Representatives. The Assistant Attorney General shall also be responsible for arranging for all transfers and deposits to the Treasury that are required by 28 U.S.C. § 524(d), and for making any other arrangements that will aid in the Department's execution of its gift acceptance authority.

/s/JANET RENO
Attorney General

4.4.1.4. General DOJ Gift Acceptance Delegation

U.S. Department of Justice
Washington, D.C. 20530

JUL 19 1999

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: Stephen R. Colgate

/s/STEPHEN R COLGATE

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Assistant Attorney General
for Administration

SUBJECT: Gift Acceptance Delegation

Pursuant to 28 U.S.C. § 524(d), and the authority granted to the Assistant Attorney General for Administration by Department of Justice Order 2400.2, I hereby delegate to each Department of Justice component head the authority to accept any form of devise, bequest, gift or donation of property that is appropriate for use or display in the component. This delegation does not apply to services, and is limited to donations valued at no more than \$150 (one hundred fifty dollars) per donor per calendar year. This delegation includes those instances where individual employees are given items that exceed \$20 in value, which is the de minimis amount for a gift that may be retained by an employee personally under the executive branch standards of conduct, 5 CFR 2635.204(a). Where such a gift is received by an employee and it is appropriate for use or display by the component, the component head may authorize acceptance on behalf of the Department.

Component heads may redelegate this authority to one other official but no further redelegation is authorized. No donations from Department of Justice employees may be accepted under this delegation. No employee may solicit gifts or encourage the solicitation of gifts to the Department unless approved in advance by the Deputy Attorney General. This delegation does not limit previous delegations issued under DOJ Order 2400.2.

This delegation is not intended to relieve components of the obligation to discourage the donation of gifts presented where Department of Justice employees give speeches or attend events sponsored by outside organizations. In particular, this delegation of authority is not intended to result in a proliferation of small items of limited use or value to the component.

Each component head shall ensure that either a Gift Donation Form or a Gift Acceptance Form is completed for each donation accepted under this delegation. The completed form must be forwarded to Property Management Services, Facilities and Administrative Services Staff, JMD, at the time the gift is accepted. The Gift Donation Form is the preferred form to use when a potential donor indicates that they intend to donate a gift. The Gift Acceptance Form may be used when the gift was presented to an employee with no prior indication of the donation. The component's Deputy Designated Agency Ethics Official shall concur in order for a gift to be accepted. Wherever possible, the Gift Donation Form should be signed by the donor; in unusual circumstances where this is not possible, the form may be completed by the component, describing the circumstances in which the gift was accepted. In these cases, a letter should be sent to the donor advising them that the gift has been accepted on behalf of the Department. Appropriate forms and a sample letter are attached.

In those infrequent cases where the gift has already been presented, but it is determined not suitable for use or display, and the item cannot reasonably be returned, please contact JMD on (202) 307-2761 for disposition instructions.

Attachments

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4.4.2. FBI Gift Acceptance Authority

- a. FBI employees shall not solicit gifts for DOJ or the Bureau. Such activity constitutes a misuse of position and usurps congressional authority to determine the level at which our agency will be funded.
- b. Per the above DOJ orders and delegations, the Director, however, has authority to accept unsolicited offers of gifts as follows:
- (1) Any form of devise, bequest gift or donation of property (not services) to the FBI valued at no more than \$150 (hereinafter referred to the FBI's General Gift Acceptance Authority);
 - (2) Certain case-specific gifts from private parties in criminal and civil investigations, prosecutions and civil litigation that is valued at \$50,000 or less (hereinafter referred to as the FBI's Case-Specific Gift Acceptance Authority);
 - (3) Use of non-federal facilities for predominantly internal training (hereinafter referred to as the FBI's Training Facility Gift Acceptance Authority); and
 - (4) Payment from a non-Federal source in connection with the attendance of its employee(s) (and in some cases, the accompanying spouse) at a meeting or similar function (hereinafter referred to as the FBI's Travel Gift Acceptance Authority).

Each of these authorities is discussed separately below.

4.4.3. FBI General Gift Acceptance Procedures

- a. **Notification of Gift Offer.** Only persons specifically authorized under this policy may approve acceptance of a gift for the FBI. Any gift offered to the FBI must be properly scrutinized before the gift is processed for acceptance under these rules. Often FBI employees are informed that a gift is being offered to the Bureau. Upon receiving such information, the FBI employees involved should consult OIC Ethics Attorneys about the propriety of accepting the gift and shall complete the appropriate gift acceptance form. See the FD-1082, *Federal Bureau of Investigation Gift Acceptance Form [Gifts with a market value NOT GREATER THAN \$150]*, and the FD-1082a, *Department of Justice Gift Acceptance Form [Used for gifts with a market value GREATER THAN \$150]*.
- b. **Conditional Acceptance.** An employee should not advocate actual transfer of an offered gift if the prospective donor is willing to retain the gift pending final approval under this Guide. A gift, however, may also be sent or "presented" to an FBI employee at a meeting, event or under other circumstances where it comes into FBI possession prior to securing formal approval. When a gift is offered to the FBI in such a manner and the offered gift appears substantially to meet the criteria and considerations noted below, then the gift may be conditionally accepted pending final approval. Conditional acceptance shall:
1. Be with the concurrence of the relevant Division Head (ADIC/SAC/ HQ AD);
 2. Only be undertaken subsequent to receiving a written acknowledgement from the offeror that:
 - holds the FBI harmless for any damage to property while in FBI custody; and

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- consents to responsibility for prompt removal of the property without cost to the FBI if the gift is ultimately declined.

3. Ensure that the property is properly safeguarded in a manner consistent with comparable Government property and NOT used for any purpose prior to formal acceptance by competent authority;

4. Be communicated to the offeror, depending upon the circumstances surrounding the gift presentation;

5. Not be construed as binding DOJ or the FBI on the ultimate determination as to whether to accept the gift.

c. Factors to consider in conditionally or finally accepting any gift to the FBI include:

1. The identity of the gift offeror. Acceptance of a gift for the FBI must not appear to compromise the FBI's objectivity or neutrality in executing our mission. If the acceptance of a gift would cause a reasonable member of the public to question the integrity and impartiality of our programs or operations, then the gift should be politely but firmly declined. In this regard, it is FBI policy, as a general rule, to not accept gifts from contractors or those who wish to contract with us. Such actions may give rise to allegations of unfair competitive advantage and lead to bid protests or other adverse consequences. Additionally, an indices check should be conducted on each potential donor to determine whether the donor is a subject of investigative interest or otherwise has interests that may be affected by the performance or non-performance of FBI duties. Multiple gifts from a single donor must be evaluated to determine whether the frequency of the gifts give rise to the appearance of impropriety.

2. The value and usefulness of the gift. As a general rule, the FBI procures the goods and services which we need to perform our mission through competitive procurement processes. Although we have authority to accept gifts of services and goods, we must always ask whether a particular gift should be obtained through normal procurement channels. Similarly, the usefulness of each gift must be assessed to determine whether related operational and maintenance expenses will exceed the value of the gift. Gifts not intended solely for display must be assessed for utility – i.e. will the gift be of any use to the FBI?

3. The circumstances surrounding the offer. Even if an offered gift appears appropriate and otherwise meets all the other criteria for acceptance, a responsible FBI official may still decline to conditionally accept any offered gift, or to return one that was previously conditionally accepted; if under the totality of the circumstances, the final acceptance and use would detract from the FBI image or ability to conduct its mission. In this regard, keep in mind that DOJ, not the FBI, is the final decision maker for gifts value at over \$150.00. (See below).

d. Processing a Conditionally Accepted Gift or a Gift Offer for final Approval

1. When a gift is offered to the FBI, it is the receiving entity's responsibility to determine the fair market value of the item. The fair market value of the gift means the retail cost of the item in the United States determined through appropriate and diligent research (e.g., internet search, catalogue comparisons or formal appraisal for more unique/expensive items. See 2635.203(c)). Retail prices, vice any discount the offeror may have received, shall be used to calculate the fair market value. OIC Ethics Attorneys and Finance Division may provide assistance in arriving at an appropriate gift value.

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2. Once the fair market value is established, the offered gift will be processed for final approval as follows:

A. Gifts Valued At No More Than \$150: The Director's general gift acceptance authority for gifts valued at \$150 or less has been redelegated to the Assistant Director/Chief Financial Officer, Finance Division, subject to FBI DDAEO concurrence as discussed below. Generally, such gifts will be accepted, provided that:

- (1) The gift was not solicited;
- (2) The gift is appropriate for FBI use or display;
- (3) Acceptance would not obligate the FBI to a significant, unbudgeted expenditure of funds;
- (4) Acceptance is not otherwise unlawful and would not compromise the integrity of the FBI, its programs or operations; and

(5) The FBI office to which the gift is offered completes and receives final approval as documented by the FBI Gift Acceptance Form. *See the FD-1082, Federal Bureau of Investigation Gift Acceptance Form [Gifts with a market value NOT GREATER THAN \$150].*

B. Gifts Valued At Greater Than \$150: The FBI must obtain approval from the Assistant Attorney General for Administration prior to accepting a gift valued at greater than \$150 per donor per calendar year. In order to process a gift valued at greater than \$150, the office to which the gift is offered should submit a DOJ Gift Acceptance form. *See the FD-1082a, Department of Justice Gift Acceptance Form [Used for gifts with a market value GREATER THAN \$150].*

Example 1: An FBI Legat receives a small bronze statue from a Vatican Security representative in Rome. The statute is valued at over \$500. Since the statue is a gift valued over the minimal value that the employee can personally accept pursuant to the Foreign Gifts and Decorations Act (FGDA), the Legat must either return the gift to the offeror or process its acceptance as a gift to the FBI. Because the value of the gift exceeds the FBI's general gift acceptance authority, the Legat must complete a DOJ Gift Acceptance Form, FD-1082a, and submit it to the OIC for processing.

C. FBI DDAEO Concurrence: While the Assistant Director/Chief Financial Officer, Finance Division has the authority to accept gifts valued at \$150 or less, the FBI's DDAEO must concur with the acceptance of any offered gift. Similarly, the FBI DDAEO shall review all requests prior to forwarding to DOJ.

D. Recordkeeping and Other Matters:

- (1) All gifts accepted for official use or display must be logged in the Asset Management System. (See reference to the Asset Management System.)
- (2) Every effort should be made to place items accepted for display in a location that will afford the largest number of employees, and if feasible, members of the public, the maximum opportunity to see the display.

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4.4.4. Investigation/Case-Specific Gift Acceptance Authority

4.4.4.1. Investigation/Case-Specific DOJ Gift Acceptance Delegation

(Editor's Note: Only the paragraphs delegating case specific gift acceptance authority to the Director of the FBI are contained in this section.)

U.S. Department of Justice
Washington, D.C. 20530

May 26, 2006

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS UNITED
STATES ATTORNEYS

FROM: Paul J. McNulty /s/PAUL J. MCNULTY
Deputy Attorney General

SUBJECT: Guidance for Acceptance of Assistance and Gifts from
Private Parties for Use in Connection with Investigations and Litigation

...

In conjunction with this memorandum, the AAG/A is delegating additional authority to component heads to determine whether to accept certain case-specific gifts from private parties in criminal and civil investigations, prosecutions, and civil litigation that have a value of \$50,000 or less. This delegation is consistent with both prudent oversight and efficient administration. The component head may accept the first offer from a source up to \$50,000. A second or subsequent offer in the same fiscal year from the same source must be submitted to the Assistant AAG/A for approval when the combined value with the first gift exceeds \$50,000. Gifts that are not case-specific, gifts of cash, gifts valued above \$50,000, and extraordinary case-specific gifts will continue to require approval by the AAG/A.

...

4.4.4.2. FBI Investigation/Case-Specific Gift Acceptance Policy

(Editor's Note: The following guidance applies only to gifts and not to offers of "traditional assistance" to law enforcement as defined in the aforementioned DOJ Memorandum. For guidance concerning "traditional assistance" to law enforcement, please consult the OGC.)

a. **Acceptance Authority.** The Director's authority to accept certain case-specific gifts from private parties in criminal and civil investigations, prosecutions, and civil litigation that have a value of \$50,000 or less has been redelegated to the Deputy Director.

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b. Prior to accepting any case-specific gift, FBI employees must obtain the approval of their appropriate Division Head (ADIC/SAC/AD) in consultation with the responsible Chief Division Counsel or OGC for HQ components. The final decision, however, to accept such a gift must be made by the Deputy Director in consultation with FBI's DDAEO and OGC as appropriate. The FBI's DDAEO will be responsible for determining whether:

- (1) The offer was unsolicited;
- (2) The offer qualifies as "assistance" under the DOJ Memorandum;
- (3) If acceptance is appropriate under all the facts and circumstances; and
- (4) Whether DOJ approval must be secured.

Example: A nationwide retail giant has its own security force and has spent considerable resources to set up its own forensics laboratory to assist in enhancing security camera images to fight shoplifting and other crimes against the company. The local FBI office is investigating a case that has no connection to the retail company, but involves an interstate theft ring impacting other retailers. The retail giant hears about the FBI's investigation and offers to provide free use of their state of the art equipment. Since this is related to a specific case, the free forensic services may be determined to constitute assistance. Assuming the value of the assistance is less than \$50,000, the FBI's Deputy Director may approve, with the concurrence of the FBI DDAEO, acceptance of such service. If the value is greater than \$50,000, then AAG/A's approval must be sought prior to accepting these services.

Example 2: If in the above example the retail giant simply offers the use of its equipment to aid the FBI's counterterrorism efforts, the offer is not case-specific but is, rather, a traditional gift offer that is valued greater than \$150. The AAG/A is the only authority who may approve this gift.

4.4.5. Training Facility Gift Acceptance Authority

4.4.5.1. DOJ Training Facility Gift Acceptance Authority

[Editor's Note: Only the paragraph delegating the authority to accept donations of space for predominantly internal training to the Director of the FBI is contained in this section. All other paragraphs have been omitted.]

U.S. Department of Justice
Washington, D.C.20530

AUG 10 2006

MEMORANDUM FOR ROBERT MUELLER

Director

Federal Bureau of Investigation

FROM: Lee J. Lofthus

/s/LEE J. LOFTHUS

**FBI Ethics and Integrity Program Policy Guide
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**Acting Assistant Attorney General
for Administration**

**SUBJECT: Gift Acceptance Delegation for Gifts of Space for Internal
Training and Conferences**

Pursuant to 28 U.S.C. § 524(d), and the authority granted to the Assistant Attorney General for Administration by the Department of Justice Order 2400.2, I hereby delegate to the Director of the Federal Bureau of Investigation (FBI) the authority to accept [free] donations of space from non-federal facilities to be used for predominantly internal training or conferences, as provided in Section 1173 of Public law 109-162, the Violence Against Women and Department of Justice Reauthorization Act of 2005 (the Act).

...

4.4.5.2. FBI Training Facility Gift Acceptance Authority Policy

a. The Director's authority to accept donations of free space from non-federal entities to be used for predominantly internal training or conferences has been redelegated to the FBI's Deputy Designated Agency Ethics Official (DDAEO). Training Division (TD) is responsible for scheduling, coordinating, tracking and reporting all training conducted by the FBI; consequently, any request to use donated space must be processed first through TD. TD, as appropriate, will work with employees to submit requests to accept donated space through the Training Requests and Budgeting System/Travel Expense Enterprise [TRUSTEE] process within the Enterprise Process Automation System (EPAS). [The TRUSTEE process was designed to provide a process for tracking training event requests and expenses from the point of submission, through financial obligation and reconciliation.] Once submitted, requests are routed to the Office of Integrity and Compliance for approval by the FBI DDAEO. Employees must provide the following information when completing the Trustee process:

- (1) Requestor/originator (name and phone number)
- (2) Sponsoring division/FO
- (3) Event date
- (4) Name of event
- (5) Description of training (subject matter; who is providing training; who is receiving training; other details)
- (6) Number of FBI employees receiving training
- (7) Number of FBI employees providing training
- (8) Number of non-FBI attendees receiving training
- (9) Is training co-sponsored (yes or no)?

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If yes, who are the co-sponsors besides the FBI?

- (10) Donor name
- (11) Site offered/description
- (12) Did the FBI ask to use the space (yes or no)?
If yes, did the FBI ask to use the space free of charge or did the donor voluntarily offer to let the FBI use it without charge?
- (13) Terms and limitations (concerning use of space): Estimated fair market value of using a comparable space
- (14) Donor relationship with FBI
- (15) Results of indices check on donor (check with division security officer if needed):
- (16) Summary of any division/matters/work likely to affect interests of donor: Will anyone from the donor providing the space attend and/or participate in the training?

b. For more information on FBI acceptance of free training facilities and relevant procedures, definitions and reports required to be made concerning holding such events, see PD 0589D, Conference Planning—Conference Cost Reporting and Approvals to Use Non-Federal Facilities.

Employees should also consult with their Training Division POCs.

4.4.6. Gifts of Travel Related Expenses from non-Federal Sources

4.4.6.1. 31 U.S.C. § 1353 (Acceptance of Travel and Related Expenses from Non-Federal Sources)

(Editor's Note: Only the paragraphs pertaining to the FBI's authority to accept travel and related expenses from non-Federal sources are contained in this section. All other paragraphs have been omitted.)

(a) Notwithstanding any other provision of law, the Administrator of General Services, in consultation with the Director of the Office of Government Ethics, shall prescribe by regulation the conditions under which an agency in the executive branch (including an independent agency) may accept payment, or authorize an employee of such agency to accept payment on the agency's behalf, from non-Federal sources for travel, subsistence, and related expenses with respect to attendance of the employee (or the spouse of such employee) at any meeting or similar function relating to the official duties of the employee. Any cash payment so accepted shall be credited to the appropriation applicable to such expenses. In the case of a payment in kind so accepted, a pro rata reduction shall be made in any entitlement of the employee to payment from the Government for such expenses.

(b) Except as provided in this section or section 4111 or 7342 of title 5, an agency or employee may not accept payment for expenses referred to in subsection (a). An employee who accepts any payment in violation of the preceding sentence -

(1) may be required, in addition to any penalty provided by law, to repay, for deposit in the general fund of the Treasury, an amount equal to the amount of the payment so accepted; and

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(2) in the case of a repayment under paragraph (1), shall not be entitled to any payment from the Government for such expenses.

(c) As used in this section –

(1) the term "executive branch" means all executive agencies (as such term is defined in section 105 of title 5); and

(2) the term "employee in the executive branch" means -

(A) an appointed officer or employee in the executive branch;

and

(B) an expert or consultant in the executive branch, under section 3109 of title 5; and

(3) the term "payment" means a payment or reimbursement, in cash or in kind.

(d)(1) The head of each agency of the executive branch shall, in the manner provided in paragraph (2), submit to the Director of the Office of Government Ethics reports of payments of more than \$250 accepted under this section with respect to employees of the agency. The Director shall make such reports available for public inspection and copying.

(2) The reports required by paragraph (1) shall, with respect to each payment -

(A) specify the amount and method of payment, the name of the person making the payment, the name of the employee, the nature of the meeting or similar function, the time and place of travel, the nature of the expenses, and such other information as the Administrator of General Services may prescribe by regulation under subsection (a);

(B) be submitted not later than May 31 of each year with respect to payments in the preceding period beginning on October 1 and ending on March 31; and

(C) be submitted not later than November 30 of each year with respect to payments in the preceding period beginning on April 1 and ending on September 30.

-SOURCE-

(Added Pub. L. 101-194, title III, Sec. 302(a), Nov. 30, 1989, 103 Stat. 1745, Sec. 1352; renumbered Sec. 1353 and amended Pub. L. 101-280, Sec. 4(b)(1), (c), May 4, 1990, 104 Stat. 157, 158.)

4.4.6.2. 41 C.F.R. § 304 Payments of Travel Expenses from Non-Federal Sources

See Ethics Guide Reference Library for Regulations, Questions, Answers and FAQ's concerning the acceptance of travel expenses from non-Federal sources.

4.4.6.3. FBI Travel Gift Acceptance Authority-Delegation

a. **FBI Approval Authority.** The Director's authority to accept gifts of travel has been redelegated to the Section Chief, Finance Division, Accounting Section, with concurrence from the FBI DDAEO.

b. **Procedures.** In order to process a gift of travel and related expenses from a non-Federal source, the employee receiving the offer must complete a TRIP request and receive approval

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prior to the date of travel. FBI policy concerning acceptance of travel and related expenses from non-Federal sources can be found in Finance Division's Reference Guide for Travel at: <http://home.fbinet.fbi/DO/FD/AS/TAPU/Documents/Instructional/TDY%20Reference%20Guide%20FINAL.doc>.

c. All requests to accept travel expenses from foreign governments will be closely scrutinized by the FBI DDAEO. The FBI DDAEO will notify the Deputy Director in such cases and, even if the offer is legally unobjectionable, the Deputy Director may decline an offer for policy or mission reasons.

4.5. Financial Conflicts of Interest

4.5.1. Criminal Conflict of Interest Laws

4.5.1.1. 18 U.S.C. § 201 Bribery of Public Officials and Witnesses

Bribery is a quid pro quo offense in that a person accepts something of value in exchange for taking or failing to take action in their Government position. (See 18 U.S.C. § 201 for the full text of these provisions)

4.5.1.2. 18 § U.S.C. 202 Definitions

(See 18 U.S.C. § 202 for the full text of these definitions)

4.5.1.3. 18 U.S.C. § 203 Compensation to Members of Congress, Officers, and Others in matters affecting the Government

This section prohibits federal employees from misusing their position or influence by prohibiting them from seeking official action on behalf of private interests. Section 203 bans Federal employees from sharing in any compensation for representations made before the Government by themselves or others. (See 18 U.S.C. § 203 for the full text of these provisions)

Example 1: An FBI COR recommended that the FBI purchase software from ABC Company. A week later the ABC Company offered the FBI employee \$10,000 in recognition of his recommendation. The employee would violate 18 U.S.C. 203 if he accepts the payment even though the offer did not exist at the time he made his recommendation.

Example 2: An FBI employee engages in outside employment with a vendor who services the Drug Enforcement Administration (DEA). The vendor asks the FBI employee to represent the vendor on a contract dispute with the DEA. Such representation would violate the statute.

4.5.1.4. 18 U.S.C. § 205 Activities of Officers and Employees in Claims against and other matters affecting the Government

This section prohibits federal employees, whether or not compensated, from seeking action from the Government on behalf of private interests. There are five exceptions to the general prohibition. (See 18 U.S.C. § 205 for the full text of these provisions)

Example: A neighbor of an FBI attorney asks him to represent the neighbor before the IRS on a tax matter. The FBI attorney cannot represent his neighbor before the IRS or any other agency even if he is not compensated. Such representation would also violate the DOJ supplemental regulation prohibiting the outside practice of law in most situations, see Section 4.8.4.1 of this Guide.

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4.5.1.5. 18 U.S.C. § 207 Restrictions on former officers, employees, and elected officials of the executive and legislative branches

Section 207 provides rules concerning post-Government service employment restrictions.

(Also, see Chapter 6 of this Guide, Post-Government Service Employment Rules, for more information.)

4.5.1.6. 18 U.S.C. § 208 Acts Affecting Personal Financial Interests

A federal employee is prohibited from participating personally and substantially in an official capacity in any particular matter in which he or any person whose interests are imputed to him under the statute has a financial interest. This prohibition is covered in detail in the remainder of this chapter (See 18 U.S.C. § 208 for the full text of these provisions)

4.5.1.7. 18 U.S.C. § 209 Salary of Government Official and Employees Payable only to the United States

A federal employee may not accept compensation for services they perform officially from anyone but the Government. (See 18 U.S.C. § 209 for the full text of these provisions)

Example 1: An agent who investigates fraud is asked to speak in her official capacity at an Annual Fraud Conference sponsored by the Anti-Fraud League (non-federal organization). She is offered an honorarium of \$2,500 to do so. If approved by her chain of command, the agent could speak at the conference but could not accept the honorarium because the speech is given in her official capacity. For more details on speaking, teaching, and writing, see Chapter 4.9.

Example 2: A child is kidnapped from his home. The child's father offers a \$10,000 reward for any information leading to the child's safe return. An FBI agent assigned to the case finds the child and returns him safely to his family. The grateful family wants to pay the agent the \$10,000 reward. The agent may not accept since all of her actions leading up to the child's return were performed in the regular course of the agent's official duties. (Note, however, if the agent were nominated to receive a previously established recurring award for her meritorious service, then she may be able to accept – see Chapter 4.2 for information on Awards.

4.5.2. Conflicting Financial Interests

4.5.2.1. 5 C.F.R. § 2635.401 Overview Financial Interests

This subpart contains two provisions relating to financial interests. One is a disqualification requirement and the other is a prohibition on acquiring or continuing to hold specific financial interests. An employee may acquire or hold any financial interest not prohibited by Sec. 2635.403. Notwithstanding that his acquisition or holding of a particular interest is proper, an employee is prohibited in accordance with Sec. 2635.402 of this subpart from participating in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest. See also part 2640 of this chapter, for additional guidance amplifying Sec. 2635.402.

4.5.2.2. 5 C.F.R. § 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,

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to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest. Note: Standards applicable when seeking non-Federal employment are contained in subpart F of this part and, if followed, will ensure that an employee does not violate 18 U.S.C. 208(a) or this section when he is negotiating for or has an arrangement concerning future employment. In all other cases where the employee's participation would violate 18 U.S.C. 208(a), an employee shall disqualify himself from participation in the matter in accordance with paragraph (c) of this section or obtain a waiver or determine that an exemption applies, as described in paragraph (d) of this section.

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

(1) Direct and predictable effect.

(i) A particular matter will have a direct effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately. A particular matter will not have a direct effect 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.

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

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

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

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

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

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

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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.

Example 3: FBI employee Doe's job responsibilities include assessing training needs and procuring training services. Doe's wife owns ABC Training, Inc. Doe recommended that several training contracts be awarded to ABC Training, Inc. Doe violated 18 U.S.C. § 208, even if ABC did not get the contract. Any substantial participation is enough to trigger the statute.

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

(c) Disqualification. Unless the employee is authorized to participate in the particular matter by virtue of a waiver or exemption described in paragraph (d) of this section or because the interest has been divested in accordance with paragraph (e) of this section, an employee shall disqualify himself from participating in a particular matter in which, to his knowledge, he or a person whose interests are imputed to him has a financial interest, if the particular matter will have a direct and predictable effect on that interest. 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

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employee may elect to create a record of his actions by providing written notice to a supervisor or other appropriate official.

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

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

(Note that waivers are hardly, if ever, granted. See Section 4.5.2.5.10)

(1) Regulatory exemptions. Under 18 U.S.C. 208(b)(2), regulatory exemptions of general applicability have been issued by the Office of Government Ethics, based on its determination that particular interests are too remote or too inconsequential to affect the integrity of the services of employees to whom those exemptions apply. See the regulations in subpart B of part 2640 of this chapter, which supersede any preexisting agency regulatory exemptions.

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

(i) The employee:

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

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

(ii) Such official determines, in writing, that the employee's financial interest in the particular matter or matters is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such employee. See also subpart C of part 2640 of this chapter, for additional guidance.

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

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Government official to whom authority to issue such a waiver for the employee has been delegated):

- (i) Reviews the financial disclosure report filed by the special Government employee pursuant to the Ethics in Government Act of 1978; and
 - (ii) Certifies in writing that the need for the individual's services outweighs the potential for a conflict of interest created by the otherwise disqualifying financial interest. See also subpart C of part 2640 of this chapter, for additional guidance.
- (4) Consultation and notification regarding waivers. When practicable, an official is required to consult formally or informally with the Office of Government Ethics prior to granting a waiver referred to in paragraph (d)(2) or (3) of this section. A copy of each such waiver is to be forwarded to the Director of the Office of Government Ethics.
- (e) Divestiture of a disqualifying financial interest. Upon sale or other divestiture of the asset or other interest that causes his disqualification from participation in a particular matter, 18 U.S.C. 208(a) and paragraph (c) of this section will no longer prohibit the employee's participation in the matter.
- (1) Voluntary divestiture. An employee who would otherwise be disqualified from participation in a particular matter may voluntarily sell or otherwise divest himself of the interest that causes the disqualification.
 - (2) Directed divestiture. An employee may be required to sell or otherwise divest himself of the disqualifying financial interest if his continued holding of that interest is prohibited by statute or by agency supplemental regulation issued in accordance with Sec. §2635.403(a), or if the agency determines in accordance with Sec. §2635.403(b) that a substantial conflict exists between the financial interest and the employee's duties or accomplishment of the agency's mission.
 - (3) Eligibility for special tax treatment. An employee who is directed to divest an interest may be eligible to defer the tax consequences of divestiture under subpart J of part 2634 of this chapter. An employee who divests before obtaining a certificate of divestiture will not be eligible for this special tax treatment.
- (f) Official duties that give rise to potential conflicts. Where an employee's official duties create a substantial likelihood that the employee may be assigned to a particular matter from which he is disqualified, the employee should advise his supervisor or other person responsible for his assignments of that potential so that conflicting assignments can be avoided, consistent with the agency's needs.

Example: An FBI employee's minor child is the beneficiary of a trust that consists of stock in XYZ Corp worth \$30,000. Since the interests of the minor children are imputed to the employee, and the stock is valued at greater than \$15,000, this employee may not participate in an investigation of XYZ Corp.

4.5.2.3. 28 C.F.R. § 45.2 Disqualification arising from personal or political relationship.

(a) Unless authorized under paragraph (b) of this section, no employee shall participate in a criminal investigation or prosecution if he has a personal or political relationship with:

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- (1) Any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution; or
 - (2) Any person or organization which he knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.
- (b) An employee assigned to or otherwise participating in a criminal investigation or prosecution who believes that his participation may be prohibited by paragraph (a) of this section shall report the matter and all attendant facts and circumstances to his supervisor at the level of section chief or the equivalent or higher. If the supervisor determines that a personal or political relationship exists between the employee and a person or organization described in paragraph (a) of this section, he shall relieve the employee from participation unless he determines further, in writing, after full consideration of all the facts and circumstances, that:
- (1) The relationship will not have the effect of rendering the employee's service less than fully impartial and professional; and
 - (2) The employee's participation would not create an appearance of a conflict of interest likely to affect the public perception of the integrity of the investigation or prosecution.
- (c) For the purposes of this section:
- (1) Political relationship means a close identification with an elected official, a candidate (whether or not successful) for elective, public office, a political party, or a campaign organization, arising from service as a principal adviser thereto or a principal official thereof; and
 - (2) Personal relationship means a close and substantial connection of the type normally viewed as likely to induce partiality. An employee is presumed to have a personal relationship with his father, mother, brother, sister, child and spouse. Whether relationships (including friendships) of an employee to other persons or organizations are "personal" must be judged on an individual basis with due regard given to the subjective opinion of the employee.
- (d) This section pertains to agency management and is not intended to create rights enforceable by private individuals or organizations.

4.5.2.4. 5 C.F.R. § 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 Government wide applicability prohibiting employees from holding or acquiring any financial interest. Statutory restrictions, if any, are contained in agency statutes which, in some cases, may be implemented by agency regulations issued independent of this part.

(a) Agency regulation prohibiting certain financial interests. An agency may, by supplemental agency regulation issued after February 3, 1993, prohibit or restrict the acquisition or holding of a financial interest or a class of financial interests by agency employees, or any category of agency employees, and the spouses and minor children of those employees, based on the

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

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

- (1) Require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired; or
- (2) Adversely affect the efficient accomplishment of the agency's mission because another employee cannot be readily assigned to perform work from which the employee would be disqualified by reason of the financial interest.

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

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

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

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

Example 2: An agency that insures bank deposits may, by supplemental agency regulation, prohibit its employees who are bank examiners from obtaining loans from banks they examine.

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Examination of a member bank could have no effect on an employee's fixed obligation to repay a loan from that bank and, thus, would not affect an employee's financial interests so as to require disqualification under Sec. §2635.402. Nevertheless, a loan from a member bank is a discrete financial interest within the meaning of Sec. §2635.403(c) that may, when appropriate, be prohibited by supplemental agency regulation.

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

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

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

(e) Eligibility for special tax treatment. An employee required to sell or otherwise divest a financial interest may be eligible to defer the tax consequences.

4.5.2.5. Interpretation and Waiver Guidance Concerning 18 U.S.C. § 208

4.5.2.5.1. 5 C.F.R. § 2640.101 Purpose

18 U.S.C. 208(a) prohibits an officer or employee of the executive branch, of any independent agency of the United States, of the District of Columbia, or Federal Reserve bank director, officer, or employee, or any special Government employee from participating in an official capacity in particular matters in which he has a personal financial interest, or in which certain persons or organizations with which he is affiliated have a financial interest. The statute is intended to prevent an employee from allowing personal interests to affect his official actions, and to protect governmental processes from actual or apparent conflicts of interests. However, in certain cases, the nature and size of the financial interest and the nature of the matter in which the employee would act are unlikely to affect an employee's official actions. Accordingly, the statute permits waivers of the disqualification provision in certain cases, either on an individual basis or pursuant to general regulation. Section 208(b)(2) provides that the Director of the Office of Government Ethics may, by regulation, exempt from the general prohibition, financial interests which are too remote or too inconsequential to affect the integrity of the services of the employees to which the prohibition applies. The regulations in this part describe those financial interests. This part also provides guidance to agencies on the factors to consider when issuing individual waivers under 18 U.S.C. 208 (b)(1) or (b)(3), and provides an interpretation of 18 U.S.C. 208(a).

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4.5.2.5.2. 5 C.F.R. § 2640.102 Definitions

For purposes of this part:

(a) Diversified means that the fund, trust or plan does not have a stated policy of concentrating its investments in any industry, business, single country other than the United States, or bonds of a single State within the United States and, in the case of an employee benefit plan, means that the plan's trustee has a written policy of varying plan investments. Note to paragraph (a): A mutual fund is diversified for purposes of this part if it does not have a policy of concentrating its investments in an industry, business, country other than the United States, or single State within the United States. Whether a mutual fund meets this standard may be determined by checking the fund's prospectus or by calling a broker or the manager of the fund. An employee benefit plan is diversified if the plan manager has a written policy of varying assets. This policy might be found in materials describing the plan or may be obtained in a written statement from the plan manager. It is important to note that a mutual fund or employee benefit plan that is diversified for purposes of this part may not necessarily be an excepted investment fund (EIF) for purposes of reporting financial interests pursuant to 5 C.F.R. 2634.310(c) and 2634.907(i)(3). In some cases, an employee may have to report the underlying assets of a fund or plan on his financial disclosure statement even though an exemption set forth in this part would permit the employee to participate in a matter affecting the underlying assets of the fund or plan. Conversely, there may be situations in which no exemption in this part is applicable to the assets of a fund or plan which is properly reported as an EIF on the employee's financial disclosure statement.

(b) Employee means an officer or employee of the executive branch of the United States, or of any independent agency of the United States, a Federal Reserve Bank director, officer, or employee, or an officer or employee of the District of Columbia. The term also includes a special Government employee as defined in 18 U.S.C. 202.

(c) Employee benefit plan means a plan as defined in section 3(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(3), and that has more than one participant. An employee benefit plan is any plan, fund or program established or maintained by an employer or an employee organization, or both, to provide its participants medical, disability, death, unemployment, or vacation benefits, training programs, day care centers, scholarship funds, prepaid legal services, deferred income, or retirement income.

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

(e) Holdings means portfolio of investments.

(f) Independent trustee means a trustee who is independent of the sponsor and the participants in a plan, or is a registered investment advisor.

(g) Institution of higher education means an educational institution as defined in 20 U.S.C. 1141(a).

(h) Issuer means a person who issues or proposes to issue any security, or has any outstanding security which it has issued.

(i) Long-term Federal Government security means a bond or note, except for a U.S. Savings bond, with a maturity of more than one year issued by the United States Treasury pursuant to 31 U.S.C. chapter 31.

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(j) Municipal security means direct obligation of, or obligation guaranteed as to principal or interest by, a State (or any of its political subdivisions, or any municipal corporate instrumentality of one or more States), or the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States.

(k) Mutual fund means an entity which is registered as a management company under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1 et seq.). For purposes of this part, the term mutual fund includes open-end and closed-end mutual funds and registered money market funds.

(l) Particular matter involving specific parties includes any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties. The term typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties.

(m) Particular matter of general applicability means a particular matter that is focused on the interests of a discrete and identifiable class of persons, but does not involve specific parties.

(n) Pension plan means any plan, fund or program maintained by an employer or an employee organization, or both, to provide retirement income to employees, or which results in deferral of income for periods extending to, or beyond, termination of employment.

(o) Person means an individual, corporation, company, association, firm, partnership, society or any other organization or institution.

(p) Publicly traded security means a security as defined in paragraph (r) of this section and which is:

(1) Registered with the Securities and Exchange Commission pursuant to section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) and listed on a national or regional securities exchange or traded through NASDAQ;

(2) Issued by an investment company registered pursuant to section 8 of the Investment Company Act of 1940, as amended (15 U.S.C. 80a-8); or

(3) A corporate bond registered as an offering with the Securities and Exchange Commission under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l) and issued by an entity whose stock is a publicly traded security.

Note to paragraph (p): National securities exchanges include the American Stock Exchange and the New York Stock Exchange. Regional exchanges include Boston, Cincinnati, Intermountain (Salt Lake City), Midwest (Chicago), Pacific (Los Angeles and San Francisco), Philadelphia (Philadelphia and Miami), and Spokane stock exchanges.

(q) Sector mutual fund or sector unit investment trust means a mutual fund or unit investment trust that concentrates its investments in an industry, business, single country other than the United States, or bonds of a single State within the United States.

(r) Security means common stock, preferred stock, corporate bond, municipal security, long-term Federal Government security, and limited partnership interest. The term also includes "mutual fund" for purposes of Sec. 2640.202(e) and (f) and Sec. 2640.203(a).

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(s) Short-term Federal Government security means a bill with a maturity of one year or less issued by the United States Treasury pursuant to 31 U.S.C. Chapter 31.

(t) 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.

(u) Unit investment trust means an investment company as defined in 15 U.S.C. 80a-4(2) that is a regulated investment company under 26 U.S.C. 851.

(v) United States Savings bond means a savings bond issued by the United States Treasury pursuant to 31 U.S.C. 3105.

4.5.2.5.3. 5 C.F.R. § 2640.103 Prohibition

(a) Statutory prohibition. Unless permitted by 18 U.S.C. 208(b) (1)-(4), an employee is prohibited by 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 other person specified in the statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest. The restrictions of 18 U.S.C. 208 are described more fully in 5 C.F.R. §2635.401 and §2635.402.

(1) Particular matter. The term "particular matter" includes 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. The term may include matters which do not involve formal parties and may extend to legislation or policy making that is narrowly focused on the interests of a discrete and identifiable class of persons. It does not, however, cover consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons. The particular matters covered by this part include a judicial or other proceeding, application or request for a ruling or other determination, contract, claim, controversy, charge, accusation or arrest.

Example 1: The Overseas Private Investment Corporation decides to hire a contractor to conduct EEO training for its employees. The award of a contract for training services is a particular matter.

Example 2: The spouse of a high level official of the Internal Revenue Service (IRS) requests a meeting on behalf of her client (a major U.S. corporation) with IRS officials to discuss a provision of IRS regulations governing depreciation of equipment. The spouse will be paid a fee by the corporation for arranging and attending the meeting. The consideration of the spouse's request and the decision to hold the meeting are particular matters in which the spouse has a financial interest.

Example 3: A regulation published by the Department of Agriculture applicable only to companies that operate meat packing plants is a particular matter.

Example 4: A change by the Department of Labor to health and safety regulations applicable to all employers in the United States is not a particular matter. The change in the regulations is directed to the interests of a large and diverse group of persons.

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Example 5: The allocation of additional resources to the investigation and prosecution of white collar crime by the Department of Justice is not a particular matter. Similarly, deliberations on the general merits of an omnibus bill such as the Tax Reform Act of 1986 are not sufficiently focused on the interests of specific persons, or a discrete and identifiable group of persons to constitute participation in a particular matter.

Example 6: The recommendations of the Council of Economic Advisors to the President about appropriate policies to maintain economic growth and stability are not particular matters. Discussions about economic growth policies are directed to the interests of a large and diverse group of persons.

Example 7: The formulation and implementation of the response of the United States to the military invasion of a U.S. ally is not a particular matter. General deliberations, decisions and actions concerning a response are based on a consideration of the political, military, diplomatic and economic interests of every sector of society and are too diffuse to be focused on the interests of specific individuals or entities. However, at the time consideration is given to actions focused on specific individuals or entities, or a discrete and identifiable class of individuals or entities, the matters under consideration would be particular matters. These would include, for example, discussions whether to close particular oil pumping station or pipeline in the area where hostilities are taking place, or a decision to seize a particular oil field or oil tanker.

Example 8: A legislative proposal for broad health care reform is not a particular matter because it is not focused on the interests of specific persons, or a discrete and identifiable class of persons. It is intended to affect every person in the United States. However, consideration and implementation, through regulations, of a section of the health care bill limiting the amount that can be charged for prescription drugs is sufficiently focused on the interests of pharmaceutical companies that it would be a particular matter.

Example 9: An FBI agent is asked to work on a mortgage fraud investigation against XYZ Bank. The FBI agent's wife works for XYZ Bank in the Mortgage Department as a Loan Officer. The FBI agent may not work on the investigation due to his spouse's employment. See Section 4.5.4 of this Guide for methods to remedy such conflicts.

Example 10: An FBI contracting officer owns \$20,000 of stock in a company that is bidding on an FBI contract. This employee would violate the law if he/she takes any official action on that contract. Similarly, participating in the matter would also be a violation of the law even if the employee's spouse or dependent child owned the stock.

(2) Personal and substantial participation. 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 the 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

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through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter.

Example 1 to paragraph (a)(2): An agency's Office of Enforcement is investigating the allegedly fraudulent marketing practices of a major corporation. One of the agency's personnel specialists is asked to provide information to the Office of Enforcement about the agency's personnel ceiling so that the Office can determine whether new employees can be hired to work on the investigation. The employee personnel specialist owns \$20,000 worth of stock in the corporation that is the target of the investigation. She does not have a disqualifying financial interest in the matter (the investigation and possible subsequent enforcement proceedings) because her involvement is on a peripheral personnel issue and her participation cannot be considered "substantial" as defined in the statute.

(3) 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 part.

(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.

Example 1: An attorney at the Department of Justice is working on a case in which several large companies are defendants. If the Department wins the case, the defendants may be required to reimburse the Federal Government for their failure to adequately perform work under several contracts with the Government. The attorney's spouse is a salaried employee of one of the companies, working in a division that has no involvement in any of the contracts. She does not participate in any bonus or benefit plans tied to the profitability of the company, nor does she own stock in the company. Because there is no evidence that the case will have a direct and predictable effect on whether the spouse will retain her job or maintain the level of her salary, or whether the company will undergo any reorganization that would affect her interests, the attorney would not have a disqualifying financial interest in the matter. However, the attorney must consider, under the requirements of Sec. §2635.502 of this chapter, whether his impartiality would be questioned if he continues to work on the case.

Example 2: A special Government employee (SGE) whose principal employment is as a researcher at a major university is appointed to serve on an advisory committee that will evaluate the safety and effectiveness of a new medical device to regulate arrhythmic heartbeats. The device is being developed by Alpha Medical Inc., a company which also has contracted with the SGE's university to assist in developing another medical device related to kidney dialysis. There is no evidence that the advisory committee's determinations concerning the medical device under review will affect Alpha Medical's contract with the university to develop the kidney

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dialysis device. The SGE may participate in the committee's deliberations because those deliberations will not have a direct and predictable effect on the financial interests of the researcher or his employer.

Example 3: The SGE in the preceding example is instead asked to serve on an advisory committee that has been convened to conduct a preliminary evaluation of the new kidney dialysis device developed by Alpha Medical under contract with the employee's university. Alpha's contract with the university requires the university to undertake additional testing of the device to address issues raised by the committee during its review. The committee's actions will have a direct and predictable effect on the university's financial interest.

Example 4: An engineer at the Environmental Protection Agency (EPA) was formerly employed by Waste Management, Inc., a corporation subject to EPA's regulations concerning the disposal of hazardous waste materials. Waste Management is a large corporation, with less than 5% of its profits derived from handling hazardous waste materials. The engineer has a vested interest in a defined benefit pension plan sponsored by Waste Management which guarantees that he will receive payments of \$500 per month beginning at age 62. As an employee of EPA, the engineer has been assigned to evaluate Waste Management's compliance with EPA hazardous waste regulations. There is no evidence that the engineer's monitoring activities will affect Waste Management's ability or willingness to pay his pension benefits when he is entitled to receive them at age 62. Therefore, the EPA's monitoring activities will not have a direct and predictable effect on the employee's financial interest in his Waste Management pension. However, the engineer should consider whether, under the standards set forth in 5 C.F.R. §2635.502, a reasonable person would question his impartiality if he acts in a matter in which Waste Management is a party.

(b) Disqualifying financial interests. For purposes of 18 U.S.C. 208(a) and this part, the term financial interest means the potential for gain or loss to the employee, or other person specified in section 208, as a result of governmental action on the particular matter. The disqualifying financial interest might arise from ownership of certain financial instruments or investments such as stock, bonds, mutual funds, or real estate. Additionally, a disqualifying financial interest might derive from a salary, indebtedness, job offer, or any similar interest that may be affected by the matter.

Example 1: An employee of the Department of the Interior owns transportation bonds issued by the State of Minnesota. The proceeds of the bonds will be used to fund improvements to certain State highways. In her official position, the employee is evaluating an application from Minnesota for a grant to support a State wildlife refuge. The employee's ownership of the transportation bonds does not create a disqualifying financial interest in Minnesota's application for wildlife funds because approval or disapproval of the grant will not in any way affect the current value of the bonds or have a direct and predictable effect on the State's ability or willingness to honor its obligation to pay the bonds when they mature.

Example 2: An employee of the Bureau of Land Management owns undeveloped land adjacent to Federal lands in New Mexico. A portion of the Federal land will be leased by the Bureau to a mining company for exploration and development, resulting in an increase in the value of the surrounding privately owned land, including that owned by the employee. The employee has a financial interest in the lease of the Federal land to the mining company and, therefore, cannot

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participate in Bureau matters involving the lease unless he obtains an individual waiver pursuant to 18 U.S.C. 208(b)(1).

Example 3: A special Government employee serving on an advisory committee studying the safety and effectiveness of a new arthritis drug is a practicing physician with a specialty in treating arthritis. The drug being studied by the committee would be a low cost alternative to current treatments for arthritis. If the drug is ultimately approved, the physician will be able to prescribe the less expensive drug. The physician does not own stock in, or hold any position, or have any business relationship with the company developing the drug. Moreover, there is no indication that the availability of a less expensive treatment for arthritis will increase the volume and profitability of the doctor's private practice. Accordingly, the physician has no disqualifying financial interest in the actions of the advisory committee.

(c) Interests of others. The financial interests of the following persons will serve to disqualify an employee to the same extent as the employee's own interests:

- (1) The employee's spouse;
- (2) The employee's minor child;
- (3) The employee's general partner;
- (4) An organization or entity which the employee serves as officer, director, trustee, general partner, or employee; and
- (5) A person with whom the employee is negotiating for, or has an arrangement concerning, prospective employment.

Example 1: An employee of the Consumer Product Safety Commission (CPSC) has two minor children who have inherited shares of stock from their grandparents in a company that manufactures small appliances. Unless an exemption is applicable under Sec. 2640.202 or he obtains a waiver under 18 U.S.C. 208(b)(1), the employee is disqualified from participating in a CPSC proceeding to require the manufacturer to remove a defective appliance from the market.

Example 2: A newly appointed employee of the Department of Housing and Urban Development (HUD) is a general partner with three former business associates in a partnership that owns a travel agency. The employee knows that his three general partners are also partners in another partnership that owns a HUD-subsidized housing project. Unless he receives a waiver pursuant to 18 U.S.C. 208(b)(1) permitting him to act, the employee must disqualify himself from particular matters involving the HUD-subsidized project which his general partners own.

Example 3: The spouse of an employee of the Department of Health and Human Services (HHS) works for a consulting firm that provides support services to colleges and universities on research projects they are conducting under grants from HHS. The spouse is a salaried employee who has no direct ownership interest in the firm such as through stockholding, and the award of a grant to a particular university will have no direct and predictable effect on his continued employment or his salary. Because the award of a grant will not affect the spouse's financial interest, section 208 would not bar the HHS employee from participating in the award of a grant to a university to which the consulting firm will provide services. However, the employee should consider whether her participation in the award of the grant would be barred

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under the impartiality provision in the Standards of Ethical Conduct for Employees of the Executive Branch at 5 C.F.R. §2635.502.

(d) Disqualification. Unless the employee is authorized to participate in the particular matter by virtue of an exemption or waiver described in subpart B or subpart C of this part, or 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 any other person specified in the statute 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 assignments 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, is asked by an agency ethics official or the person responsible for his assignment to file a written disqualification statement, or is required to do so by agency supplemental regulation issued pursuant to 5 C.F.R. §2635.105. 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: The supervisor of an employee of the Department of Education asks the employee to attend a meeting on his behalf on developing national standards for science education in secondary schools. When the employee arrives for the meeting, she realizes one of the participants is the president of Education Consulting Associates (ECA), a firm which has been awarded a contract to prepare a bulletin describing the Department's policies on science education standards. The employee's spouse has a subcontract with ECA to provide the graphics and charts that will be used in the bulletin. Because the employee realizes that the meeting will involve matters relating to the production of the bulletin, the employee properly decides that she must disqualify herself from participating in the discussions. After withdrawing from the meeting, the employee should notify her supervisor about the reason for her disqualification. She may elect to put her disqualification statement in writing, or to simply notify her supervisor orally. She may also elect to notify appropriate coworkers about her need to disqualify herself from this matter.

(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, an employee is no longer prohibited from acting in the particular 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.

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(2) Directed divestiture. An employee may be required to sell or otherwise divest himself of the disqualifying financial interest if his continued holding of that interest is prohibited by statute or by agency supplemental regulation issued in accordance with Sec. §2635.403(a) of this chapter, or if the agency determines in accordance with Sec. §2635.403(b) of this chapter 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.

**4.5.2.5.4. 5 C.F.R. § 2640.201 Exemptions for Interests in Mutual Funds,
Unit Investments Trust and Employee Benefit Plans**

(a) Diversified mutual funds and unit investment trusts. An employee may participate in any particular matter affecting one or more holdings of a diversified mutual fund or a diversified unit investment trust where the disqualifying financial interest in the matter arises because of the ownership of an interest in the fund or trust.

Example 1 to paragraph (a): An employee owns shares worth \$100,000 in several mutual funds whose portfolios contain stock in a small computer company. Each mutual fund prospectus describes the fund as a "management company," but does not characterize the fund as having a policy of concentrating its investments in any particular industry, business, single country (other than the U.S.) or bonds of a single State. The employee may participate in agency matters affecting the computer company.

Example 2 to paragraph (a): A nonsupervisory employee of the Department of Energy owns shares valued at \$75,000 in a mutual fund that expressly concentrates its holdings in the stock of utility companies. The employee may not rely on the exemption in paragraph (a) of this section to act in matters affecting a utility company whose stock is a part of the mutual fund's portfolio because the fund is not a diversified fund as defined in Sec. 2640.102(a). The employee may, however, seek an individual waiver under 18 U.S.C. 208(b)(1) permitting him to act.

Example 3: An FBI employee's husband owns interest in several mutual funds including \$35,000 in American Markets fund, \$20,000 in ABC Balanced Index fund and \$10,000 in XYZ Small Cap Class A fund. The interests of her husband are imputed to the employee. All three funds are diversified mutual funds because none of the funds have a stated policy of concentrating investments in an industry, business, single country other than the United States or bonds of a single state. Accordingly, even though her husband's interests are imputed to her, she can participate in matters affecting the underlying holdings of the funds under this exception.

(b) Sector mutual funds and sector unit investment trusts.

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(1) An employee may participate in any particular matter affecting one or more holdings of a sector mutual fund or a sector unit investment trust where the affected holding is not invested in the sector in which the fund or trust concentrates, and where the disqualifying financial interest in the matter arises because of ownership of an interest in the fund or unit investment trust.

(2)

(i) An employee may participate in a particular matter affecting one or more holdings of a sector mutual fund or a sector unit investment trust where the disqualifying financial interest in the matter arises because of ownership of an interest in the fund or the unit investment trust and the aggregate market value of interests in any sector fund or funds and any sector investment unit trust does not exceed \$50,000.

(ii) For purposes of calculating the \$50,000 de minimis amount in paragraph (b)(2)(i) of this section, an employee must aggregate the market value of all sector mutual funds and sector unit investment trusts in which he has a disqualifying financial interest and that concentrate in the same sector and have one or more holdings that may be affected by the particular matter.

Example 1 to paragraph (b): An employee of the Federal Reserve owns shares in the mutual fund described in the preceding example. In addition to holdings in utility companies, the mutual fund contains stock in certain regional banks and bank holding companies whose financial interests would be affected by an investigation in which the Federal Reserve employee would participate. The employee is not disqualified from participating in the investigation because the banks that would be affected are not part of the sector in which the fund concentrates.

Example 2 to paragraph (b): A health scientist administrator employed in the Public Health Service at the Department of Health and Human Services is assigned to serve on a Department wide task force that will recommend changes in how Medicare reimbursements will be made to health care providers. The employee owns \$35,000 worth of shares in the XYZ Health Sciences Fund, a sector mutual fund invested primarily in health-related companies such as pharmaceuticals, developers of medical instruments and devices, managed care health organizations, and acute care hospitals. The health scientist administrator may participate in the recommendations.

Example 3 to paragraph (b): The spouse of the employee in the previous Example owns \$40,000 worth of shares in ABC Specialized Portfolios: Healthcare, a sector mutual fund that also concentrates its investments in health-related companies. The two funds focus on the same sector and both contain holdings that may be affected by the particular matter. Because the aggregated value of the two funds exceeds \$50,000, the employee may not rely on the exemption.

(c) Employee benefit plans. An employee may participate in:

(1) Any particular matter affecting one or more holdings of an employee benefit plan, where the disqualifying financial interest in the matter arises from membership in:

(i) The Thrift Savings Plan for Federal employees described in 5 U.S.C. 8437;

(ii) A pension plan established or maintained by a State government or any political subdivision of a State government for its employees; or

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(iii) A diversified employee benefit plan, provided:

(A) The investments of the plan are administered by an independent trustee, and the employee, or other person specified in section 208(a) does not participate in the selection of the plan's investments or designate specific plan investments (except for directing that contributions be divided among several different categories of investments, such as stocks, bonds or mutual funds, which are available to plan participants); and

(B) The plan is not a profit-sharing or stock bonus plan.

Note to paragraph (c)(1): Employee benefit plans that are tax deferred under 26 U.S.C. 401(k) are not considered profit-sharing plans for purposes of this section. However, for the exemption to apply, 401(k) plans must meet the requirements of paragraph (c)(1)(iii)(A) of this section.

(2) Particular matters of general applicability, such as rulemaking, affecting the State or local government sponsor of a State or local government pension plan described in paragraph (c)(1)(ii) of this section where the disqualifying financial interest in the matter arises because of participation in the plan.

Example 1: An attorney terminates his position with a law firm to take a position with the Department of Justice. As a result of his employment with the firm, the employee has interests in a 401(k) plan, the assets of which are invested primarily in stocks chosen by an independent financial management firm. He also participates in a defined contribution pension plan maintained by the firm, the assets of which are stocks, bonds, and financial instruments. The plan is managed by an independent trustee. Assuming that the manager of the pension plan has a written policy of diversifying plan investments, the employee may act in matters affecting the plan's holdings. The employee may also participate in matters affecting the holdings of his 401(k) plan if the individual financial management firm that selects the plan's investments has a written policy of diversifying the plan's assets. Employee benefit plans that are tax deferred under 26 U.S.C. 401(k) are not considered profit-sharing or stock bonus plans for purposes of this part.

Example 2: An employee of the Department of Agriculture who is a former New York State employee has a vested interest in a pension plan established by the State of New York for its employees. She may participate in an agency matter that would affect a company whose stock is in the pension plan's portfolio. She also may participate in a matter of general applicability affecting all States, including the State of New York, such as the drafting and promulgation of a rule requiring States to expend additional resources implementing the Food Stamp program. Unless she obtains an individual waiver under 18 U.S.C. 208(b)(1), she may not participate in a matter involving the State of New York as a party, such as an application by the State for additional Federal funding for administrative support services, if that matter would affect the State's ability or willingness to honor its obligation to pay her pension benefits.

(d) Matters affecting mutual funds and unit investment trusts. In addition to participation in the particular matters affecting the holdings of mutual funds and unit investment trusts as permitted under paragraphs (a) and (b) of this section, an employee may participate in any particular matter of general applicability affecting a mutual fund or unit investment trust where the disqualifying financial interest arises because of the ownership of an interest in the mutual fund or unit investment trust.

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4.5.2.5.5. 5 C.F.R. § 2640.202 Exemptions for Interests in Securities

(a) De minimis exemption for matters involving parties. An employee may participate in any particular matter involving specific parties in which the disqualifying financial interest arises from the ownership by the employee, his spouse or minor children of securities issued by one or more entities affected by the matter, if:

- (1) The securities are publicly traded, or are long-term Federal Government, or are municipal securities; and
- (2) The aggregate market value of the holdings of the employee, his spouse, and his minor children in the securities of all entities does not exceed \$15,000.

Example 1 to paragraph (a): An employee owns 100 shares of publicly traded stock valued at \$3,000 in XYZ Corporation. As part of his official duties, the employee is evaluating bids for performing computer maintenance services at his agency and discovers that XYZ Corporation is one of the companies that has submitted a bid. The employee is not required to recuse himself from continuing to evaluate the bids.

Example 2 to paragraph (a): In the preceding example, the employee and his spouse each own \$8,000 worth of stock in XYZ Corporation, resulting in ownership of \$16,000 worth of stock by the employee and his spouse. The exemption in paragraph (a) of this section would not permit the employee to participate in the evaluation of bids because the aggregate market value of the holdings of the employee, spouse and minor children in XYZ Corporation exceeds \$15,000. The employee could, however, seek an individual waiver under 18 U.S.C. 208(b)(1) in order to participate in the evaluation of bids.

Example 3 to paragraph (a): An employee is assigned to monitor XYZ Corporation's performance of a contract to provide computer maintenance services at the employee's agency. At the time the employee is first assigned these duties, he owns publicly traded stock in XYZ Corporation valued at less than \$15,000. During the time the contract is being performed, however, the value of the employee's stock increases to \$17,500. When the employee knows that the value of his stock exceeds \$15,000, he must disqualify himself from any further participation in matters affecting XYZ Corporation or seek an individual waiver under 18 U.S.C. 208(b)(1). Alternatively, the employee may divest the portion of his XYZ stock that exceeds \$15,000. This can be accomplished through a standing order with his broker to sell when the value of the stock exceeds \$15,000.

(b) De minimis exemption for matters affecting nonparties. An employee may participate in any particular matter involving specific parties in which the disqualifying financial interest arises from the ownership by the employee, his spouse, or minor children of securities issued by one or more entities that are not parties to the matter but that are affected by the matter, if:

- (1) The securities are publicly traded, or are long-term Federal Government or municipal securities; and
- (2) The aggregate market value of the holdings of the employee, his spouse and minor children in the securities of all affected entities (including securities exempted under paragraph (a) of this section) does not exceed \$25,000.

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Example 1 to paragraph (b): A Food and Drug Administration advisory committee is asked to review a new drug application from Alpha Drug Co. for a new lung cancer drug. A member of the advisory committee owns \$20,000 worth of stock in Mega Drug Co., which manufactures the only similar lung cancer drug on the market. If approved, the Alpha Drug Co.'s drug would directly compete with the drug sold by the Mega Drug Co., resulting in decreased sales of its lung cancer drug. The committee member may participate in the review of the new drug.

(c) De minimis exemption for matters of general applicability.

(1) An employee may participate in any particular matter of general applicability, such as rulemaking, in which the disqualifying financial interest arises from the ownership by the employee, his spouse or minor children of securities issued by one or more entities affected by the matter, if:

(i) The securities are publicly traded, or are municipal securities, the market value of which does not exceed:

(A) \$25,000 in any one such entity; and

(B) \$50,000 in all affected entities; or

(ii) The securities are long-term Federal Government securities, the market value of which does not exceed \$50,000.

(2) For purposes of this paragraph (b), the value of securities owned by the employee, his spouse, and minor children must be aggregated in applying the exemption.

Example 1 to paragraph (c): The Bureau of Export Administration at the Department of Commerce is in the process of formulating a regulation concerning exportation of portable computers. The regulation will affect all domestic companies that sell portable computers. An employee of the Department who is assisting in drafting the regulation owns \$17,000 worth of stock in Comp America and \$20,000 worth of stock in XYZ Computer Inc. Even though the employee owns \$37,000 worth of stock in companies that will be affected by the regulation, she may participate in drafting the regulation because the value of the securities she owns does not exceed \$25,000 in any one affected company and the total value of stock owned in all affected companies does not exceed \$50,000.

(d) Exemption for certain Federal Government securities. An employee may participate in any particular matter in which the disqualifying financial interest arises from the ownership of short-term Federal Government securities or from U.S. Savings bonds.

(e) Exemption for interests of tax-exempt organizations. An employee may participate in any particular matter in which the disqualifying financial interest arises from the ownership of publicly traded or municipal securities, or long-term Federal Government securities by an organization which is tax-exempt pursuant to 26 U.S.C. 501(c) (3) or (4), and of which the employee is an unpaid officer, director, or trustee, or an employee, if:

(1) The matter affects only the organization's investments, not the organization directly;

(2) The employee plays no role in making investment decisions for the organization, except for participating in the decision to invest in several different categories of investments such as stocks, bonds, or mutual funds; and

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(3) The organization's only relationship to the issuer, other than that which arises from routine commercial transactions, is that of investor.

Example 1: An employee of the Federal Reserve is a director of the National Association to Save Trees (NAST), an environmental organization that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. The employee knows that NAST has an endowment fund that is partially invested in the publicly traded stock of Computer Inc. The employee's position at the Federal Reserve involves the procurement of computer software, including software marketed by Computer Inc. The employee may participate in the procurement of software from Computer Inc. provided that he is not involved in selecting NAST's investments, and that NAST has no relationship to Computer Inc. other than as an investor in the company and routine purchaser of Computer Inc. software.

(f) Exemption for certain interests of general partners. An employee may participate in any particular matter in which the disqualifying financial interest arises from:

(1) The ownership of publicly traded securities, long-term Federal

Government securities, or municipal securities by the employee's general partner, provided:

(i) Ownership of the securities is not related to the partnership between the employee and his general partner, and

(ii) The value of the securities does not exceed \$200,000; or

(2) Any interest of the employee's general partner if the employee's relationship to the general partner is as a limited partner in a partnership that has at least 100 limited partners.

Example 1: An employee of the Department of Transportation is a general partner in a partnership that owns commercial property. The employee knows that one of his partners owns stock in an aviation company valued at \$100,000 because the stock has been pledged as collateral for the purchase of the commercial property by the partnership. In the absence of an individual waiver under 18 U.S.C. 208(b)(1), the employee may not act in a matter affecting the aviation company. Because the stock has been pledged as collateral, ownership of the securities is related to the partnership between the employee and his general partner.

Example 2: An employee of the Pension Benefit Guaranty Corporation (PBGC) has a limited partnership interest in Ambank Partners, a large partnership with more than 500 limited partners. The partnership assets are invested in the securities of various financial institutions. Ambank's general partner is Capital Investment Services, an investment firm whose pension plan for its own employees is being examined by the PBGC for possible unfunded liabilities. Even though the employee's general partner (Capital Investment Services) has a financial interest in PBGC's review of the pension plan, the employee may participate in the review because his relationship with his general partner is that of a limited partner in a partnership that has at least 100 limited partners.

4.5.2.5.6. 5 C.F.R. § 2640.203 Miscellaneous Exemptions

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(a) Hiring decisions. An employee may participate in a hiring decision involving an applicant who is currently employed by a corporation that issues publicly traded securities, if the disqualifying financial interest arises from:

- (1) Ownership of publicly traded securities issued by the corporation; or
- (2) Participation in a pension plan sponsored by the corporation.

(b) Employees on leave from institutions of higher education. An employee on a leave of absence from an institution of higher education may participate in any particular matter of general applicability affecting the financial interests of the institution from which he is on leave, provided that the matter will not have a special or distinct effect on that institution other than as part of a class.

Example 1: An employee at the Department of Defense (DOD) is on a leave of absence from his position as a tenured Professor of Engineering at the University of California (UC) at Berkeley. While at DOD, he is assigned to assist in developing a regulation which will contain new standards for the oversight of grants given by DOD. Even though the University of California at Berkeley is a DOD grantee, and will be affected by these new monitoring standards, the employee may participate in developing the standards because UC Berkeley will be affected only as part of the class of all DOD grantees. However, if the new standards would affect the employee's own financial interest, such as by affecting his tenure or his salary, the employee could not participate in the matter unless he first obtains an individual waiver under section 208(b)(1).

Example 2: An employee on leave from a university could not participate in the development of an agency program of grants specifically designed to facilitate research in jet propulsion systems where the employee's university is one of just two or three universities likely to receive a grant under the new program. Even though the grant announcement is open to all universities, the employee's university is among the very few known to have facilities and equipment adequate to conduct the research. The matter would have a distinct effect on the institution other than as part of a class.

(c) Multi-campus institutions of higher education. An employee may participate in any particular matter affecting one campus of a State multi-campus institution of higher education, if the employee's disqualifying financial interest is employment in a position with no multi-campus responsibilities at a separate campus of the same multi-campus institution.

Example 1: A special Government employee (SGE) member of an advisory committee convened by the National Science Foundation is a full-time professor in the School of Engineering at one campus of a State university. The SGE may participate in formulating the committee's recommendation to award a grant to a researcher at another campus of the same State university system.

Example 2: A member of the Board of Regents at a State university is asked to serve on an advisory committee established by the Department of Health and Human Services to consider applications for grants for human genome research projects. An application from another university that is part of the same State system will be reviewed by the committee. Unless he receives an individual waiver under section 208(b)(1) or (b)(3), the advisory committee member may not participate in matters affecting the second university that is part of the State system

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because as a member of the Board of Regents, he has duties and responsibilities that affect the entire State educational system.

(d) Exemptions for financial interests arising from Federal Government employment or from Social Security or veterans' benefits. An employee may participate in any particular matter where the disqualifying financial interest arises from Federal Government or

Federal Reserve Bank salary or benefits, or from Social Security or veterans' benefits, except an employee may not:

- (1) Make determinations that individually or specially affect his own salary and benefits; or
- (2) Make determinations, requests, or recommendations that individually or specially relate to, or affect, the salary or benefits of any other person specified in section 208.

Example 1: An employee of the Office of Management and Budget may vigorously and energetically perform the duties of his position even though his outstanding performance would result in a performance bonus or other similar merit award.

Example 2: A policy analyst at the Defense Intelligence Agency may request promotion to another grade or salary level. However, the analyst may not recommend or approve the promotion of her general partner to the next grade.

Example 3: An engineer employed by the National Science Foundation may request that his agency pay the registration fees and appropriate travel expenses required for him to attend a conference sponsored by the Engineering Institute of America. However, the employee may not approve payment of his own travel expenses and registration fees unless he has been delegated, in advance, authority to make such approvals in accordance with agency policy.

Example 4: A GS-14 attorney at the Department of Justice may review and make comments about the legal sufficiency of a bill to raise the pay level of all Federal employees paid under the General Schedule even though her own pay level, and that of her spouse who works at the Department of Labor, would be raised if the bill were to become law.

Example 5: An employee of the Department of Veterans Affairs (VA) may assist in drafting a regulation that will provide expanded hospital benefits for veterans, even though he himself is a veteran who would be eligible for treatment in a hospital operated by the VA.

Example 6: An employee of the Office of Personnel Management may participate in discussions with various health insurance providers to formulate the package of benefits that will be available to Federal employees who participate in the Government's Federal Employees Health Benefits Program, even though the employee will obtain health insurance from one of these providers through the program.

Example 7: An employee of the Federal Supply Service Division of the General Services Administration (GSA) may participate in GSA's evaluation of the feasibility of privatizing the entire Federal Supply Service, even though the employee's own position would be eliminated if the Service were privatized.

Example 8: Absent an individual waiver under section 208(b)(1), the employee in the preceding example could not participate in the implementation of a GSA plan to create an employee-owned private corporation which would carry out Federal Supply Service functions under contract with

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GSA. Because implementing the plan would result not only in the elimination of the employee's Federal position, but also in the creation of a new position in the new corporation to which the employee would be transferred, the employee would have a disqualifying financial interest in the matter arising from other than Federal salary and benefits, or Social Security or veterans benefits.

Example 9: A career member of the Senior Executive Service (SES) at the Internal Revenue Service (IRS) may serve on a performance review board that makes recommendations about the performance awards that will be awarded to other career SES employees at the IRS. The amount of the employee's own SES performance award would be affected by the board's recommendations because all SES awards are derived from the same limited pool of funds. However, the employee's activities on the board involve only recommendations, and not determinations that individually or specially affect his own award. Additionally, 5 U.S.C. 5384(c)(2) requires that a majority of the board's members be career SES employees.

Example 10: In carrying out a reorganization of the Office of General Counsel (OGC) of the Federal Trade Commission, the Deputy General Counsel is asked to determine which of five Senior Executive Service (SES) positions in the OGC to abolish. Because her own position is one of the five SES positions being considered for elimination, the matter is one that would individually or specially affect her own salary and benefits and, therefore, the Deputy may not decide which position should be abolished.

Note to paragraph (d): This exemption does not permit an employee to take any action in violation of any other statutory or regulatory requirement, such as the prohibition on the employment of relatives at 5 U.S.C. 3110.

(e) Commercial discount and incentive programs. An employee may participate in any particular matter affecting the sponsor of a discount, incentive, or other similar benefit program if the disqualifying financial interest arises because of participation in the program, provided:

- (1) The program is open to the general public; and
- (2) Participation in the program involves no other financial interest in the sponsor, such as stockholding.

Example 1: An attorney at the Pension Benefit Guaranty Corporation who is a member of a frequent flier program sponsored by Alpha Airlines may assist in an action against Alpha for failing to make required payments to its employee pension fund, even though the agency action will cause Alpha to disband its frequent flier program.

(f) Mutual insurance companies. An employee may participate in any particular matter affecting a mutual insurance company if the disqualifying financial interest arises because of an interest as a policyholder, unless the matter would affect the company's ability to pay claims required under the terms of the policy or to pay the cash value of the policy.

Example 1: An administrative law judge at the Department of Labor receives dividends from a mutual insurance company which he takes in the form of reduced premiums on his life insurance policy. The amount of the dividend is based upon the company's overall profitability. Nevertheless, he may preside in a Department hearing involving a major corporation insured by the same company even though the insurance company will have to pay the corporation's penalties and other costs if the Department prevails in the hearing.

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Example 2: An employee of the Department of Justice is assigned to prosecute a case involving the fraudulent practices of an issuer of junk bonds. While developing the facts pertinent to the case, the employee learns that the mutual life insurance company from which he holds a life insurance policy has invested heavily in these junk bonds. If the Government succeeds in its case, the bonds will be worthless and the corresponding decline in the insurance company's investments will impair the company's ability to pay claims under the policies it has issued. The employee may not continue assisting in the prosecution of the case unless he obtains an individual waiver pursuant to section 208(b)(1).

(g) Exemption for employment interests of special Government employees serving on advisory committees. A special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. app.) may participate in any particular matter of general applicability where the disqualifying financial interest arises from his non-Federal employment or non-Federal prospective employment, provided that the matter will not have a special or distinct effect on the employee or employer other than as part of a class. For purposes of this paragraph, "disqualifying financial interest" arising from non-Federal employment does not include the interests of a special Government employee arising from the ownership of stock in his employer or prospective employer.

Example 1: A chemist employed by a major pharmaceutical company has been appointed to serve on an advisory committee established to develop recommendations for new standards for AIDS vaccine trials involving human subjects. Even though the chemist's employer is in the process of developing an experimental AIDS vaccine and therefore will be affected by the new standards, the chemist may participate in formulating the advisory committee's recommendations. The chemist's employer will be affected by the new standards only as part of the class of all pharmaceutical companies and other research entities that are attempting to develop an AIDS vaccine.

Example 2: The National Cancer Institute (NCI) has established an advisory committee to evaluate a university's performance of an NCI grant to study the efficacy of a newly developed breast cancer drug. An employee of the university may not participate in the evaluation of the university's performance because it is not a matter of general applicability.

Example 3: An engineer whose principal employment is with a major Department of Defense (DOD) contractor is appointed to serve on an advisory committee established by DOD to develop concepts for the next generation of laser-guided missiles. The engineer's employer, as well as a number of other similar companies, has developed certain missile components for DOD in the past, and has the capability to work on aspects of the newer missile designs under consideration by the committee. The engineer owns \$20,000 worth of stock in his employer. Because the exemption for the employment interests of special Government employees serving on advisory committees does not extend to financial interests arising from the ownership of stock, the engineer may not participate in committee matters affecting his employer unless he receives an individual waiver under section 208(b)(1) or (b)(3), or determines whether the exemption for interests in securities at Sec. 2640.202(b) applies.

(h) Directors of Federal Reserve Banks.

...

(This portion of the Regulation has been omitted, as it is not applicable.)

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(i) Medical products. A special Government employee serving on an advisory committee within the meaning of the Federal Advisory Committee Act (5 U.S.C. app.) may participate in Federal advisory committee matters concerning medical products if the disqualifying financial interest arises from:

- (1) Employment with a hospital or other similar medical facility whose only interest in the medical product or device is purchase of it for use by, or sale to, its patients; or
- (2) The use or prescription of medical products for patients.

(j) Nonvoting members of standing technical advisory committees established by the Food and Drug Administration. A special Government employee serving as a nonvoting representative member of an advisory committee established by the Food and Drug Administration pursuant to the requirements of the Federal Advisory Committee Act (5 U.S.C. app.) and appointed under a statutory authority requiring the appointment of representative members, may participate in any particular matter affecting a disqualifying financial interest in the class which the employee represents. Nonvoting representative members of Food and Drug Administration advisory committees are described in 21 C.F.R. 14.80(b)(2), 14.84, 14.86, and 14.95(a).

Example 1: The FDA's Medical Devices Advisory Committee is established pursuant to 21 U.S.C. 360c(b), which requires that each panel of the Committee include one nonvoting industry representative and one nonvoting consumer representative. An industry representative on the Ophthalmic Devices Panel of this Committee has been appointed as a special Government employee, in accordance with the procedures described at 14 C.F.R. 14.84. The special Government employee may participate in Panel discussions concerning the premarket approval application for a silicone posterior chamber intraocular lens manufactured by MedInc, even though she is employed by, and owns stock in, another company that manufactures a competing product. However, a consumer representative who serves as a special Government employee on the same Panel may not participate in Panel discussions if he owns \$30,000 worth of stock in MedInc unless he first obtains an individual waiver under 18 U.S.C. 208 (b)(1) or (b)(3).

(k) Employees of the Tennessee Valley Authority.

...

(This portion of the Regulation has been omitted, as it is not applicable.)

(l) Exemption for financial interests of non-Federal government employers in the decennial census. An employee of the Bureau of the Census at the United States Department of Commerce, who is also an employee of a State, local, or tribal government, may participate in the decennial census notwithstanding the disqualifying financial interests of the employee's non-Federal government employer in the census provided that the employee:

- (1) Does not serve in a State, local, or tribal government position which is filled through public election;
- (2) Was hired for a temporary position under authority of 13 U.S.C. 23; and
- (3) Is serving in a Local Census Office or an Accuracy and Coverage Evaluation function position as an enumerator, crew leader, or field operations supervisor.

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(m) Official participation in nonprofit organizations. An employee may participate in any particular matter where the disqualifying financial interest is that of a nonprofit organization in which the employee serves (or is seeking or has an arrangement to serve) solely in an official capacity as an officer, a director, or a trustee.

Note to paragraph (m): Nothing in this paragraph shall be deemed independent authority for an agency to assign an employee to serve in an official capacity with a particular nonprofit organization. Agencies will make such determinations based on evaluations of their own statutory authorities and missions. Individual agency decisions to permit (or not permit) an employee to serve in an official capacity necessarily involve a range of legal, policy, and managerial considerations, and nothing in this paragraph is intended to interfere with an agency's discretion to assign official duties and limit such assignments as the agency deems appropriate.

4.5.2.5.7. 5 C.F.R. § 2640.204 Prohibited Financial Interests

None of the exemptions set forth in Sec. Sec. 2640.201, 2640.202, or 2640.203 apply to any financial interest held or acquired by an employee, his spouse, or minor child in violation of a statute or agency supplemental regulation issued in accordance with 5 C.F.R. §2635.105, or that is otherwise prohibited under 5 C.F.R. §2635.403(b).

Example 1 to Sec. 2640.204: The Office of the Comptroller of the Currency (OCC), in a regulation that supplements part §2635 of this chapter, prohibits certain employees from owning stock in commercial banks. If an OCC employee purchases stock valued at \$2,000 in contravention of the regulation, the exemption at Sec. 2640.202(a) for interests arising from the ownership of no more than \$15,000 worth of publicly traded stock will not apply to the employee's participation in matters affecting the bank.

4.5.2.5.8. 5 C.F.R. § 2640.205 Employee Responsibility

Prior to taking official action in a matter which an employee knows would affect his financial interest or the interest of another person specified in 18 U.S.C. 208(a), an employee must determine whether one of the exemptions in Sec. Sec. 2640.201, 2640.202, or 2640.203 would permit his action notwithstanding the existence of the disqualifying interest. An employee who is unsure whether an exemption is applicable in a particular case, should consult an agency ethics official prior to taking action in a particular matter.

4.5.2.5.9. 5 C.F.R. § 2640.206 Existing Agency Exemptions

An employee who, prior to January 17, 1997, acted in an official capacity in a particular matter in which he had a financial interest, will be deemed to have acted in accordance with applicable regulations if he acted in reliance on an exemption issued by his employing Government agency pursuant to 18 U.S.C. 208(b)(2), as in effect prior to November 30, 1989.

4.5.2.5.10. Waivers, General

FBI Policy on waivers: waivers discussed in this section are not favored as a matter of FBI policy and are very seldom granted. FBI employees may contact OIC for additional information.

4.5.2.5.11. 5 C.F.R. § 2640.301 Waivers Issued Pursuant to 18 U.S.C. 208 (b)(1)

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(a) Requirements for issuing an individual waiver under 18 U.S.C. 208(b)(1). Pursuant to 18 U.S.C. 208(b)(1), an agency may determine in an individual case that a disqualifying financial interest in a particular matter or matters is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. Upon making that determination, the agency may then waive the employee's disqualification notwithstanding the financial interest, and permit the employee to participate in the particular matter. Waivers issued pursuant to section 208(b)(1) should comply with the following requirements:

- (1) The disqualifying financial interest, and the nature and circumstances of the particular matter or matters, must be fully disclosed to the Government official responsible for appointing the employee to his position (or other Government official to whom authority to issue such a waiver for the employee has been delegated);
- (2) The waiver must be issued in writing by the Government official responsible for appointing the employee to his position (or other Government official to whom the authority to issue such a waiver for the employee has been delegated);
- (3) The waiver should describe the disqualifying financial interest, the particular matter or matters to which it applies, the employee's role in the matter or matters, and any limitations on the employee's ability to act in such matters;
- (4) The waiver shall be based on a determination that the disqualifying financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government. Statements concerning the employee's good character are not material to, nor a basis for making, such a decision;
- (5) The waiver must be issued prior to the employee taking any action in the matter or matters; and
- (6) The waiver may apply to both present and future financial interests, provided the interests are described with sufficient specificity.

Note to paragraph (a): The disqualifying financial interest, the particular matter or matters to which the waiver applies, and the employee's role in such matters do not need to be described with any particular degree of specificity. For example, if a waiver were to apply to all matters which an employee would undertake as part of his official duties, the waiver document would not have to enumerate those duties. The information contained in the waiver, however, should provide a clear understanding of the nature and identity of the disqualifying financial interest, the matters to which the waiver will apply, and the employee's role in such matters.

(b) Agency determination concerning substantiality of the disqualifying financial interest. In determining whether a disqualifying financial interest is sufficiently substantial to be deemed likely to affect the integrity of the employee's services to the Government, the responsible official may consider the following factors:

- (1) The type of interest that is creating the disqualification (e.g. stock, bonds, real estate, other securities, cash payment, job offer, or enhancement of a spouse's employment);
- (2) The identity of the person whose financial interest is involved, and if the interest is not the employee's, the relationship of that person to the employee;

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- (3) The dollar value of the disqualifying financial interest, if it is known or can be estimated (e.g. the amount of cash payment which may be gained or lost, the salary of the job which will be gained or lost, the predictable change in either the market value of the stock or the actual or potential profit or loss or cost of the matter to the company issuing the stock, the change in the value of real estate or other securities);
- (4) The value of the financial instrument or holding from which the disqualifying financial interest arises (e.g. the face value of the stock, bond, other security or real estate) and its value in relationship to the individual's assets. If the disqualifying financial interest is that of a general partner or organization specified in section 208, this information must be provided only to the extent that it is known by the employee; and
- (5) 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.
- (6) Other factors which may be taken into consideration include:
 - (i) The sensitivity of the matter;
 - (ii) The need for the employee's services in the particular matter; and
 - (iii) Adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that the integrity of the employee's services would be questioned by a reasonable person.

4.5.2.5.12. 5 C.F.R. § 2640.302 Waivers Issued Pursuant to 18 U.S.C. 208 (b)(3)

(a) Requirements for issuing an individual waiver under 18 U.S.C. 208(b)(3). Pursuant to 18 U.S.C. 208(b)(3), an agency may determine in an individual case that the prohibition of 18 U.S.C. 208(a) should not apply to a special Government employee serving on, or an individual being considered for, appointment to an advisory committee established under the Federal Advisory Committee Act, notwithstanding the fact that the individual has one or more financial interests that would be affected by the activities of the advisory committee. The agency's determination must be based on a certification that the need for the employee's services outweighs the potential for a conflict of interest created by the financial interest involved. Waivers issued pursuant to 18 U.S.C. 208(b)(3) should comply with the following requirements:

- (1) The advisory committee upon which the individual is serving, or will serve, is an advisory committee within the meaning of the Federal Advisory Committee Act, 5 U.S.C. app.;
- (2) The waiver must be issued in writing by the Government official responsible for the individual's appointment (or other Government official to which authority to issue such waivers has been delegated) after the official reviews the financial disclosure report filed by the individual pursuant to the Ethics in Government Act of 1978;
- (3) The waiver must include a certification that the need for the individual's services on the advisory committee outweighs the potential for a conflict of interest;
- (4) The facts upon which the certification is based should be fully described in the waiver, including the nature of the financial interest, and the particular matter or matters to which the waiver applies;

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- (5) The waiver should describe any limitations on the individual's ability to act in the matter or matters;
 - (6) The waiver must be issued prior to the individual taking any action in the matter or matters; and
 - (7) The waiver may apply to both present and future financial interests of the individual, provided the interests are described with sufficient specificity.
- (b) Agency certification concerning need for individual's services. In determining whether the need for an individual's services on an advisory committee outweighs the potential for a conflict of interest created by the disqualifying financial interest, the responsible official may consider the following factors:
- (1) The type of interest that is creating the disqualification (e.g. stock, bonds, real estate, other securities, cash payment, job offer, or enhancement of a spouse's employment);
 - (2) The identity of the person whose financial interest is involved, and if the interest is not the individual's, the relationship of that person to the individual;
 - (3) The uniqueness of the individual's qualifications;
 - (4) The difficulty of locating a similarly qualified individual without a disqualifying financial interest to serve on the committee;
 - (5) The dollar value of the disqualifying financial interest, if it is known or can be estimated (e.g. the amount of cash payment which may be gained or lost, the salary of the job which will be gained or lost, the predictable change in either the market value of the stock or the actual or potential profit or loss or cost of the matter to the company issuing the stock, the change in the value of real estate or other securities);
 - (6) The value of the financial instrument or holding from which the disqualifying financial interest arises (e.g. the face value of the stock, bond, other security or real estate) and its value in relationship to the individual's assets. If the disqualifying financial interest is that of a general partner or organization specified in section 208, this information must be provided only to the extent that it is known by the employee; and
 - (7) The extent to which the disqualifying financial interest will be affected individually or particularly by the actions of the advisory committee.

4.5.2.5.13. 5 C.F.R. § 2640.303 Consultation and Notification Regarding Waivers Issued Pursuant to 18 U.S.C. 208 (b)(3)

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 Sec. Sec. 2640.301 and 2640.302. A copy of each such waiver is to be forwarded to the Director of the Office of Government Ethics.

4.5.2.5.14. 5 C.F.R. § 2640.304 Public Availability of Agency Waivers

(a) Availability. A copy of an agency waiver issued pursuant to 18 U.S.C. 208 (b)(1) or (b)(3) shall be made available upon request to the public by the issuing agency. Public release of waivers shall be in accordance with the procedures set forth in section 105 of the Ethics in Government Act of 1978, as amended. Those procedures are described in 5 C.F.R. 2634.603.

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(b) Limitations on availability. In making a waiver issued pursuant to 18 U.S.C. 208 (b)(1) or (b)(3) publicly available, an agency:

- (1) May withhold from public disclosure any information contained in the waiver that would be exempt from disclosure pursuant to 5 U.S.C. 552; and
- (2) Shall withhold from public disclosure information in a waiver issued pursuant to 18 U.S.C. 208(b)(3) concerning an individual's financial interest which is more extensive than that required to be disclosed by the individual in his financial disclosure report under the Ethics in Government Act of 1978, as amended, or which is otherwise subject to a prohibition on public disclosure under law.

[Employees should contact OIC for additional information.]

4.5.3. Other Conflict of Interest Issues

4.5.3.1. 5 C.F.R. § 2635.501 through § 2635.503 Subpart E Impartiality in Performing Official Duties

(For further information, See Section 4.6 of this Guide)

4.5.3.2. 5 C.F.R. § 2635.601 through § 2635.606 Subpart F Seeking Other Employment

(For further information, See Section 4.8.2.7 of this Guide)

4.5.3.3. 5 C.F.R. § 2635.801 through § 2635.805 Subpart H Outside Activities Related to Outside Employment and Activities

(For further information, See Sections 4.8.2.1-.5 of this Guide)

4.5.3.4. 5 C.F.R. § 2635.807 Subpart H Outside Activities Related to Teaching, Speaking and Writing

(For further information, See Section 4.9 of this Guide)

4.5.3.5. 5 C.F.R. § 2635.808 Subpart H Outside Activities Related to Fundraising

(For further information, See Chapter 8 of this Guide)

4.5.3.6. 5 C.F.R. § 2635.809 Subpart H Outside Activities Related to Paying Just Financial Obligations

4.5.3.7. Financial Relations with Witnesses, Subjects, and Individuals Furnishing Information to the FBI

(See section 4.7 of this Guide)

4.5.3.8. Restriction on Financial Involvement with Employees, Relatives, or Friends of Employees

(See section 4.7 of this Guide)

4.5.3.9. Outside Employment and Possible Conflicts of Interest

(See section 4.8.5 of this Guide)

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4.6. Impartiality in Performing Official Duties

FBI employees must always act and appear to act impartially in the conduct of their official duties. The basic requirement is to treat similarly situated people and entities in the same manner each and every time. The FBI does not play favorites. We enforce the law and meet our other mission requirements without fear or favor.

This Section inevitably overlaps many other ethical considerations discussed elsewhere in this Guide. For example, conflicting financial interests (*see* Section 4.5), misuse of position (*see* Section 4.7), post-Government service employment (*see* Chapter 6), political activities (*see* Chapter 7) and gifts (*see* Section 4.3) all involve legal and ethical questions related in some way to ensuring each FBI employee acts impartially in every official action.

Certain personal and outside business relationships immediately trigger concerns about an employee's impartiality which, if not addressed, can erode the public's perception of our institutional fairness. When an employee's official duties impact on the employee's own financial interests, or those of the employee's family or personal associates, maintaining impartiality and the appearance of impartiality is of paramount importance to mission success.

This Section examines how the Standards of Conduct attempt to preserve our individual and institutional impartiality. It identifies what types of relationships must be considered when evaluating impartiality, the types of employee actions that could impact those relationships, and the circumstances under which an employee's impartiality must be reviewed.

4.6.1. Office of Government Ethics Regulations, Impartiality in Performing Official Duties

4.6.1.1. 5 C.F.R. § 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 services is subject, in 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 participation 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

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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 for the in subparts D or F of this part apply and only a statutory waiver or exemption, as described 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. Similarly, where the employee meets all prerequisites for the application of one of the exemptions set forth in subpart B of part 2640 of this chapter, that also constitutes a determination that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of agency programs and operations.

4.6.1.2. 5 C.F.R. § 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/she has informed the agency designee (The FBI's "agency designee" is the FBI Deputy Designated Agency Ethics Official (DDAEO)) 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 (your CDC, Ethics Counselor or any OIC Ethics Attorney) 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 the 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.

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(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 (If there is any controversy concerning whether or not a relative has a "close personal relationship" with an employee, the FBI DDAEO shall be consulted to resolve the issue);

Example: An Agent and her cousin grew up in the same household as children and have maintained close contact ever since. The Agent is assigned to a case investigating corruption in a local police force on which her cousin serves. The Agent has a covered relationship with her relative and should report the facts to her supervisor because the Agent's impartiality in investigating the case may be questioned by a reasonable member of the American public.

(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 as 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. (However, an FBI employee's activities in connection with partisan political candidates, partisan political parties or partisan political campaigns are limited by law. See Chapter 7 of this Guide for more information on political activities.)

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

See Section 6.6.2.8. of this Guide for this definition.

(3) *particular matter involving specific parties* has the meaning set forth in 5 C.F.R. §2641.201(h). (Editors Note: The old section was superseded; to avoid confusion the new definition is reprinted here) 5 C.F.R. 2641.201(h) states:

(h) *Particular matter involving a specific party or parties* -- (1) *Basic concept.* The prohibition applies only to communications or appearances made in connection with a "particular matter involving a specific party or parties." Although the statute defines "particular matter" broadly to include "any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding" ... only those particular matters that involve a specific party or parties fall within the prohibition ... Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identified parties, such as a specific contract, grant, license,

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product approval application, enforcement action, administrative adjudication, or court case.

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 a 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 the 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 4a: The FBI hires a technician from ABC Corp., a large Telecom provider, and the new employee is assigned to a project that would update Bureau Telecom hardware. Six months later, the FBI decides to start a procurement to purchase hardware upgrades and ABC Corp. is one of 5 bidders on the contract. Even though there are no monetary ties between the employee and ABC Corp., because the employee's impartiality could be called into question if he is personally and substantially involved in the procurement, the employee should be assigned other duties not related to the procurement.

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 the agency designee (the FBI DDAEO).* Where he has information concerning a potential appearance problem arising from the financial interest of a member of the

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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 the 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 that 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 an agency designee (the FBI DDAEO).* 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/herself from participation in the matter on the basis of an appearance problem involving the same circumstances that have been considered by the agency designee.

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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 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 the 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 FBI ethics official, or the person responsible for his/her assignment to file a written

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disqualification statement. However, an employee may elect to create a record of his actions and 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.

**4.6.1.3. 28 C.F.R. § 45.2 Additional Department of Justice Requirement:
Disqualification arising from personal or political relationship**

(a) Unless authorized under paragraph (b) of this section, no employee shall participate in a criminal investigation or prosecution if he has a personal or political relationship with:

- (1) Any person or organization substantially involved in the conduct that is the subject of the investigation or prosecution; or
- (2) Any person or organization which he knows has a specific and substantial interest that would be directly affected by the outcome of the investigation or prosecution.

(b) An employee assigned to or otherwise participating in a criminal investigation or prosecution who believes that his participation may be prohibited by paragraph (a) of this section shall report the matter and all attendant facts and circumstances to his supervisor at the level of section chief or the equivalent or higher. If the supervisor determines that a personal or political relationship exists between the employee and a person or organization described in paragraph (a) of this section, he shall relieve the employee from participation unless he determines further, in writing, after full consideration of all the facts and circumstances, that:

- (1) The relationship will not have the effect of rendering the employee's service less than fully impartial and professional; and
- (2) The employee's participation would not create an appearance of a conflict of interest likely to affect the public perception of the integrity of the investigation or prosecution.

(c) For the purposes of this section:

- (1) *Political relationship* means a close identification with an elected official, a candidate (whether or not successful) for elective, public office, a political party, or a campaign organization, arising from service as a principal adviser thereto or a principal official thereof; and
- (2) *Personal relationship* means a close and substantial connection of the type normally viewed as likely to induce partiality. An employee is presumed to have a personal relationship with his father, mother, brother, sister, child and spouse. Whether relationships (including friendships) of an employee to other persons or organizations are "personal" must be judged on an individual basis with due regard given to the subjective opinion of the employee.

Example: An FBI mobile surveillance team (MST) member is assigned to conduct a surveillance on a person who turns out to be a former high school acquaintance with whom the employee has not had contact since graduating from high school 9 years earlier. Since the focus of the surveillance involves an acquaintance 9 years removed, the matter need not be reported to her supervisor.

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(d) This section pertains to agency management and is not intended to create rights enforceable by private individuals or organizations.

4.6.2. Nepotism and Interpersonal Relationships

See Sections 4.7.2 and 4.7.7 of this Guide.

4.6.3. 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/she 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

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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.

4.7. Misuse of Position

Misusing official authority, taking improper advantage of our position, the FBI name or the trust placed in us as Federal employees for the personal benefit of ourselves or others are contrary to the notion of public service and must be avoided. Simply put, the Standards of Conduct for the Executive Branch require FBI employees to make proper use of Government authority, time, and property and safeguard information and resources to which they have access because of their Federal position.

4.7.1. Office of Government Ethics Regulations Related to Misuse of Position and Nonpublic Information

4.7.1.1. 5 C.F.R. §2635.101 Basic obligation of public service

See 6.6.2.6. 5 C.F.R. §2635.101 Basic Obligation of Public Service.

4.7.1.2. 5 C.F.R. §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 [*See 5 C.F.R. §2635.702*];
- (b) Use of nonpublic information [*See 5 C.F.R. §2635.703*];
- (c) Use of Government property [*See 5 C.F.R. §2635.704*]; and
- (d) Use of official time. [*See 5 C.F.R. §2635.705*].

4.7.1.3. 5 C.F.R. §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

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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.

Example 3: A special agent (SA) goes to a private nightclub while off duty and shows his badge to the "bouncer" to gain entry to the night club and avoid payment of the cover charge. The SA has violated the prohibition against use of public office for private gain and misused the official indicia of his office.

Example 4: An intelligence analyst (IA), with access to official FBI stationery, uses it to request a local magistrate to continue her personal traffic court hearing. While requesting a continuance is within the IA's rights, her use of FBI letterhead to do so is a misuse of FBI authority and property.

Example 5: A special agent (SA) receives a traffic ticket from a local police department for exceeding the speed limit in a BUCAR while performing routine FBI business. His SAC calls the local Police Chief to ask that the ticket be dismissed as a "professional courtesy." The SAC's call constitutes a misuse of position. Violating traffic laws is not in accordance with the performance of an SA's duties in non-emergency situations but is, rather, a personal matter. Conversely, if during an operation, the same SA had used the vehicle to maintain surveillance of a suspect and later received in the mail a "photo" ticket for running a red light in order to keep up with the subject, then it would not be a misuse of position for the SAC to contact the ticketing authority to explain the circumstances and request dismissal.

Example 6: A special agent is deployed as part of an evidence response team (ERT) to investigate the scene of an infamous crime. As a memento of his work, the SA takes a seemingly innocuous piece of metal from the scene. The taking of this item or anything else from the scene without lawful authority violates FBI policy, constitutes misuse of FBI position, and undermines public trust and confidence in the FBI. Such conduct may result in disciplinary action or even prosecution under some circumstances.

(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

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whom he is recommending for Federal employment. The use of official government stationery (e.g., FBI letterhead) is highly discouraged and may not be used without approval from OIC.

Example 1: An employee of the Department of the Treasury 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.

Wrongfully Influencing Private Entities' Employment Decisions by Legislative and Executive Branch Officers and Employees

The Stop Trading on Congressional Knowledge Act (STOCK Act) also amends federal criminal code 18 U.S.C. §227 to subject a "covered government person" (including executive branch employees) to a fine or imprisonment of 15 years or both who, with the intent to influence on the basis of partisan political affiliation, an employment decision or employment practice of any private entity: (1) takes or withholds or offers or threatens to take or withhold an official act, or (2) influences or offers or threatens to influence the official act of another.

FBI Policy on Recommendations/Recommendation Letters.

- Consistent with the above, FBI policy requires any written employment recommendation or character reference to:

- (1) Not disclose information concerning or from any FBI investigation, inquiry, operation or file;
- (2) Not reveal any classified or law enforcement sensitive information;
- (3) Not disclose any information protected from disclosure by any law or regulation, including the Privacy Act; and (4) Include a disclaimer that all information provided is based on the personal knowledge of the employee making the reference and should not be construed as the official views of the FBI. (See Ethics Guide Reference Library for Model Letter of Recommendation.)

Example 1: A former FBI summer intern is applying to take a State bar examination and requests a character reference from her former FBI supervisor. The supervisor may provide the reference and use his official title in the signature block, as long as the letter contains an appropriate disclaimer.

Example 2: An FBI employee has a fraternity brother with whom he was very close in college. He has, however, not kept in close contact with this individual. The fraternity brother now has a 20 year old child applying for employment with the FBI. The fraternity brother asks the employee to write a recommendation for the child's application. As the FBI employee does not have personal knowledge of the character of the child of his former fraternity brother, it would

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be improper for him to write a letter of recommendation using his FBI title or FBI letterhead even though the child is applying for Federal employment.

Example 3: An FBI employee is approached by a DoD investigator who is conducting a background investigation on a retired FBI employee who is now seeking employment with a DoD contractor. To facilitate the proper review of the former employee's suitability for obtaining a security clearance, the FBI employee may answer questions about the retired employee's general character (trustworthiness and loyalty, for example) and specific instances of conduct relating to such character issues that are known to the interviewed employee. He may not, however, represent his view as the FBI's position on such matters or provide the investigator with copies of material in the retired employee's personal records; the investigator should be referred to the FBI Employment Verification Unit for such matters. This example would similarly apply to representatives of other Federal agencies who contact FBI employees making enquiries about FBI employees applying for employment with their agency.

**FBI Policy Regarding Recommendations or Opinions Requested by Persons
Running for Political Office**

Political Appointees: FBI employees shall not provide recommendation letters that refer to their titles or official positions, nor use FBI letterhead where the subject of the recommendation is running for political office or seeking appointment to a position by a political entity (e.g., USA, state or federal judgeship). If a personal letter is drafted using personal, nonofficial stationery and signed simply with the author's name, an employee may, in the body of the letter, state how the employee became acquainted with the candidate's abilities but must not give his/her FBI association any greater prominence than necessary to lay the foundation for a character opinion.

**FBI Policy Regarding Recommendations or Opinions of a Former or Current
Employee's Official Status or Performance**

(a) Consistent with the above, FBI policy prohibits FBI employees from providing oral or written testimonials, opinions, or letters of recommendation to non-FBI personnel regarding the *official status or performance* of current or former Bureau employees unless authorized to do so by proper authority.

-“Official status or performance” includes such information as current or former positions or titles held in the Bureau, salaries, duty stations, evaluations, and reasons for separation. All inquiries regarding official status or performance should be referred to:

FBI Employment Verification
FBIHQ, 935 Pennsylvania Avenue, N.W.
Attn: HRD Call Center
Washington, D.C. 20535

(b) 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:

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- (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 3a: The Unit Chief (UC) of the FBI's Crimes Against Children Unit may send a letter of appreciation to a local production company containing factual information about the company's efforts to assist the FBI in development of an on-line predator-awareness video for children even though she knows that the company may include a copy of her letter in a Federal grant application. The letter, however, must not reference the grant application or recommend approval of the production company's application. Such a reference or recommendation would constitute an improper endorsement under 5 C.F.R. §2635.702 and may also violate 18 U.S.C. §§ 203 and 205.

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.

FBI Policy Regarding Other "Endorsement" Considerations:

Referrals, Outside Speakers and Vendors

- Consistent with the above, FBI employees who arrange for internal training to be given by a non-Governmental entity (e.g. a financial planner) must:

- (1) Not give or appear to give preferential treatment toward a particular vendor, company or person;
- (2) Not permit the sale or exchange of any product or service during the training session (See GSA regulations at 41 C.F.R. §102-74.410.);
- (3) Take reasonable steps to prevent unauthorized use of FBI indicia by the vendor;

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- (4) Conduct indices checks unless their "bona fides" are well known and previously established; and
- (5) Follow standard competitive acquisition policies and procedures where appropriate. For more information on procurement policies and procedures and before an FBI employee engages any entity to perform services on behalf of the FBI, even when there is no charge to the FBI, the employee should contact the Office of General Counsel, Procurement Law Unit.)

Example 1: An ABC Co. Mortgage broker contacts an FBI SAC offering to teach a class on credit and debt management to FBI office employees. As long as the focus of the class is on educating employees about general financial issues rather than the promotion or sale of ABC Co. products and services, it would not be a violation of the Standards for the SAC to accept the mortgage broker's offer. To ensure fairness and avoid any appearances of preferential treatment, similarly situated offers from others must be afforded similar treatment. Further, the SAC must cause the company and its instructors to be "vetted" to ensure their suitability for being granted access to FBI spaces and employees, including indices checks, unless their "bona fides" are well known and previously established.

Example 2: An FBI Division is holding an international conference on counter-terrorism and contacts ABC Corp, a conference planning organization who performed conference planning for another FBI Division in the past year, about the event. The company informs the FBI they will handle all administrative aspects of the event, including advertising, arranging for hotels, handling registration and check in, scheduling meeting rooms and establishing a vendor display area that will feature technology vendor's newest products related to the event. ABC Corp notes that they will perform these services at no cost to the FBI, selling "sponsorships" and charging for vendor display rentals to cover their expenses. Before agreeing to engage ABC Corp, and in order to avoid the appearance of preferential treatment and endorsement of ABC Corp or their affiliated vendors by the FBI, the POC for the division should contact the OGC Procurement Law Unit to consider the necessity of advertising and competing this "opportunity" with other interested conference planning organizations.

- Except as noted below, FBI employees may not use their official title or any authority associated with their Government position to make or appear to make referrals.
- When undertaking statutory and mission related functions that require professional referrals (e.g., referrals for health purposes from the FBI's Office for Victims Assistance), employees should ensure that any referral:
 - a. Is based upon referral lists that are approved by the head of the responsible office;
 - b. Includes a disclaimer informing the employee or member of the public of the fact that the FBI does not endorse any particular person or entity; and
 - c. Is based on criteria established by the office involved, not the individual employee.

Example 1: An FBI employee assistance program (EAP) coordinator is contacted by a FBI employee that is suffering from depression. The EAP coordinator fought this disorder himself and had good results with a local psychiatrist. The FBI Counselor calls his former doctor and

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arranges an appointment for this employee. This referral is improper because it fails to meet any of the above three criteria.

Example 2: An FBI employee, who is a recent victim of a violent crime, discusses the psychological impact of the crime on his FBI duties with an FBI victim-witness counselor. The counselor feels the employee would benefit from professional psychiatric assistance so she provides the employee with a referral list that is approved by her Unit Chief. The counselor points out two of 15 doctors who specialize in post-traumatic stress disorder. Because the counselor may point out relevant specialists within an approved list, her actions do not constitute an improper referral.

(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.

See section 4.9 of this Guide for FBI policy regarding reference to official position while teaching, speaking and writing in a personal capacity.

Endorsements Associated with Federal Grants

Employees are generally prohibited from endorsing grant applications submitted by private-sector applicants, even if submitted by nonprofit organizations [See 5 C.F.R. 2635.702].

On the other hand, 5 C.F.R. 2635.702 does not prohibit employees from endorsing applications submitted by state or local law enforcement organizations, as the premise of their applications is not to seek "private gain." An employee may be faced, however, with applications from competing organizations in the same area of responsibility (AOR) or applicants in different AORs applying for the same limited grant funds, which could lead to dueling endorsements from different employees.

FBI employees asked to provide such endorsements:

- (1) Should limit comments strictly to the substantive merits of the underlying proposal without commenting in any way on the caliber, quality, or worth of the applicant program or organization.
- (2) May note how the proposal aligns with FBI initiatives and priorities.
- (3) Should discuss the merits of the proposal with the pertinent operational division or the Office of Law Enforcement Coordination (OLEC).

FBI Policy Regarding Personal Capacity Testimony and Letters by FBI Employees

Note: This section does not apply to official capacity testimony, which includes testimony regarding any material contained in FBI files, related to FBI files, acquired by the employee as a part of the performance of his or her official duties or because of the employee's official status.

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This type of testimony requires prior FBI review and approval and coordination with the responsible Department of Justice attorney, regardless of whether it is compelled or volunteered (See 28 C.F.R. 16.21, Subpart B—Production or Disclosure in Federal and State Proceedings, *The United States Attorney's Manual* (USAM), Chapter 1-6.000, Department of Justice Personnel as Witnesses, and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).) Disclosure of FBI employment alone by a testifying employee does not constitute official capacity testimony.

FBI employees testifying in their personal capacity in federal or state courts on criminal or civil/administrative matters must avoid misusing their official positions to the benefit or detriment of any party. Personal capacity testimony is testimony that solely relays information that is not related to an employee's official duties and includes written or oral character testimony provided in support of a party. FBI employees who are compelled to provide personal capacity testimony pursuant to a judicial demand or who volunteer to provide testimony must comply with applicable laws, in addition to this policy.

If the nature and circumstances of the proceedings are unclear, or if the employee is unsure whether the testimony is related to his or her official duties, the employee must seek guidance from his or her direct superior, CDC, or (for divisions/FOs without a CDC) OGC prior to testifying.

The employee must also comply with applicable security policies such as IPO PD 0600D, Personnel Security Self-Reporting Requirements.

(a) Providing Testimony/Letters in Criminal Matters. An employee must inform his or her direct superior regarding the obligation or desire to provide testimony. The employee must disclose, to the best of his or her knowledge, the nature and circumstances of the proceeding, the substance of the testimony, whether it was compelled or not, whether it potentially involves disclosure of classified information, and whether FBI employment factors into the testimony. After the employee's superior reviews this information, and prior to the employee testifying, the employee must coordinate testifying with the CDC or, if at Headquarters, OGC. Any issues with the expected testimony by the CDC or OGC must be resolved before the employee testifies.

Example: An FBI employee desires to testify or write a letter of support in her personal capacity for a friend convicted in state court of driving while under the influence of alcohol. Prior FBI review and approval is required.

The reviewing CDC or OGC attorney has discretion to require the employee to notify the prosecuting authority in a criminal case of the proposed appearance, regardless of whether the United States is a party to the matter.

(b) Providing Testimony/Letters in Civil or Administrative Matters. Prior to testifying, the employee must consider the nature and circumstances of the proceeding and ensure that it does not involve a criminal matter or disclosure of potentially classified information or information related to the employee's official duties. If the nature and circumstances of the proceedings are unclear, the employee is unsure whether the testimony is related to his or her official duties, or the testimony potentially involves disclosure of classified information, the employee must seek guidance from his or her direct superior, the appropriate CDC, or OGC prior to testifying. Otherwise, no prior FBI review or approval is required.

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Example: An FBI employee is subpoenaed to testify in a personal capacity in a neighbor's child-custody dispute in state court. Because the testimony has nothing to do with the FBI, and the proceedings are not criminal, no prior legal or ethics review or approval is required. The employee must, however, notify his or her CSO and ensure that security policies and procedures are followed.

4.7.1.4. 5 C.F.R. §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 1a: A special agent (SA) doing research in the FBI's central recordkeeping system learns that XYZ Company is under FBI investigation. He then goes to his online "broker" program and puts in an order to sell his shares of XYZ. When news of the investigation is later released, XYZ Company's stock drops but the SA has already sold his stock at the previous price. Because the SA used nonpublic information in his transaction, he violated 5 C.F.R. §2635.703 (and possibly Federal statutes designed to prevent insider trading practices).

Example 1b: An FBI employee may not access any official FBI recordkeeping system to perform a criminal background or "indices" check to determine whether there is any derogatory information on a person who is dating her son. Such access constitutes a misuse of the non-public information contained in the database. Similarly, it would violate the Standards for an employee to attempt to satisfy his or her curiosity by "looking up" the criminal histories of persons known to the employee or of public figures. Not only is this a misuse of non-public information and Government time but it would also violate the Privacy Act.

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

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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 C.F.R. 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 newspaper reporter nonpublic information about long-range plans to build a particular dam.

4.7.1.5. The STOCK Act, Pub.L. 112-105 – Prohibitions

(a) Insider Trading

The STOCK Act prohibits FBI employees from using nonpublic information derived from their positions or gained from the performance of official responsibilities for private gain. Additionally, the Act declares that executive branch employees are not exempt from the insider trading prohibitions arising under the Securities Exchange Act of 1934.

4.7.2. 5 U.S.C. §3110 Employment of Relatives; Restrictions

(a) For the purpose of this section--

(1) "agency" means--

- (A) an Executive agency;**
- (B) an office, agency, or other establishment in the legislative branch;**
- (C) an office, agency, or other establishment in the judicial branch; and**
- (D) the government of the District of Columbia;**

(2) "public official" means an officer (including the President and a Member of Congress), a member of the uniformed service, an employee and any other individual, in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement, in connection with employment in an agency; and

(3) "relative" means, with respect to a public official, an individual who is related to the

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public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.

(b) A public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual.

(c) An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced.

(d) The Office of Personnel Management may prescribe regulations authorizing the temporary employment, in the event of emergencies resulting from natural disasters or similar unforeseen events or circumstances, of individuals whose employment would otherwise be prohibited by this section.

(e) This section shall not be construed to prohibit the appointment of an individual who is a preference eligible in any case in which the passing over of that individual on a certificate of eligibles furnished under section 3317(a) of this title will result in the selection for appointment of an individual who is not a preference eligible.

4.7.3. 5 C.F.R. §310.102 Exceptions to Legal Restrictions on the Employment of Relatives

Subsection (d) of 5 U.S.C. 3110 authorizes the Office of Personnel Management to prescribe regulations authorizing the temporary employment of relatives, in certain conditions, notwithstanding the restrictions. This regulation sets forth exceptions to the restrictions. When necessary to meet urgent needs resulting from an emergency posing an immediate threat to life or property, or a national emergency as defined in § 230.402(a)(1) of this title, a public official may employ relatives to meet those needs without regard to the restrictions on the employment of relatives in 5 U.S.C. 3110. Such appointments are temporary and may not exceed 30 days, but the agency may extend such an appointment for one additional 30-day period if the emergency need still exists at the time of the extension.

4.7.4. Office of Government Ethics Regulations Related to Government Property

4.7.4.1. 5 C.F.R. §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

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contractor personnel. The term includes office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data processing capabilities [Information Technology/Information Systems], 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 C.F.R. §101-35.201, an employee may make a personal long distance call charged to her personal calling card.

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

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

Example 4: An FBI employee is permitted by this regulation to make short and infrequent personal local calls on her Government telephone in order to arrange a practice for her daughter's little league team; however, she may not make such personal calls if there is a charge to the Government. Neither DOJ regulations nor FBI policies authorize any more than negligible use of official resources to make personal calls, even if the employee intends to reimburse the FBI. (See subsection 4.7.6.3.)

4.7.5. DOJ Restrictions and Requirements Related to Government Property

4.7.5.1. 5 C.F.R. §3801.104 Purchase or Use of Certain Forfeited and Other Property

(a) In the absence of prior approval by the agency designee, no employee shall purchase, directly or indirectly, from the Department of Justice or its agents property forfeited to the United States and no employee shall use property forfeited to the United States which has been purchased, directly or indirectly, from the Department of Justice or its agents by his spouse or minor child. Approval may be granted only on the basis of a written determination by the agency designee that in the mind of a reasonable person with knowledge of the circumstances, purchase or use by the employee of the asset will not raise a question as to whether the employee has used his official position or nonpublic information to obtain or assist in an advantageous purchase or create an appearance of loss of impartiality in the performance of the employee's duties. A copy of the written determination shall be filed with the Deputy Attorney General.

(b) No employee of the United States Marshals Service, Federal Bureau of Investigation, or Drug Enforcement Administration shall purchase, directly or indirectly, from his component, the General Services Administration, or the agent of either, property formerly used by that component and no such employee shall use property formerly used by his component which has been purchased, directly or indirectly, by his spouse or minor child from his component, the General Services Administration, or to the agent of either.

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4.7.5.2. 5 C.F.R. §3801.105 Personal Use of Government Property

Employees are prohibited by part 2635 of this title from using Government property for other than authorized purposes. The Department rule authorizing limited personal use of Department of Justice office and library equipment and facilities by its employees is at 28 C.F.R. 45.4.

4.7.5.3. 28 C.F.R. §45.4 Personal Use of Government Property

(This regulation is reproduced in subsection 3.3. of this Guide)

(a) Employees may use Government property only for official business or as authorized by the Government. *See* 5 C.F.R. 2635.101(b)(9), 2635.704(a). The following uses of Government office and library equipment and facilities are hereby authorized:

- (1) Personal uses that involve only negligible expense (such as electricity, ink, small amounts of paper, and ordinary wear and tear); and
- (2) Limited personal telephone/fax calls to locations within the office's commuting area, or that are charged to non-Government accounts.

(b) The foregoing authorization does not override any statutes, rules, or regulations governing the use of specific types of Government property (e.g. internal Departmental policies governing the use of electronic mail; and 41 C.F.R. (FPMR) 101-35.201, governing the authorized use of long-distance telephone services), and may be revoked or limited at any time by any supervisor or component for any business reason.

(c) In using Government property, employees should be mindful of their responsibility to protect and conserve such property and to use official time in an honest effort to perform official duties. *See* 5 C.F.R. §§2635.101(b)(9), 2635.704(a), 2635.705(a).

FBI Policy Regarding Use of FBI Time and Property; De Minimis Use

-Personal use of Government time and/or property may only be authorized if the resulting use is de minimis. "De minimis" in this context means that the use must:

- (1) Involve a negligible expense to the FBI;
- (2) Not adversely affect the performance of official duties; and
- (3) Be of minimal duration and frequency.

-Even if "de minimis" in nature, FBI property and/or time may not be used for personal profit-making or commercial activities or for purposes that are prohibited or reflect adversely on the FBI, such as:

- (1) Accessing pornography;
- (2) Promotion of supremacist or racist causes;
- (3) Activities of questionable legality;
- (4) Sale of products, including personal items, or services in the Federal workplace (except on authorized bulletin boards);

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(5) Gambling; and/or

(6) Sending or forwarding chain e-mails.

Example 1: An FBI employee completes her tax return and makes a 15 page copy of the return on the office copier. Such use is within the "de minimis" use rule. Note that an employee's supervisor could prohibit such use if there were a business reason to do so.

Example 2: An employee who sends an advertisement for the sale of his personal vehicle car via Government e-mail to the employees in his Division is in violation of the rule even if it is a one-time event. He may, however, generally be authorized to post the advertisement on an FBI bulletin board if authorized to do so by the head of the office where the bulletin board is posted.

4.7.5.4. DOJ Order 2421.1E Use of Government Telecommunications Systems

(See Ethics Guide Reference Library for the full text of DOJ Order 2421.1E. Portions of the Order that relate to the Standards of Conduct are reproduced below.)

...

(d) Policy. The FTS and other Government provided LD telephone services are to be used only to conduct official business or for calls which are authorized as necessary in the interest of the Government (see paragraph 9b). These networks are to be used for the placement of calls, instead of the commercial toll network, to the maximum extent practicable. Supervisors are responsible for the management of telephone usage within their jurisdiction.

(e) Authorized Use of the GTS.

(1) The use of the GTS (including calls over commercial systems which will be billed to the Government) shall be limited to the conduct of official business, or those authorized calls identified in appendix 1, only. Unauthorized calls should not be placed over the GTS, even if the employee's intention is to reimburse the Government for the cost of the call.

(2) The use of GTS may properly be authorized as being necessary and in the interest of the DOJ if such use satisfies the following criteria:

- (a) It does not adversely affect the performance of official duties by the employee or the employee's organization.
- (b) It is of reasonable duration and frequency.
- (c) It reasonably could not have been made at another time.
- (d) It is provided for in a collective bargaining agreement that is consistent with this order, or executed before the effective date of this order but continuing only until the term of the agreement expires.

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(3) Examples of the circumstances in which use of the GTS properly may be approved, as being necessary in the interest of the Government, are shown in appendix 1.

(4) Personal calls that must be made during working hours may be made over the commercial LD network, if the calls are not charged to the Government; i.e., the call is:

- (a) Charged to the employee's home telephone number or other nongovernment number (third number call).
- (b) Made to an 800 toll free number.
- (c) Charged to the called party, if a nongovernment number (collect call).
- (d) Charged to a personal telephone credit card.

(f) Abuse by Employees. Departmental employees should be particularly sensitive to the use of the Government's telephone facilities under the conditions (examples) outlined in appendix 1. If possible, such calls should be made during lunch, break, or other off-duty periods. Abuse of the Government's facilities, including abuse of the privileges in appendix 1, may result in disciplinary action in accordance with applicable departmental guidelines. The key to solving many of the problems of GTS abuse is improved management controls and a rational policy on employee use of the GTS.

(g) Prohibitions. Use of the services, equipment, or facilities, for other than official business, except for emergency calls and those calls which the Department determines are necessary in the interest of the Government, may result in criminal, civil, or administrative action, including suspension or dismissal. Such unauthorized uses are shown in appendix 2.

...

/s/ HARRY H. FLICKINGER
Assistant Attorney General
for Administration

(m) Appendix 1. Examples of Authorized Use of Federal Telecommunications System.

- (1) An employee is injured on the job. Calls to notify his/her family and/or doctor are appropriate.
- (2) An employee traveling on Government business is delayed due to official business or transportation delay and must reschedule a return time. A call to notify his/her family of the change in schedule is appropriate.

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(3) An employee traveling overnight on Government business may make a brief call daily to his or her residence.

(4) An employee is required to work overtime without advance notice. A telephone call to advise the employee's family of the change in schedule or to make alternate transportation or child care arrangements is appropriate.

(5) An employee may make a brief daily call to locations within the local commuting area (the area from which the employee regularly commutes) to speak to spouse, minor children (or those responsible for them, e.g., school or day-care center) to see how they are.

(6) An employee may make a brief call to locations within the local commuting area that can only be reached during working hours, such as: his or her residence, local government agency, or physician.

(7) An employee may make a brief call to locations within the local commuting area to arrange for emergency repairs to his or her residence or automobile.

(m) Appendix 2. Prohibitions.

The practices set forth in the following paragraphs are prohibited. A willful violation may result in criminal, civil, or administrative action, including suspension or dismissal.

(1) Use of the following services, equipment, or facilities for other than official business -- except emergency calls -- and calls which the departmental component determines are necessary in the interest of the Government, as provided in appendix I:

- (a) Federal Telecommunications System (FTS)
- (b) Government-provided long distance telephone service, other than FTS.
- (c) A commercial network where the Government is billed for the call.

(2) Use of any Government-provided telephone service, equipment or facility under circumstances that interfere with the expeditious and orderly conduct of Government business.

(3) Making an unofficial telephone call with the intent of reimbursing the Department later.

(4) Listening-in or recording of telephone conversations except as authorized by Subpart 201-6.2 of C.F.R. and/or FIRMR.

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(5) Use of telephone call detail data in other than an authorized fashion. See 52 FR 12990, April 20, 1987.

4.7.5.5. Credentials and Badges

a. FBI employees are issued FBI Badges and/or Credentials to identify themselves as FBI employees for official purposes. (See Security Policy Guide at <
<http://home.fbinet.fbi/forms/fd1028/Policy%20and%20Guidance%20Library/spm.pdf>>.)

b. FBI employees shall not use their credentials for purely personal reasons. Not only is the use of official indicia limited to official uses but personal or other indiscreet use of your credentials or badge may result in your being identified and targeted by foreign intelligence services.

Improper use includes:

1. Displaying credentials to traffic enforcement officers to avoid a traffic citation;
2. Wrongfully inducing others to provide personal benefits. See also 5 C.F.R. §§ 2635.701-705

4.7.5.6. Use of Government Vehicles

See the Government Vehicle Use Policy Guide (0791PG).

4.7.5.7. Contractor Use of FBI Property for Personal Activities.

As a general rule, contractors may not use Government property or time chargeable to the Government other than to execute the terms of their contract. Thus, contractors are not authorized to use Government Property or time for any personal use, subject to the following:

Contract personnel may use Government equipment for personal activities in accordance with the limitation set out above for Government employees if approved in advance by the cognizant Contracting Officer's Technical Representative or Contracting Officer and only if the use:

- (1) Occurs during time not charged to the Government;
- (2) Is not prohibited by the contract employee's contract with the FBI/Government; and,
- (3) Does not result in any additional charge to the Government (e.g., long distance/toll charges for any use of the Government phone or facsimile machine is prohibited);

4.7.6. Office of Government Ethics Regulations Related to Government Time

4.7.6.1. 5 C.F.R. §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

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performance of her assigned duties as a disability claims examiner. This statutory authority is limited to union activities and does not apply to FBI employees or employee organizations.

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

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

Example 1: An employee of the Department of Housing and Urban Development may not ask his secretary to type his personal correspondence during duty hours. Further, directing or coercing a subordinate to perform such activities during non-duty hours constitutes an improper use of public office for private gain in violation of §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.

Example 2: An FBI lawyer receives written authorization to engage in outside employment with a local community college. She is very busy in her FBI duties and ends up working very long hours. She asks a paralegal to look up some cases needed for her college class lecture. Asking a subordinate to perform a personal obligation is inappropriate and violates the Standards. Using the computer for outside employment purposes is also not considered a "de minimis" use under DOJ regulations.

4.7.7. Restrictions on the Employee Interaction

4.7.7.1. Appropriate Superior-Subordinate Inter-Personal Relationships

a. Employee relationships in the FBI should always be:

1. Professional and courteous;
2. Consistent with FBI Core Values, Motto and Code of Conduct; and
3. Conducted in a manner that recognizes the dignity of every person with whom we come into contact.

b. Persons who are given the authority to supervise others in the Government must not engage in activities that may subtly or overtly coerce a subordinate to provide any personal benefit (to themselves or any other person) that is otherwise not authorized in the course of performing official duties. Generally speaking, employees and their supervisors must not engage in any relationship, financial or otherwise (romantic, business, recreational) that:

1. Negatively impacts their ability to maintain a professional and appropriate superior-subordinate relationship; or
2. Otherwise adversely impacts the completion of the FBI mission.

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c. A superior has the greater authority and, hence, the greater responsibility to avoid creating appearances of preferential treatment or other improper conduct. As a result of this greater responsibility and the inequality inherent in the superior-subordinate relationship, a superior is held to a higher standard than a subordinate when improprieties are addressed in the disciplinary or administrative process.

4.7.7.2. Inappropriate Superior-Subordinate Inter-Personal Relationships

a. FBI personnel in a superior-subordinate relationship shall not:

1. Sell products or services to any subordinate irrespective of where the sale takes place (e.g., in or out of the Federal workplace), except for limited one-time sales;
2. Engage in "nepotism" where a person is supervised or supervises an employee with a familial relationship, established through blood or other legal basis (e.g., adopted child and "in-laws").
3. Engage in interpersonal actions that amount to a violation of law or internal regulations; and/or
4. Advocate to any subordinate any cause, charity or non-Federal activity (including engaging in fundraising directly or through a member of their immediate family); either while on or off a Federal facility on behalf of any such person, charity or cause. *See also* chapter 8 of this Guide.

b. See the FBI's Personal Relationships Policy (Policy Directive 0802D).

4.8. Employment and Activities Outside of FBI

4.8.1. Restrictions on outside employment and involvement in outside organizations for FBI employees generally

(a) This section details limitations on the outside employment activities of FBI employees. It also describes policy and requirements for participation in outside organizations, in either a personal or official capacity.

(b) The section also covers "pro-bono" activities, civic and charitable work, and similar endeavors.

(c) Certain rules that govern outside activities of employees are also discussed in other sections of this Guide, such as:

- Conflicting financial interests (See Section 4.5),
- Conflicts while seeking outside employment (See Section 6 and Section 4.5)
- Political activities (See Section 6)
- Teaching, Speaking, and Writing (See Section 4.9)

(d) As a general rule, the stronger the nexus between an outside activity and an employee's duties, the government, or the FBI, the more it will be regulated under these rules.

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4.8.2. Office of Government Ethics Regulations Related to Outside Employment and Activities - 5 C.F.R. §2635

4.8.2.1. 5 C.F.R. §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 section. 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 (The FBI requires approval for all outside employment by its employees. See Section 4.8.5.)
- (3) The limitations on 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 (outlined in Section 4.9 of this Guide)
- (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 section and in supplemental agency regulations. These include the principle that an employee must endeavor to avoid actions creating an appearance of violating any of the ethical standards in this section 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 non-governmental capacity.

Example: An FBI professional staff employee of the Criminal Justice Information Services (CJIS) Division requested approval to engage in outside employment by operating a small gun sales shop. Because CJIS, through the National Criminal Background Check System, performs Brady Act checks on prospective gun buyers for federal firearm licensees (gun shop owners), operating the gun shop while serving in CJIS would likely create a conflict of interest and an appearance of impropriety. Therefore, this request would not be approved.

(d) In addition to the provisions of this and other subparts of this section, 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 section, may include:

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(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 exception, as well as standards for special Government employees that limit the scope of the restrictions.

Example: A Special Agent has a roommate that is having difficulty settling a tax dispute with the Internal Revenue Service (IRS). The agent had worked with an IRS fraud investigator in the past. The roommate has asked the agent to talk to her IRS contact to help the roommate resolve the issue. Whether or not the agent is compensated for her assistance, such contact would create an inappropriate conflict between the employee and the U.S. Government. The IRS claim is a "covered matter" under Section 205. The agent should inform the roommate that she cannot make the planned contact with the IRS investigator without violating a criminal law.

(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) **Federal Acquisition Regulations**, Section 3.601, generally prohibits awarding a contract to a government employee or to a business concern owned by a government employee in order to avoid the conflicts of interest that may arise, or appear to arise, from such actions.

4.8.2.2. 5 C.F.R. §2635.802 Conflicting outside employment and activities

(a) An employee may 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 if:

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

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(2) Under the standards set forth in §§2635.402 and 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.

(b) 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 section or require the employee to disqualify himself from participation in certain particular matters under standards concerning Conflicting Financial Interests (5 C.F.R. §§2635.401-403) or Impartiality in Performing Official Duties (5 C.F.R. §§2635.501-503).

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 (OSHA) 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 5 C.F.R. §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.

4.8.2.3. 5 C.F.R. §2635.803 Prior approval for outside employment and activities

When required by agency supplemental regulation issued after February 3, 1993, an employee must 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 must, 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. (The FBI has pre-approval requirements for both outside employment, all official capacity involvement in Non-Federal entities and certain personal involvement in outside activities with non-Federal organizations. See Sections 4.8.5 and 4.8.7, respectively.)

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4.8.2.4. 5 C.F.R. §2635.804 Outside income limitations for presidential appointees and non-career employees. [Not included, See regulation for text]

4.8.2.5. 5 C.F.R. §2635.805 Service as an expert witness

(a) **Restriction.** An employee may 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 applies 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 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 may 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 applies to a special government employee who:

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

(c) **Authorization** to serve as an expert witness. Provided that the employee's testimony will not violate any of the principles or standards set forth in this section, 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 (DOJ) 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 5 C.F.R.

§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.

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4.8.2.6. Teaching, Speaking and Writing

(See Section 4.9 of this Guide for limitations on teaching, speaking or writing.)

4.8.2.7. 5 C.F.R. §2635.601 Conflict Considerations While Seeking Outside Employment

This subpart contains a disqualification requirement that applies to employees when seeking employment with persons whose financial interests would be directly and predictably affected by particular matters in which the employees participate personally and substantially. Specifically, it addresses the requirement of 18 U.S.C. §208(a) that an employee disqualify himself from participation in any particular matter that will have a direct and predictable effect on the financial interests of a person "with whom he is negotiating or has any arrangement concerning prospective employment." See 5 C.F.R. §§2635.402 and 2640.103. 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.

4.8.2.7.1. 5 C.F.R. §2635.602 Applicability and Related Considerations.

(a) To ensure that an employee does not violate 18 U.S.C. §208(a) or the principles of ethical conduct contained in 5 C.F.R. §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 5 C.F.R. §§2635.604 and 606 if particular matters in which the employee will be participating personally and substantially would directly and predictably affect the financial interests of a prospective employer or of a person with whom the employee has an arrangement concerning prospective employment. Compliance with this subpart also ensures that the employee will not violate 5 C.F.R. §2635 subpart D or E concerning Conflicting Financial Interests and Impartiality in Performing Official Duties.

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

(c) 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 5 C.F.R. §2635 (and requirements discussed for pre-approval of contemplated outside employment by FBI employees as discussed in this section). He must also comply with any disqualification requirement that may be applicable under 5 C.F.R. §2635 subpart D or E concerning conflicting financial interests and impartiality in performing official duties.

(2) Post-employment restrictions. An employee who is contemplating employment to be undertaken following the termination of his Federal employment should consult an agency

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ethics official to obtain advice regarding any post-employment restrictions that may be applicable. Regulations implementing the Government wide post-employment statute 18 U.S.C. §207 are contained in 5 C.F.R. §§2637 and 2641. Employees are cautioned that they may be subject to additional statutory prohibitions on post-employment acceptance of compensation from contractors, such as 41 U.S.C. §423(d). (See Section 6 of this Guide for further information on post-government employment standards and restrictions.)

(b) Interview trips and entertainment. Where a prospective employer who is a prohibited source, as defined in 5 C.F.R. §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 under 5 C.F.R. §2635.204(e)(3).

4.8.2.7.2. 5 C.F.R. §2635.603 Definitions

(a) For purposes of this subpart:

(1) **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. (Note that DOJ supplemental regulations have a similar but more expansive definition of employment that applies to all departmental employees. See Section 4.8.4.1.)

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 constitutes 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 considered [to be] **seeking employment** from the time he has begun seeking employment within the meaning of paragraph (b)(1) of this section 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

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(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

(C) 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 (HCFA) 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 (DCAA) 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

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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: An employee of the Federal Aviation Administration (FAA) 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 [identified] airport authorities within her jurisdiction. Even though the employee has not personally had employment discussions with either, each airport authority is her prospective employer. She began seeking employment with each upon learning its identity and that it has been given her resume.

(d) Direct and predictable effect, particular matter, and personal and substantial have the respective meanings set forth in 5 C.F.R. §2635.402(b)(1), (3), and (4).

NOTE: STOCK Act, Pub.L. 112-105, Post-Employment Negotiation Restrictions

Any filer of a public financial disclosure report who engages in "negotiations" or reaches an agreement for post-government service employment or compensation must advise the FBI DDEAO **within three business days** of commencing negotiations or reaching an agreement. The STOCK Act requires that the notification be "signed" by the employee.

Employees may notify the DDEAO by providing:

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1. A written statement signed by the employee; or
2. An email digitally "signed" through the Public Key Infrastructure (PKI) system.

4.8.2.7.3. 5 C.F.R. §2635.604 Disqualification Requirements while Seeking Employment

(a) **Obligation to disqualify.** Unless the employee's participation is authorized according to 5 C.F.R. §2635.605, the employee may not participate personally and substantially in a particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom he is seeking employment within the meaning of 5 C.F.R. §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 5 C.F.R. §2634 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 (VA) 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 (FDA) 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

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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 (NSF) 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.

4.8.2.7.4. 5 C.F.R. §2635.605 Waiver or Authorization Permitting Participation While Seeking Employment.

(a) Waiver. Where, as defined in 5 C.F.R. §2635.603(b)(1)(i), an employee is engaged in discussions that constitute employment negotiations for purposes of 18 U.S.C. §208(a), the employee may participate personally and substantially in a particular matter that has a direct and predictable effect on the financial interests of a prospective employer only after receiving a written waiver issued under the authority of 18 U.S.C. §208(b)(1) or (b)(3). These waivers are described in 5 C.F.R. §2635.402(d). See also Part D of 5 C.F.R. §2640. For certain employees, a regulatory exemption under the authority of 18 U.S.C. §208(b)(2) may also apply (see subpart B of 5 C.F.R. §2640). (Note that these waivers are very rarely granted for FBI employees and should be sought only when essential to meeting mission requirements.)

Example: 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 5 C.F.R. §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.

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(b) Authorization by agency designee. Where an employee is seeking employment within the meaning of 5 C.F.R. §2635.603(b)(1)(ii) or (iii), a reasonable person would be likely to question his impartiality if he were to participate personally and substantially in a particular matter that has a direct and predictable effect on the financial interests of any such prospective employer. The employee may participate in such matters only where the agency designee has authorized his participation according to the standards set forth in 5 C.F.R. §2635.502(d).

Example: 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 5 C.F.R. §2635.603(b)(1)(ii) even though she has received no reply. In the absence of specific authorization by the agency designee under 5 C.F.R. §2635.502(d), she may not participate in an assignment to review a grant application submitted by the university. (Note example 5 in section 4.8.2.7.2, as Special Government employees are treated differently than regular FBI employees.)

4.8.2.7.5. 5 C.F.R. §2635.606 Disqualification Based on an Arrangement Concerning Prospective Employment or Otherwise After Negotiations

[See note in subsection 4.8.2.7.2, for information concerning the STOCK Act Post-Employment Negotiation Restrictions]

(a) Employment or arrangement concerning employment. An employee is disqualified from participating personally and substantially in a particular matter that has a direct and predictable effect on the financial interests of the person by whom he is employed or with whom he has an arrangement concerning future employment, unless authorized to participate in the matter by a written waiver issued under the authority of 18 U.S.C. §208 (b)(1) or (b)(3), or by a regulatory exemption under the authority of 18 U.S.C. §208(b)(2). These waivers and exemptions are described in 5 C.F.R. §2635.402(d). See also subparts B and C of 5 C.F.R. §2640.

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 (COC), 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 will 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 5 C.F.R. §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

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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 5 C.F.R. §2635.502(d), and a determination 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.

Example: 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.

4.8.3. Other Constitutional and Statutory Considerations Related to Outside Employment

(a) 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.

(b) The Hatch Act Reform Amendments, 5 U.S.C. §§7321 through 7326, which govern the political activities of executive branch employees. (See Section 6 of this Guide for further information.)

(c) Limitations on outside employment, 5 U.S.C. App. (Ethics in Government Act of 1978), which prohibit a covered non-career 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 5 C.F.R. §§ 2636.305 through 2636.307.

4.8.4. DOJ Restrictions and Requirements Regarding Outside Employment

4.8.4.1. DOJ Supplemental Regulation - 5 C.F.R. §3801.106

(a) Definition of Outside Employment. For purposes of this section, outside employment means any form of employment, business relationship or activity, involving the provision of personal services whether or not for compensation, other than in the discharge of official duties. It includes, but is not limited to, services as a lawyer, officer, director, trustee, employee, agent, consultant, contractor, or general partner. Speaking, writing, and serving as a fact witness are excluded from this definition as long as they are not combined with the provision of other services that do fall within this definition, such as the practice of law. Employees who wish to

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engage in compensated speaking and writing should review 5 C.F.R. §2635.807. (See Section 4.8.2.6. above.)

(b) Prohibited outside employment

(1) No employee may engage in outside employment that involves:

- (i) The practice of law, unless it is uncompensated and in the nature of community service, or unless it is on behalf of himself, his parents, spouse, or children:
- (ii) Any criminal or habeas corpus matter, be it federal, state, or local: or
- (iii) Litigation, investigations, grants, or other matters in which the Department of Justice is or represents a party, witness, litigant, investigator, or grant-maker.

(2) Where application of the restrictions of paragraph (b)(1) of this section will cause undue personal or family hardship; unduly prohibit an employee from completing a professional obligation entered into prior to government service; or unduly restrict the department from securing necessary and uniquely specialized services, the restrictions may be waived in writing based upon a determination that the activities covered by the waiver are not expected to involve conduct prohibited by statute or federal regulation. Employees should refer to DOJ Order 1200.1 on obtaining waivers. The order is available from the agency designee which, for purposes of this rule, shall be the Deputy Designated Agency Ethics Official for the component.

Example 1: An FBI employee is interested in working as a volunteer police officer, evidence custodian, sketch artist, dispatcher, or in other similar duties, for an understaffed local police department in the community. Even if all proposed work would be performed during off-duty hours, the employee must submit a request to engage in this activity since it constitutes outside employment even though it would be uncompensated. Because the proposed activity involves criminal law enforcement work, however, it will not be approved.

Example 2: An FBI employee wants to work for a university as an instructor, but will be paid by the university for her services with monies provided by a DOJ grant to the school. Because the work involves a DOJ grant, this employment is not permitted under the DOJ supplemental regulation and will be disapproved. Similarly, if an FBI laboratory employee wanted to work for an organization on a project funded in significant part through a DOJ grant, his request would be disapproved.

(c) Prior approval for outside employment

(1) An employee must obtain written approval before engaging in outside employment not otherwise prohibited by paragraph (b) of this section that involves:

- (i) The practice of law; or
- (ii) A subject matter, policy, or program that is in his component's area of responsibility.

(2) Employees should refer to DOJ Order 1200.1 for procedures on obtaining prior approval. A waiver granted pursuant to paragraph (b)(2) of this section will be sufficient to satisfy this prior approval requirement. (See also, Section 4.8.5.4 of this Guide.)

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(3) Approval is granted only upon a determination that the outside employment is not expected to involve conduct that is prohibited by statute or federal regulation.

No FBI employee may engage in the outside practice of law, even for a good cause (pro-bono representation) without the prior written permission of the FBI Deputy Designated Agency Ethics Official. Note that this restriction applies to all FBI employees and not just employees in attorney positions.

4.8.4.2. DOJ Policy Statement on Pro Bono Legal and Volunteer Services

See Ethics Guide Reference Library for DOJ's Policy on Pro Bono Legal and Volunteer Services, which provides all reporting and procedural requirements that concern performing additional voluntary pro bono legal services.

4.8.5. FBI Policy on Outside Employment

(a) "Outside Employment" is defined in DOJ supplemental regulations 5 C.F.R. §3801.106 (a), (quoted in Section 4.8.4.1(a) above).

(b) FBI personnel requesting to participate in outside employment or an outside activity must submit an FD-331 for approval. The electronic version of the FD-331 is located in EPAS.

(c) The FBI's policy governing outside employment is a matter of security and personnel management policy intended to promote both compliance with ethical standards and the mission effectiveness of the FBI.

4.8.5.1. Restrictions Relative to FBI Special Agent Outside Employment

(a) Special agents occupy positions in which the hours of duty cannot be controlled administratively; they are required to work substantial amounts of irregular unscheduled overtime; they generally are responsible for recognizing, without supervision, the circumstances that require them to remain on duty; they are subject routinely to recall on a 24/7 basis; and they are subject to Brady/Giglio concerns. Because of the foregoing requirements, special agents are paid availability pay (AVP). In exchange for receiving that additional pay, special agents are required to be available at all times and may not enter into financial arrangements and agreements to provide personal services that potentially or actually impact their availability. Thus, as a general rule, special agents are prohibited from engaging in outside employment.

(b) Subject to HRD oversight (see below), division/FO heads may approve exceptions to the general prohibition for special agents who request permission to engage in outside employment under the following limited circumstances:

1. Coaching, officiating, teaching, or instructing no more than five hours per week with a total compensation (monetary or in-kind) not exceeding \$3000 per calendar year. The five-hour per week and \$3000 per calendar year limits apply to the special agent, not the activity. *(Comment: Although these types of employment have the potential to adversely affect an agent's availability, they also strengthen the communities in which we work and*

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live, and serve to foster a sense of community responsibility among our employees. Thus, when a special agent is engaged in these activities for the minimal hours and remuneration specified, the potential impact on availability is acceptable, so long as there is no actual adverse effect on either the agent's performance or the division's/FO's mission. This is not the case with more traditional forms of commercial or business employment.); or

2. Activities that do not require ANY in-person or scheduled appearances or meetings; do not involve partners, employees, or fiduciary relationships; may be completed at home with no associated deadlines; and, result in total compensation (monetary or in-kind) for all such activities combined not exceeding \$3000 per calendar year.¹ *(Comment: Although these activities also have the potential to adversely affect an agent's availability, the enumerated conditions and compensation cap reduce that potential to acceptable levels, so long as there is no actual adverse effect on either the agent's performance or the division's mission.); or*
3. Activities necessary to obtain or maintain official professional certifications required by the FBI for the benefit of the FBI, such as those listed below:
 - Emergency medical technician (EMT)/paramedic
 - Pilot in command/flight instructor
 - Underwater diving certification

When considering the foregoing exceptions, division/FO heads must consider the actual and potential impact of the proposed outside employment on the special agent's availability, including his or her history of availability. Division/FO heads may revoke approval for outside employment at any time if it is in the best interests of the FBI's effective and efficient operations.

- (c) HRD shall oversee the administration of this subsection. HRD may approve or deny a request to engage in outside employment that was previously reviewed by a division FO head if HRD determines that doing so is for good cause and in the best interests of the FBI. Approval of outside employment under this PG does not relieve special agents of

¹ Note that subsection 4.8.5.3. of this PG defines activities that are not covered by this PG. Those activities apply to special agents as well as professional staff personnel, and do not require approval under this section.

² An agent may engage in outside employment activities described in subparagraphs (b)1 and (b)2 simultaneously, so long as the total compensation received from both activities combined does not exceed \$3000 and the hours permitted cap specified in (b)1 is not exceeded.

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any additional, applicable requirements, such as avoiding conflicts of interest, using government property for official purposes only, or obtaining prepublication review prior to publication.

- (d) Special agents may participate in the activities listed in paragraph 4.8.5.3. below without seeking advance approval.

Examples:

Example 1: An FBI special agent with an excellent record of availability requests approval to officiate in a youth sports league on Saturday mornings from 9:00 a.m. until noon. Other officials are available to take over or the games can be easily canceled or interrupted if the special agent needs to attend to FBI duties. Free uniforms worth less than \$100 and a \$500 calendar-year stipend are provided. The division/FO head may, in accordance with subsection (b)1 above, approve this request. The division/FO head may deny or suspend this request if the squad has an ongoing case that requires work on Saturday mornings.

Example 2: An FBI special agent with an excellent record of availability requests approval to serve as an adjunct professor teaching constitutional law twice a week for two hours in the evening from 7 until 9 at a local community college. The dean of the college has acknowledged in writing that the special agent may have to cancel or leave the class on short or no notice to attend to FBI duties. A salary of \$3500 per semester is provided. This outside employment may not be approved because the salary exceeds the \$3000 limit established in Section (b)1 above. If the salary was to be reduced to \$3000/calendar year, the division head could approve the request.

Example 3: An FBI special agent with an excellent record of availability is asked by a local gym to instruct the "cross-fit" class that the agent attends regularly four days a week for an hour in the morning from 6:30 until 7:30, in return for waiver of the normal gym membership fee, which is valued at \$600 for a one-year membership. If the agent cannot attend or has to leave early, other instructors are always available. Assuming there are no conflicts with squad activities, such as surveillance, the field office head could approve the request since it is consistent with both the time and compensation limits established by subsection (b)1 above.

Example 4: An FBI special agent makes pottery in her spare time in a home workshop and sells it on an Internet auction site. Items sold are packaged at home and mailed using the U.S. mail. No one else is involved in the process. There is no association between the items and the FBI. The special agent expects to make no more than \$2000 per calendar year. The division/FO head may approve this outside employment under subsection (b)2 above. If the request involved running the business with other individuals, the request would be denied.

Example 5: An FBI special agent who serves as an EMT/paramedic on the SWAT team requires active experience to maintain her EMT/paramedic certification. The special agent requests approval to work limited shifts in a hospital emergency room to maintain

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her certification and will be compensated at the prevailing rates paid by the hospital. This request may be approved under subsection (b)3 above.

Example 6: An FBI special agent with an excellent record of availability requests approval to work at a local retailer on weekends during the holiday season. It is anticipated that total compensation would not exceed \$2000. This request must be denied because it does not fall under any of the exceptions listed above.

For additional information, special agents are directed to contact the HRD Employee Development and Selection Program Section.

4.8.5.2. Additional Limitations on Outside Employment

(a) As noted in the Standards of Conduct regulations, Section 4.8.2.2 above, FBI employees may not engage in outside employment that conflicts with their official duties.

(1) Because all FBI employees must have and maintain eligibility for a Top Secret security clearance, they cannot engage in activities that are incompatible with maintenance of such a clearance, including, but not limited to:

(i) Employment with or by a foreign government or a foreign government controlled entity (e.g., a foreign government-owned or controlled organization or corporation).

Example: A professional staff LEGAT employee desires to teach, for compensation and during off-duty hours, for a U.S. Department of Defense (DoD) college outreach program offered by a U.S. university to DoD personnel stationed in Paris, France. The employee properly submits a request to engage in this outside employment and, absent specific conflicts with duties, it may be authorized. If, however, the employee requested authority to teach at the "University of France," a French-government controlled university, the request must be disapproved.

(ii) Activities that require submission to a polygraph examination. For security reasons, employees may not submit to a polygraph examination conducted by any agency or organization, other than the FBI, in connection with outside employment.

(iii) Activities that would be incompatible with policy restrictions identified in SecD's PD 0536D, Security Division Processing of Forms Involving Employment Organizations and Activities Outside of the FBI.

(2) In general, FBI employees may be denied outside employment if they are not performing their FBI duties at least at the "Successful" level.

(3) Employees also may not engage in activities that:

(i) Reasonably could interfere with the employee's regular attendance, availability, health, or efficient performance of duties, particularly where the employee's work performance would likely degrade. *Example: An FBI professional staff employee desires to work during off-duty hours as a sales clerk for a local 24-hour grocery store. The employee's work hours would involve a minimum of 48 hours a week in two 24-hour shifts. These activities involve hours that conflict with the employee's full-time FBI duties and possible emergency response capability and would not normally be approved.*

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(ii) Are reasonably likely to conflict with an employee's official duties, to create an impermissible appearance of such a conflict as discussed in Section 4.8.2.2 above, or to violate any applicable provision of law or regulation.

(iii) Are incompatible with a position as an employee of a law enforcement agency because they are of questionable legality; involve activities of current or periodic investigative interest, such as organized gambling or commercial pornography; capitalize or appear to capitalize on "inside" information; or are otherwise incompatible with FBI employment.

Example: An FBI professional staff employee wishes to work during off-duty hours as a "bouncer" at a local club that features nude dancers and has been the subject of complaints involving drug activity. Such employment is not illegal, but it is not compatible with employment by the FBI and would be disapproved.

(iv) Involve dual compensation. Federal employees are generally not entitled to receive basic compensation from more than one civilian government job for more than an aggregate of 40 hours of work in any calendar week. Most FBI positions are full time, thus, most FBI employees may not hold another federal job. No outside employment by another federal agency should be approved without first having the proposed activity reviewed by the Office of Integrity and Compliance.

(v) Would require excessive monitoring by the FBI.

(vi) Involve compensation for teaching, speaking, or writing except as authorized by 5 C.F.R. § 2635.807. (See Section 4.9 of this Guide.)

(vii) Involve work performed under an FBI contract, under a contract under which the FBI receives services, or on FBI premises, unless approved by OIC after consultation with the contracting officer (or comparable FBI official), the employee's division/FO head, and OGC.

Example: An FBI professional staff employee requests to work during off-duty hours as a custodian for an FBI contractor in an FBI workspace. Outside employment that requires an FBI employee to work for a third party in FBI space is problematic for a number of reasons. From an institutional prospective, such an arrangement may cause a reasonable member of the American public to question the necessity of the contract in the first instance and the propriety of its award in the second. Further, such an arrangement complicates the administration of the contract for both the contractor and FBI management. For example, on the one hand, the contractor may find it difficult to correct or discipline less-than-satisfactory performance attributable to an employee of the very entity from which the contractor receives compensation while, on the other hand, FBI management may find it difficult to take action to remediate poor performance knowing that such action may adversely affect the economic welfare of an FBI employee. Competitors of the contractor may also conclude that there is little hope that they will be able to compete fairly for subsequent awards since the incumbent enjoys "an inside track" by virtue of its close connection to FBI personnel. In turn, this would make it difficult for the FBI to defend against allegations of "unfair competitive advantage" lodged by disappointed vendors whose employees aren't on the FBI's payroll. From an individual perspective, such an arrangement increases the likelihood that the employee may be asked by his or her outside employer to communicate with FBI management on its behalf, which could well violate 18 U.S.C. § 203 or 205. It also increases the potential for violations of 18 U.S.C. § 208, which, among other things,

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prohibits federal employees from taking any official action that could reasonably affect the financial interests of any entity for which they are an employee. Similarly, since the interests of the FBI and its contractors are often dissimilar, an employee who works for both may occasionally find it difficult to reconcile the fiduciary duties he or she owes to each. Additionally, if the employee were fired or suspended from duty, then he or she would lose unescorted access privileges to FBI space, complicating execution of the contract. These and similar considerations cause us to conclude that the proposed employment is objectionable and generally would not be approved. All or part of this analysis may also be applicable to situations where an employee requests to work for an FBI contractor at a non-FBI facility or work in FBI space for a non-FBI contractor. In either situation, the employee would need to submit an FD-331 for approval.

(viii) Use the FBI title or position; the FBI name, seal, badge, initials, or other official indicia; or authority to promote or appear to endorse the outside employment activity.

Example: An FBI employee who is authorized to sell items during off-duty time from a mail-order supplier may not solicit or transact such sales on FBI premises. However, GSA regulations allow for personal notices to be posted on notice boards in common areas where the boards are designated for such use. Note that even if conducted outside the workplace, it is inappropriate for supervisors to solicit sales from subordinates because such activity implicitly or explicitly coerces the subordinate. Also, employees must be careful not to use, or allow the use of, their official position or the FBI name to promote their approved activity.

4.8.5.3 Activities that Do Not Require Approval as Outside Employment

(a) Subject to the limitations expressed in Section 4.8.5.2 and the DOJ supplemental regulations outlined in Section 4.8.4.1 (b) or (c) of this section, the following types of activities do not require approval as outside employment under this section:

(1) Administering and managing the employee's personal investments, including the supervision of personal accounts involving the employee's own passive investments such as stocks, bonds, annuities, income from life insurance contracts and endowment contracts, interest, dividends, capital gains, and nominal rental property to name a few. Employees may exercise such supervision and management over similar accounts of their spouse, children, and parents, or other individuals with which they have a fiduciary relationship.

Example: An FBI employee who is involved in managing investments held in a trust established by the employee's parents for the benefit of the employee's dependent children can manage those personal accounts, including taking action to make occasional stock trades or decisions regarding investments for the trust, without requesting prior approval from the FBI.

(2) Occasional management activities relating to the rental of an employee's former or future personal residences or residential rental property owned by the employee. If the employee's involvement consists of more than the mere collection of rents, minimal maintenance, etc, approval is required.

Example 1: A Special Agent owns two homes outside the area of her current field office. One was purchased while working for the FBI in a prior assignment, the other was left to the employee by her parents. The employee also owns a home on the New Jersey shore that the employee and her family use for vacation purposes. She rents all three homes, but uses a

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management company to handle the advertising, contracting, collecting, and maintenance of the homes. This activity would not require FBI pre-approval, but the employee should be careful to seek approval if the conditions change and require more involvement on the employee's part.

Example 2: An employee regularly purchases, refurbishes, and sells houses in the area of the employee's assigned field office. The employee's activities also include occasional rentals of the homes with direct collection of rent from several tenants on occasion. These activities would constitute self-employment requiring prior-approval by the FBI. Because of the time such activity entails and its likely impact on being available for 24/7 recall, such activity would not normally be approved for a special agent.

(3) Providing unpaid services in an outside organization as a volunteer does not require the submission of an FD-331, when an employee participates as a member or participant in an uncompensated civic, charitable, community service, professional organization or activity, including working for such organizations by providing labor or services (e.g., volunteer coach or volunteer firefighter) or serving as a committee member, etc. Note, however, that:

(i) While an employee is not required to submit an FD-331 in these circumstances, employees should review and ensure compliance with the rules, regulations, policies, and statutes covered by this ethics PG. Employees may contact OIC ethics attorneys for guidance.

(ii) Service that involves fiduciary obligations (e.g., serving as an officer or member of the board of directors) in outside organizations requires approval under the provisions regarding "Outside Organizations" in subsection 4.8.7. of this PG.

(iii) Most organizations are presumed to not be the subject of FBI investigative interest, but FBI employees are required to inform their Division Head if an organization they work with is later found to be the subject of FBI investigation.

(iv) To help reduce the chance of conflicts between their outside activities and their Federal duties, FBI employees may request that their immediate supervisor conduct an indices check on any such organization.

Example 1: An FBI employee volunteers during off-duty time as the president of a local church parish council, a body that decides financial issues for the church, including facility improvements and maintenance, which charities will receive monies distributed for beneficent purposes and clergy compensation. This activity is not employment covered by this section. See subsection 4.8.7. "Participation in Outside Organizations."

Example 2: An FBI employee volunteers, during her off-duty hours, with an organization that builds homes for disadvantaged families in the local area. This uncompensated service includes board review of applicants to receive homes built by the organization, actually working on homes, and hiring local contractors to provide expertise in the projects, none of which are related to the FBI. This activity does not require FBI pre-approval.

(4) Performing occasional labor or services for minimal compensation that does not involve a contract, license, business, or professional obligation and is generally not performed on a recurring basis.

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Example 1: An FBI employee babysits on occasion for a neighbor. The babysitting takes place on Friday evenings and Saturdays. The neighbor pays the employee for the service. Whether or not the payment was arranged in advance, or just paid after the fact, this intermittent type of activity, with reasonable compensation, does not require FBI pre-approval.

Example 2: The same would be true for an FBI employee who cuts his elderly neighbor's lawn every week, and the neighbor insists on paying the employee \$10. Receiving compensation such as this would not automatically constitute outside employment requiring pre-approval, even though the service is not intermittent, as it is not motivated by compensation and the actual compensation is minimal. However, if the same employee decided to start a weekend lawn-cutting business, that changes the nature of the activity and does require pre-approval.

Example 3: An FBI professional staff employee requests permission to engage in house-cleaning self-employment in off-duty hours. The employee's activities would be to clean homes of persons living in the community. The employee would limit the housecleaning duties to Saturdays, with occasional Sunday work during holiday seasons. The employee's work is outside employment requiring pre-approval and could be authorized by the employee's division head. If, however, the employee's supervisor lived in the community, the employee could not arrange to clean that home, as this would create the appearance that the employee was either favored or penalized for performing the outside activity.

Example 4: An FBI employee has written a manuscript and has had the document approved according to the FBI's Pre-Publication Review process (See Pre-Publication Review Guide). The employee also received permission to sell the manuscript under this outside employment approval process. A TV producer purchased the manuscript and asks the employee to serve in his off-duty time as a consultant to a show using the work. This activity exceeds the scope of the original approval and the employee must submit a new request to engage in this outside employment. If the Employee is a Special Agent, such a request would normally be disapproved.

(5) Receiving occasional payment for sale of items created in a hobby or recreational activity that were not contracted for in advance and do not involve a continuing obligation. For example, free-lance writing or journalism that is not produced under contract or retainer may be included in this category. See 5 C.F.R. §2635.807, noted below, for further information on writing. Also note that prepublication review requirements outlined in the FBI Pre-publication Review Guide must be complied with, and that writing activities tantamount to the practice of law would be subject to the constraints of DOJ supplemental regulations discussed in this section.

Example 1: An FBI Special Agent makes wood toys in a garage workshop. The employee makes these as gifts for relatives, but the next door neighbor sees the toys and asks to purchase some. Other neighbors likewise ask to buy some of the toys for their children. As long as the Special Agent restricts this hobby activity in this manner and it involves off-duty time that does not conflict with FBI duties, this would not constitute employment requiring pre-approval. If the employee decided, however, to offer the toys for sale on the Internet, or otherwise contract to make toys for sale that would bind the employee to produce them, that would require pre-approval of the FBI.

Example 2: An FBI professional staff employee writes and illustrates poetry books for children in the employee's off-duty time. The employee's work is sent to a publisher and the publisher

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takes a selection of the illustrated poems and publishes them, netting significant income for the employee. This "hobby" activity would not require pre-approval by the employee. If the publisher contracts for future works of the employee, then the nature of this activity changes to outside employment requiring FBI pre-approval. (Also see Section 4.9 of this Guide for more guidance on writing.)

4.8.5.4. FBI Pre-Approval Requirements and Procedures Concerning Outside Employment

(a) An employee must obtain written approval before engaging in outside employment. New employees engaged in outside employment at the time they begin employment with the FBI are required to submit an FD-331 request for approval within 30 calendar days of reporting to their first permanent duty stations.

(b) FBI employees may not engage in outside employment, except as provided in paragraph 4.8.5.2, unless approved in writing as provided in this section.

In addition, SecD policy requires individuals in the following positions to obtain approval to engage in outside employment: interns, contractors, joint task force members, and other government agency personnel assigned or detailed to FBI workspace, who are authorized for unescorted FBI facility access privileges and who maintain access to FBI information technology (IT) systems or databases and/or protected information. Submissions made by the above-mentioned personnel are reviewed primarily for security purposes, but may be covered under the Standards of Conduct, depending upon the situation. (See PD 0536D, Security Division Processing of Forms Involving Employment Organizations and Activities Outside of the FBI.)

(c) These approval requirements for outside employment are intended to protect the interests of the FBI. Approval of a request for outside employment does not constitute or imply approval or endorsement of any prohibited activity or permit violation of other ethical standards of conduct that may be applicable.

(d) Other employment approval considerations:

(1) Approval to engage in outside employment may be limited or withdrawn at any time by an official with final approval authority over the employee.

(2) Approved outside employment requests are only valid for one year (calculated from the date of final approval). Employees must reapply for approval when there is a substantial change in the circumstances surrounding their outside employment or one year from the date of the last approval has passed, whichever occurs first. The electronic workflow described below is designed to remind employees of this requirement, but employees are ultimately responsible for compliance.

Example: An FBI professional staff employee works as an intelligence analyst in the Criminal Investigative Division (CID). She was previously approved to work as an adjunct professor at a local university by CID management. The employee is now preparing to move to the Counterterrorism Division (CTD). The employee would be required to resubmit an FD-331, "Outside Employment," form as her change in duties and responsibilities qualifies as a substantial change. The employee must acquire approval from CTD management to continue her involvement in outside employment.

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Example: An FBI professional staff employee was approved to work as an IT specialist for the Grady IT Firm at one of its facilities. The firm later decides to assign the employee to a federal agency where he would be working in government space. The employee would be required to resubmit his outside employment request, as this is a substantial change in circumstances.

(3) When considering approval of outside employment, the approval authority should consider whether the requesting employee's current performance of his or her official duties is successful. If successful, then the factors previously mentioned must be carefully considered in the context of the details of the proposed employment, the specific nature of the employee's current duties, the type, nature and amount of any compensation and the extent of the employee's participation in the employment.

(4) If an FBI employee has been approved to engage in outside employment and the employee learns of significant information related to the propriety of such employment, the employee (or similarly, FBI personnel who become aware of the change in circumstance) shall report the matter to the approval authority for review. (If the change in circumstance involves a trustworthiness issue, the approval authority must inform the Security Officer for action consistent with SecD's PD 0536D, Security Division Processing of Forms Involving Employment Organizations and Activities Outside of the FBI.)

Example: An FBI employee has started an approved baby-sitting business in her home. The employee regularly takes care of children after work hours. After several months, the employee's official work hours change to facilitate her division's mission. The employee's supervisor could withdraw approval of the outside employment as it would be in conflict with the employee's FBI duties.

(5) An employee on sick leave may not engage in outside employment unless approved by proper authority.

(6) Approval for outside employment, as outlined in this section, is required even if the outside employment is undertaken during a paid or unpaid leave period or is self-employment. This specifically includes pre-approval for outside employment being undertaken while an employee is in a "terminal leave" status (where he/she may have concluded FBI duties, will not return for duty, and is on approved annual or sick leave until his/her official termination/retirement date).

Example 1: An FBI employee, who has 240 hours of leave on the books decides to retire, leaves the FBI taking "terminal leave," essentially using his annual leave until official retirement begins 30 days later. The employee will not come back to work and has completed all duties. This employee wants to work immediately for a local sheriff. Because the employee is still paid by the FBI and is a DOJ employee, this outside employment would require pre-approval but would be disapproved because of the DOJ regulation against employees performing Law Enforcement functions (see Section 4.8.4.1 of this Guide).

Example 2: The same FBI employee, while on "terminal leave," properly submits a request to engage in outside employment with a local IT contractor not associated with the FBI. This employment would normally be approved. (It should be noted, however, that employees must comply with Post-Government Employment rules for any employment that follows their federal service; for more information, see Section 5.)

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(7) Attending a university or other educational institution does not require the completion of an FD-331; however, if the program involves an internship and/or practicum that requires the employee to work for, or be employed by (compensated or uncompensated), another entity (e.g., private company, nonprofit, or local/state/federal agency), the employee must submit an outside employment request and be approved prior to the start of the internship/practicum.

Example: An FBI professional staff employee attends Michigan State University, where she studies forensic psychology. As a part of her third year curriculum, she must complete an internship. She applied for, and was accepted to, an internship at a state prison where she would work with the principal psychologist, conducting evaluations of prisoners convicted of particular crimes. In this situation, not only is the employee required to submit an outside employment request for management approval but, because DOJ prohibits outside employment involving criminal matters, the employee must also submit a waiver request to DOJ and be approved prior to the start of her internship. (See subsection 4.8.4.1. (b)(1)(ii).)

(8) If participation also constitutes involvement with outside organizations, the employee must meet any applicable requirements of Section 4.8.7 of this Guide.

(e) Procedures to Request Approval of Outside Employment

(1) Personnel who wish to engage in outside employment must submit an electronic version of form FD-331 in EPAS. Requestors in offices without Intranet connectivity should complete paper versions of the requisite forms. Their division security points of contact will enter the information electronically on behalf of the individuals. Those entering the information will attach a signed, electronic version of the submitted paper form to the automated request process. See Ethics Guide Reference Library for proxy FD-331 forms, "Special Agent Request to Engage in Outside Employment" and "Professional Staff Request to Engage in Outside Employment."

(2) Note that final approval of a request for participation in outside organizations under procedures of Section 4.8.7.2 of this Guide constitutes approval for purposes of this section as well.

(3) Certain outside employment requests must be reviewed by OIC ethics attorneys. The electronic form workflow will automatically route certain outside employment requests (e.g., those involving grant-receiving employers like universities, state and local government entities and charities, the practice of law, or those involving criminal matters such as volunteer police work) to OIC ethics attorneys for legal/DDAEO review prior to division head action. As noted below, division heads may consult with OIC ethics attorneys on any questions they have regarding these requests. Field office CDC's will be given electronic notification (and the ability to review) any request automatically routed to OIC for review.

(4) **Division Head Approval.** For purposes of this section, a division head is the employee's special agent in charge (SAC), assistant director in charge (ADIC), or assistant director (AD). Division heads may delegate the authority to make decisions under this section to an appropriate official of grade GS-15 or above.

(i) Division heads must:

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- Ensure that an appropriate indices check of any prospective employer or organization is conducted (which the electronic routing of this form will ensure occurs via the Division Security Specialist or Security Officer);
- Consider whether the employee's current performance of his or her official duties is successful; and
- Determine whether the proposed employment or activity conflicts with the employee's official duties or raises other bases for denial, as described above.²

(ii) Division heads may consult with their legal advisors, security officer, the National Office of Public Affairs (i.e., for media related employment requests) the ethics attorneys in the Office of Integrity and Compliance, and others, and may require additional information from the employee as necessary to make an appropriate decision.

(iii) Division Head Approval by type of employee:

Special Agents. All requests for Special Agents to engage in outside employment (or activities requiring approval under this section) will be reviewed by their division/FO heads and, if approved, will automatically be submitted by the electronic form workflow to the Human Resources Division for final decision by the HRD designee, except as provided under paragraph 2 above or in subsection 4.8.5.2. or if found to be legally objectionable by the FBI DDAEO.

Professional Staff. Division/FO heads may approve, approve in part, or deny the request according to this section for all professional staff employees in their divisions/FOs, unless found to be legally objectionable by the FBI DDAEO.

(iv) The individual requesting approval of outside employment should be informed by electronic notification of any decision and the specific reasons for any denial within 15 working days of providing all requested information.

(v) Division/FO heads may consider requests for reconsideration of decisions within their authority, at their discretion.

(vi) **Appeal.** Professional staff employees may appeal adverse determinations to the supervisor, in the chain of command, of the official who initially determined the matter. Special Agents may appeal adverse determinations to the Human Resource Divisions' Deputy Assistant Director.

(vii) **Review and Filing by**

Security Division. Final copies of the electronic FD-331 (and other approval documents attached to the form relating to outside employment and activity requests) are reviewed by the Security Division and stored in accordance with document handling and retention requirements.

² If this determination involves the Standards of Conduct, division heads must consult with OIC. Division head/field office heads may not approve a request that OIC has found violates the Standards of Conduct or deny a request on the grounds that it violates the Standards, if OIC has previously determined that the request is unobjectionable under the Standards. A division head may deny such a request on other grounds.

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4.8.5.5. FBI Pre-Approval Requirements and Procedures Concerning Outside Legal Practice, Pro Bono Legal Services, Non FBI Law Enforcement Activities or in Matters Involving DOJ Official Action

All requests to engage in outside employment involving: (1) the practice of law, including pro bono legal activity, or (2) any activity requiring waiver under Section 4.8.4.1(b) (DOJ supplemental regulations on prohibited outside employment) must be processed according to Section 4.8.5.3 (d). Prior to final approval, division heads must submit the request for review to the Office of Integrity and Compliance. OIC reviews the request and forwards it for final approval by the appropriate official. See Ethics Guide Reference Library for DOJ's policy on Pro Bono Legal and Volunteer Services. It provides further information on FBI employee involvement in pro bono legal activities.

4.8.6. DOJ Restrictions and Requirements Regarding Outside Activities

4.8.6.1. DOJ Policy Memorandum on Participation in Outside Organizations and Activities

(The FBI policy discussed below is based on the DOJ policy memorandum concerning employee involvement in outside organizations and activities. See Ethics Guide Reference Library for the DOJ Memo on Outside Activities.)

4.8.7. FBI Policies on Participation in Outside Organizations

This section establishes requirements and provides guidance for employee participation in organizations outside of the FBI, whether in a personal or an official capacity.

4.8.7.1. Personal-Capacity Participation in Outside Organizations

In personal-capacity participation, employees make a personal choice to undertake the outside activity rather than being assigned to perform the activity by a supervisor as part of their official duties. The FBI does not control or direct employees in outside activities undertaken in a personal capacity. Employees considering involvement in outside activities must ensure:

(a) That their actions and positions taken while participating in these activities are regarded as their own and not those of the FBI or DOJ.

Example: An FBI employee serves during off-duty hours with an organization that builds housing for disadvantaged persons in the community. The employee attends community events to explain how the organization works and to raise funds to support building projects. This activity would be "personal-capacity" participation normally allowed as a permissible outside activity. If the organization develops a brochure, with the permission or acquiescence of the employee, that identifies the employee as "an FBI representative" and describes the activity as "sponsored by the FBI" because of the employee's involvement, this would amount to a violation of this regulation and constitute an impermissible use of the employee's official position to further the organization's interests.

(b) That their activities do not adversely impact the FBI, as discussed in Section 4.8.5.1.

(c) That they do not violate Title 18 U.S.C. §§203 and 205, which prohibit executive branch employees from representing an outside organization before or to any department or agency of

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the U.S. Government. (Organizations whose membership is composed of a majority of federal employees or their family members are not subject to this prohibition.)

Example: It would be permissible for an FBI employee to be a member of a national organization that provides books for underprivileged children, and the employee can help in off-duty time in collection drives and fundraising not involving solicitation of subordinates or that improperly use the FBI name. If the organization asks the employee, however, to develop and represent the organization with regard to a grant proposal before the U.S. Department of Education, the employee would have to decline.

(d) That, when performing their FBI duties, they do not take any official action that would affect the financial interests of an organization which they serve as officer, director, trustee, general partner, or employee. See 18 U.S.C. §208, and 5 C.F.R. 2635 Subparts D (Conflicting Financial Interests) and E (Impartiality in Performing Official Duties).

(e) That, if their participation also constitutes outside employment, any applicable requirements of Section 4.8.5 of this Guide must be met.

(f) That they receive prior approval for any participation that extends beyond simple membership in an organization.

4.8.7.2. Approval of Personal-Capacity Participation in Outside Organizations

(a) FBI approval of personal-capacity participation in outside organizations is required if the participation extends beyond simple membership.

(b) Definitions

(1) Simple membership is participation that does not involve the management or operation of the organization. It includes service as a committee member.

(2) Participation beyond simple membership includes service as an officer, director, committee chair, co-chair or vice-chair, or other similar managerial position, or any position that is accompanied by a fiduciary duty. (A fiduciary duty is a legal duty to act in the best interests of the beneficiary and is not limited to positions dealing solely with financial matters.)

Example: An FBI Lab technician whose expertise is in fingerprint analysis can join and be a member of an organization like the [fictional] National Association of Fingerprint Analysts, even though the organization assists in setting quality assurance standards that could later be applied to FBI fingerprint procedures. As long as the employee's involvement is "simple membership," there is no FBI notice or pre-approval requirement. If the employee is requested to serve as an officer in the non-federal entity, however, pre-approval would be required by the concerned division head.

Example: An FBI intelligence analyst has been elected as vice president of Save the Wildlife, a nonprofit organization. This involvement goes beyond "simple membership," as the position is accompanied by a fiduciary duty. Accordingly, FBI pre-approval would be required.

(c) Procedures for Requesting Approval.

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Employees who wish to engage in personal-capacity participation in an outside organization must submit an electronic version of form FD-331. Requestors in offices without Intranet connectivity should complete paper versions of the requisite forms. Their division security point of contact will enter the information electronically on behalf of the employee. Those entering the information will attach a signed, electronic version of the submitted paper form to the automated request process. See Ethics Guide Reference Library for a proxy FD-331 form, "Request for Approval of Personal Capacity Involvement in an Outside Organization."

(d) Division Head Approval

- (1) An employee's request for personal-capacity participation in an outside organization required by this section will be processed per the electronic workflow procedures mandated by this section.
- (2) Final approval of a request for outside employment under the procedures of Section 4.8.5 constitutes approval for purposes of this section as well.

4.8.7.2.1. Use of Government Resources

(a) As a general rule, activities on behalf of outside organizations should not be conducted at the expense of the government in terms of time or money. Use of government property or resources in support of an outside organization may, however, be authorized by an official with responsibility and authority over the resource in question pursuant to 5 C.F.R. §§ 251.201-202, if such use advances the interests of the government and does not unduly burden government operations.

(b) Even if use is approved, these resources may not be used in a way that suggests that the FBI or DOJ endorses the activity, nor may they be used for outside activities in a way that interferes with official business. Employees may not task subordinate staff to assist them in their personal-capacity outside activities.

Example: A FBI Lab technician, whose expertise is in fingerprint analysis and who is a member of the [fictional] National Association of Fingerprint Analysts, may, with the permission of his unit chief, copy an organizational chart of the Association from its web-page and print it on a government computer since this involves a de minimis use of the government resources. The employee could not, however, print the 100-page association directory, since this is not a reasonable use.

4.8.7.3. Official-Capacity Participation in Outside Organizations

(a) In official-capacity participation, FBI/DOJ management assigns an employee to participate in a non-federal organization as part of the employee's official duties, under the direction of an appropriate supervisor. All official-capacity participation requires prior approval. As detailed below, approval authority varies based on the degree of the involvement in the organization.

(b) Limitation on the scope of this section. This section does not apply to participating in an organization in a personal capacity or appearing in one's official capacity as a speaker, panelist, or other participant in a seminar, convention, or other particular event.

4.8.7.3.1. Official-Capacity Participation Limited to Passive Membership

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(a) **Passive membership** encompasses serving as FBI observer of the organization's activities and exercising the privileges of a member individually. While the employee participates as a representative of the FBI, the employee does not serve in a position reserved or created for the FBI representative.

Example: An FBI ethics attorney asks to and is authorized by her AD to join a major compliance and ethics organization in her official capacity. Her membership is accepted, and she attends the group's meetings, participates in substantive discussions, and attends its annual conference like any other member in the organization. She does not occupy a management position, but rather, is simply a member. This is passive membership.

(b) **Approval Authority.** For official-capacity participation that does not extend beyond passive membership, the appropriate approval authority is the employee's division head, who may delegate this decision to an appropriate official of grade GS-15 or above.

(c) **Procedures for requesting approval**

Employees assigned to engage in official-capacity participation in an outside organization must submit an electronic version of form FD-331. Requestors in offices without Intranet connectivity should complete paper versions of the requisite forms. Their division security point of contact will enter the information electronically on behalf of the employee. Those entering the information will attach a signed, electronic version of the submitted paper form to the automated request process. See [Ethics Guide Reference Library](#) for a proxy FD-331 form, "Request for Approval of Official Capacity Involvement in an Outside Organization."

(d) **Approving Requests**

All official-capacity participation in outside organization requests will be automatically routed through the electronic workflow process to OIC ethics attorneys for review and appropriate approvals. If the request is determined by OIC to be legally unobjectionable, the Division Head reviews requests for passive official-capacity participation in outside organizations and may approve them if it is determined that the participation will only constitute passive membership and is necessary or proper for the accomplishment of the FBI's mission.

4.8.7.3.2. Official-Capacity Participation Exceeding Passive Membership

(a) This category includes, but is not limited to, serving as an officer, director, or similar managerial position; serving in a position that is accompanied by a fiduciary duty; or serving in a position that is reserved or created for an FBI representative.

Example: The Deputy Director of the FBI is traditionally offered and serves in a position on the executive board of the International Chiefs of Police. This is more than passive membership.

(b) **Approval Authority**

For proposed activity beyond passive membership with national and international non-federal organizations, the Deputy Attorney General (DAG) is the approval authority. Use of the electronic version of the FD-331 is still mandatory to document appropriate review and FBI chain of command concurrence in the outside activity. Once secured, OIC will print the form and pursue DAG approval through DOJ prescribed processes.

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For such activity with other (regional, state, county, or local) non-federal organizations, the electronic FD 331 process will also be used and the approval authorities are the Assistant Director of the concerned FBIHQ Division (i.e., the FBIHQ division with the greatest interest in the programs, objectives, or policies of the organization) and the FBI Deputy Designated Agency Ethics Official (DDAEO). Routing to these approval authorities will occur via the workflow process of the electronic FD 331 and through coordination of printed forms by OIC.

(c) Procedures for requesting approval

Employees who wish to engage in official-capacity participation in outside organizations must submit an electronic version of form FD-331. Requestors in offices without Intranet connectivity should complete paper versions of the requisite forms. Their division security point of contact will enter the information electronically on behalf of the employee. Those entering the information will attach a signed electronic version of the submitted paper form to the automated request process. See [Ethics Guide Reference Library](#) for a proxy FD-331d form, "Request for Approval of Official Capacity Involvement in an Outside Organization." The electronic request should also include uploaded documents that outline:

- (1) The organization's name, a summary of its goals and objectives and how its work is related to the FBI (DOJ considers that authorizing official-capacity participation where the outside organization's work is unrelated to FBI's mission and responsibilities would mistakenly convey FBI/DOJ endorsement of the organization's activities);
- (2) A description of the organization's membership or constituency; the title, managerial authority, voting powers, and responsibilities of the position in question;
- (3) A description of the nature and extent of any fiduciary duty associated with service in the position, and a copy of or citation to any state laws that impose or describe the duty;
- (4) A copy of the organization's charter and by-laws, if reasonably available;

(d) Considerations for Approving Requests:

- (1) Basis for Approval. Approval may only be given when the FBI and DOJ have a clear interest in having an employee represent their interests, and the employee in question is an appropriate one to act as representative for the department.
- (2) Officials serving as representatives to outside organizations as part of official duties must seek to reflect the views of the whole DOJ, not their own or just those of their division or the FBI. These officials must recognize situations when DOJ should take no position because DOJ has no interest in the matter, or when it may be inappropriate for DOJ to express an official position, such as matters involving the internal operation of an organization. They must coordinate closely with DOJ and FBI regarding official positions that will be taken. Officials serving in this capacity must seek guidance from any supervisor assigned by the DAG or AD to coordinate the DOJ/FBI position.

Example 1: An FBI employee has been designated to serve in an official capacity as an FBI representative to an organization that sets standards for the development of criminal record sorting systems. The employee has always favored an approach "A" for this purpose, but after significant study by an internal FBI group of experts (and the employee), the FBI decided to use

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approach "B" as the basis for their system. The employee must be very careful to present the FBI's opinion and not to express the employee's own opinion.

Example 2: The same employee attends another meeting of the non-federal entity, again as an FBI representative. During a portion of the meeting the members are asked to vote on the organization's expenditures regarding a new parking lot to be added to their existing building. The employee should refrain from expressing an opinion or voting on the matter, as it is clearly an internal matter not of interest to the FBI.

(3) Action by SAC/ADIC (and the concerned FBIHQ AD, in cases that must be approved by the DAG). OIC automatically reviews each request as part of the electronic workflow of the request to ensure it is complete, and either disapproves it or forwards the request to the employee's Division Head. After the division has approved the activity, OIC will print the electronic form, and submit it along with appropriate documentation for further approvals.

(4) Action by FBIHQ AD. The DDAEO coordinates the documentation with the concerned FBIHQ AD. The concerned FBIHQ AD reviews each request and:

- (i) Determines that the request should not be approved and takes any additional action deemed appropriate.
- (ii) Approves or recommends that the request be approved, returning it to the FBI DDAEO, along with the AD's determinations and any policy guidance he or she believes necessary to ensure that the candidate carries out the duties of the office according to the understanding on which the approval is based.

(5) Action by the FBI DDAEO. The DDAEO reviews the request for legal sufficiency and may effect such further coordination as warranted. If the DDAEO determines that the request is legally objectionable or otherwise inappropriate, the DDAEO may deny the request and take any additional action deemed appropriate. If the DDAEO determines that the request is legally sufficient and appropriate, the DDAEO either approves the request, if within DDAEO approval authority, or recommends approval of the request and coordinates forwarding the request to the appropriate approval official.

(6) Use of Government Resources

When employees perform duties with an outside organization as part of their official duties, some government expense and use of subordinate employees' time is permissible, subject to supervisory discretion. However, in general the FBI does not authorize use of FBI resources to support the internal administration of an outside organization. The following use of resources may be authorized for employees serving an outside organization as part of their official duties:

- Official time to prepare materials related to the activities,
- Appropriated funds for travel to meetings, and
- The time of a subordinate in preparing material for meetings and other activities.

(e) **Review and Filing by Security Division.** Final copies of the electronic FD-331 (and other approval documents attached to the form relating to outside activity requests) will be reviewed by the Security Division and stored in accordance with document handling and retention requirements.

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4.8.8. Activities Related to Outside Education and Scholarly Research

The FBI continually encourages its employees to improve themselves personally and professionally by seeking advanced educational opportunities.

4.8.8.1. Education Funded by the U. S. Government

Education paid for by the U.S. Government is controlled by agreement with the employee and includes a commitment of service by the employee to the FBI after completion of the program in order for the Government to benefit from the expenses incurred in providing the training. What an employee in an FBI-funded program may and may not use in Government time and resources is controlled by the agreement and the employee's supervisors. The employee should scrupulously follow all requirements included in their agreement and must request permission from his/her immediate supervisor before using any more than *de minimis* time or resources of the FBI in activities related to his/her publicly funded educational requirements. To maximize the value to the Government, an employee engaged in a funded educational program shall, to the maximum extent practicable considering curriculum requirements, perform assignments and research that are beneficial to the FBI, specifically, or the U.S. Government, generally. Any proposed research project requirements that may involve FBI personnel, time and other resources shall be conducted as noted below.

4.8.8.2. Employees Engaged in Privately Funded Education

As noted above, education that provides personal and professional advancement is encouraged by the FBI, including education that an employee privately funds and pursues on his or her own time. The following general policies apply:

- (a) Privately funded education is a personal choice by the employee, and all aspects of the education should be conducted on the employee's personal time and outside of normal working hours.
- (b) Employees may not allow scheduling of classes and exams to conflict with the performance of their official duties. Supervisors are encouraged, consistent with mission requirements, to be flexible in work scheduling to assist employees who seek advanced training and education benefiting the FBI.
- (c) Other than as allowed for all employees (*de minimis* and personal use with negligible expense to the FBI), employees may not use government time or resources to meet their educational requirements.

4.8.8.3. Research Issues

Many advanced degrees require research projects as part of graduation requirements. FBI employees may seek to perform their academic research using FBI information and personnel. Whether the education is funded privately or by the U.S. Government, this practice is strongly discouraged and should, by default, typically be denied for a number of reasons. First, from the perspective of the employee conducting the research, it may be a misuse of position for the employee to use government time and resources (other than a *de minimis* use) for his or her personal benefit. Second, from the perspective of the other FBI employees or contractors asked to participate in the research, the context may create an atmosphere that adversely undermines

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the participating employees' ability to voluntarily consent to participate (e.g., an SAC, an ASAC, or a squad supervisor requests his or her employees to participate). Third, from the perspective of other academic institutions, which would like to have access to FBI personnel and/or resources to conduct and validate their research, it creates the appearance of preferential treatment. Notwithstanding these concerns, however, there are very limited circumstances under which authorization might be granted. This section is intended to assist employees requesting to conduct research to formulate the necessary request by identifying the circumstances, findings, and authorizations necessary to justify conducting the research using FBI information, personnel, and/or resources.

- (a) The research falls within the clear scope of duties of the FBI employee in that:
 - 1) The proposed research is reasonably consistent with, and in furtherance of, a pre-existing, formally documented and approved research process or program of the FBI employee's division, unit, or component;
 - 2) Conducting such research is explicitly or implicitly within the scope of the employee's official responsibilities and duties; or
 - 3) The cost of conducting the research is appropriately paid from FBI funds (e.g., An FBI Lab Division employee assigned to test chemical reagents first acquires FBI Lab management authorization to use a series of such tests as the basis for a doctoral thesis and to publish the same.)
- (b) The approval authority for such research activity is the SAC/division head whose division/FO is most impacted by the research (e.g., the SAC/division head of employees who are the proposed subjects of the research). If the proposed subjects of the research cross division lines, then the approval authority is the AD, HRD. The requestor must complete the FBI "Request to Engage in Research" form located in the Ethics Guide Reference Library to secure approval of the proposed research project. All research approvals must be reviewed prior to the initiation of any actual research.
- (c) To approve any research, the appropriate SAC/division head must overcome a presumption of disapproval and expressly determine and find that:
 - (1) The results of the research would benefit the FBI (e.g., the research proposal involves a topic that the FBI is interested in advancing) to such an extent that the benefit would outweigh the cost of permitting the employee to conduct the research.
 - (2) The personal benefit that tangentially accrues to the employee (e.g., meeting degree requirements) is not a factor in this decision.
 - (3) All research involving human subjects, including survey completions or any other measurement of human characteristics, physical or mental, has been vetted through the FBI Institutional Review Board (See OGC's Privacy and Civil Liberties Unit [PCLU] Intranet site).
- (d) When the projected cost to the FBI (employee time or use of government resources) is minor, and the benefit to the FBI is great (e.g., FBI management strongly encourages the research because it can advance mission requirements), the request may be approved. When the cost in government resources and employee involvement is high, but the FBI is only

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tangentially interested in the outcome, the request must be denied. (See Ethics Guide Reference Library for management considerations concerning requests to engage in research.)

4.8.9. Additional Restrictions on Service on Law Enforcement Organizations and Selection Boards

4.8.9.1. Law Enforcement Selection Boards

FBI employees may not serve on any promotion or selection boards or committees considering local, county, or state law enforcement personnel.

4.8.10. Affiliation with U.S. Military Reserve Components or National Guard Units

Service by FBI employees in the U.S. Military Reserve Component or a National Guard Unit is not covered by this section and does not require use of the outside employment request form, FD-331. Another form, the FD-942, is used for reporting any FBI employee's affiliation with Reserve or National Guard units and should be submitted according to the instructions on the form.

4.9. Teaching, Speaking, or Writing

FBI employees, including special government employees, must exercise caution when they teach, speak, or write, especially outside FBI or U.S. Government venues, to ensure that their actions do not compromise ongoing investigations or violate security provisions, privacy laws, ethics regulations, or other FBI and DOJ policies discussed in this chapter. This is true for teaching, speaking, or writing activities undertaken in either an official or a personal capacity. Even greater caution must be exercised when an FBI employee engages in activities in his/her personal capacity for compensation by some entity other than the FBI or the U.S. Government. The following must be considered when teaching, speaking, or writing:

(a) Some teaching, speaking, and writing activities may constitute outside employment requiring pre-approval. (See Section 4.8.5 of this Guide for policy and procedures regarding outside employment.)

Example 1: An FBI employee has a personal interest in historic Rome and writes a novel during off-duty time about the life of a citizen of ancient Rome. When the novel is complete, he intends to publish it. Because the novel is totally unrelated to the FBI and does not draw on any non-public information acquired by the employee during the course of his duties, there is no necessity to have it reviewed prior to publication by the FBI. However, the employee may be required to seek outside employment approval (see Section 4.8 of this Guide) prior to entering into a contract to publish the work.

Example 2: An FBI Special Agent writes a fictional novel about an FBI character, using only public information and general law enforcement procedures. Because the novel does pertain to the FBI, she submits it for pre-publication review and obtains Records Management Division (RMD) approval for disclosure. The agent then signs an agreement with a company to publish the work and to publish at least two future novels. The agent may be disciplined for failure to seek prior approval of her outside employment even though the work has cleared pre-publication review.

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(b) An employee may not be allowed to receive compensation from an outside entity for teaching, speaking and writing that relates to his or her official duties (e.g., involves actual matters to which he or she is or has been assigned to perform as an FBI employee or that involve ongoing policies, programs or operations of the FBI).

(c) As a condition of employment, all employees agreed to submit information that they seek to release outside official channels (e.g., drafts of speeches, manuscripts, class syllabi) for FBI pre-screening if the information relates to the FBI, involves any aspect of an employee's FBI duties, or pertains to any information acquired during the course of their FBI employment. [See the FBI Prepublication Review (PR) Manual. The Director has delegated authority to review works submitted under this policy to Records Management Division. Note that:

(1) This FBI review is not designed to censure or correct the content of the materials presented but is established to ensure the non-official use of official information is lawful and consistent with privacy, national security, and law enforcement requirements. (See the FBI Prepublication Review (PR) Manual at §1 and §2.5.1.)

(2) Successful completion of the FBI pre-publication review process does not constitute FBI endorsement or approval of the content of the proposed disclosure. Pre-publication review also does not constitute a determination by the FBI that a proposed disclosure is accurate or appropriate, nor is it a commitment not to pursue post-disclosure sanctions if warranted by the content or method of the actual disclosure. (See the FBI Prepublication Review (PR) Manual at §1.)

(d) Willful unauthorized release of Privacy Act protected information (personal information in FBI files) may subject an employee to criminal penalties. (See the Privacy Act of 1974 [5 U.S.C. §552a] and the Privacy and Civil Liberties Unit Intranet site for further information.)

(e) Release or declassification of classified material without proper authorization is a violation of U.S. law and could subject an employee to criminal and civil punishments and sanctions. (See e.g., 50 U.S.C. §783 and 18 U.S.C. §798.)

(f) Copyright limitations must be observed by FBI personnel when teaching, speaking, or writing. (See Section 4.9.7 below for more information.)

(g) Matters involving releases to the media, or responses to media enquiries, must be processed through the appropriate FBI Public Affairs official. (See Section 4.9.3 below for more information).

4.9.1. 5 C.F.R. §2635.807 Office of Government Ethics Regulations on Teaching, Speaking, or 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, may 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 of compensation set forth in this chapter, including:

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- (i) The requirement contained in Sec. 2636.307 of this chapter that covered non-career employees obtain advance authorization before engaging in teaching for compensation; and,
- (ii) The prohibitions and limitations in Sec. 2635.804 and in Sec. 2636.304 of this chapter on receipt of outside earned income applicable to certain Presidential appointees and to other covered noncareer employees.

(2) Definitions - For purposes of this paragraph:

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

- (A) The activity is undertaken as part of the employee's official duties.
- (B) The circumstances indicate that the invitation to engage in the activity was extended to the employee primarily because of his official position rather than his expertise on the particular subject matter.
- (C) The invitation to engage in the activity or the offer of compensation for the activity was extended to the employee, directly or indirectly, by a person who has interests that may be affected substantially by performance or nonperformance of the employee's official duties.
- (D) The information conveyed through the activity draws substantially on ideas or official data that are nonpublic information as defined in Sec. 2635.703(b).
- (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.

(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.

(F) Section 2635.807(a)(2)(i)(E) does not preclude an employee, other than a covered non-career 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

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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 (NHTSA) employee prepared a consumer's guide to purchasing a safe automobile that focuses on automobile crashworthiness statistics gathered and made public by NHTSA. He may not receive royalties or any other form of compensation for the guide. The guide presents in significant part 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 (SEC) may not receive compensation for a book that focuses specifically on the regulation of the securities industry in the United States; 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 that describe the decisions of the Federal Labor Relations Authority (FLRA) 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. FLRA 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 (EPA) 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

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area affected by EPA programs and operations. Neither employee could receive compensation or 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 that are the focus of the advisory committee deliberations are not a particular matter involving specific parties. Because the information is non-public, he could not, however, accept compensation for an article that 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 (NSF) 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.

Example 10: An FBI Special Agent is asked to speak at a monthly meeting of a non-Federal organization made up of corporate audit and state and local law enforcement personnel. The agent is asked to discuss Bureau policy and programs involving the investigation of white collar crime. After the presentation, the agent is offered the "standard" \$200 fee given each month to the featured guest speaker at the association's meetings. Since the talk is about FBI policy and procedures, the agent may not accept the fee even if the speech is made outside regular work hours. See also 18 U.S.C. §209, regarding improper supplementation of salary.

Example 11: An FBI SAC with a doctorate degree in European history is asked by a local branch of the Historic Society to speak to the group about Irish history. The speaker at these events normally receives a \$200 fee. The SAC would be able to keep the speaker's fee since the request for the SAC's participation is based upon expertise developed through the employee's educational background and the talk is not about FBI policy or programs and does not involve non-public FBI information.

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(ii) **Agency** has the meaning set forth in Sec. 2635.102(a), except that any component of a department designated as a separate agency under Sec. 2635.203(a) is 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 5 C.F.R. §§2635.201-205 (Gifts from Outside Sources).

Example: An FBI lab employee is asked to speak at the annual conference of a forensics organization. The employee is asked to discuss FBI procedures for the submission of evidentiary samples for testing. Following the presentation, the organization gives the employee a DNA replica paperweight, valued at \$19.50, supplied to all speakers by the corporate co-sponsor of the conference, an entity that does business with the FBI. Normally such gifts may not be accepted by Federal employees but because the value of the item is less than \$20, the employee may accept it as long as the federal employee does not accept more than \$50 in gifts per year from the same source. (See Section 4.2 of this Guide for further information.)

(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.

Example: If the above FBI employee's speech is delivered at a luncheon open to all attendees of the conference, the employee may partake of the offered meal.

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

(D) In the case of an employee other than a covered non-career employee as defined in 5 C.F.R. §2636.303(a), travel expenses consisting of transportation, lodgings, or meals incurred in connection with the teaching, speaking, or writing activity. (This section may seem inconsistent with paragraph iii above, but it was inserted by the Office of Government Ethics after a 1992 Supreme Court decision held that a ban on reimbursement for such expenses for GS employees below the Special Executive Service was not Constitutional.)

(E) With regard to this section, independent of 5 C.F.R. §807(a), other authorities such as 18 U.S.C. §209 may, in some circumstances, limit or entirely preclude an employee's acceptance of travel expenses. In addition, employees who file financial disclosure reports should be aware that, subject to applicable thresholds and exclusions, travel and travel reimbursements accepted from sources other than the United States Government must be reported on their financial disclosure reports.

Example 1 to paragraph (a)(2)(iii): A GS-15 employee of the Forest Service has developed and marketed, in her private capacity, a speed reading technique for which popular demand is growing. She is invited to speak about the technique by a representative of an organization that

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will be substantially affected by a regulation on land management which the employee is in the process of drafting for the Forest Service. The representative offers to pay the employee a \$200 speaker's fee and to reimburse all her travel expenses. She may accept the travel reimbursements, but not the speaker's fee. The speaking activity is related to her official duties under Sec. 2635.807(a)(2)(i)(C) and the fee is prohibited compensation for such speech. Travel expenses incurred in connection with the speaking engagement, on the other hand, are not prohibited compensation for a GS-15 employee.

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

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

Example 4 to paragraph (a)(2)(iii): An advocacy group dedicated to improving treatments for severe pain asks the National Institutes of Health (NIH) to provide a conference speaker who can discuss recent advances in the agency's research on pain. The group also offers to pay the employee's travel expenses to attend the conference. After performing the required conflict of interest analysis, NIH authorizes acceptance of the travel expenses under 31 U.S.C. §1353 and the implementing General Services Administration regulation, as codified under 41 C.F.R. chapter 304, and authorizes an employee to undertake the travel. At the conference, the advocacy group, as agreed, pays the employee's hotel bill and provides several of his meals. Subsequently the group reimburses the agency for the cost of the employee's airfare and some additional meals. All of the payments by the advocacy group are permissible. Because the employee is speaking officially and the expense payments are accepted under 31 U.S.C. §1353, they are not prohibited compensation under Sec. 2635.807(a)(2)(iii). (The FBI may allow acceptance of offers from a non-federal source to pay travel expenses [e.g., accommodations, transportation, meals, and fees] related to official teaching, speaking, or writing. The FBI must

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approve acceptance of all such offers. A TRIP request is used for this purpose. All employees who are offered free travel or payment of travel-related expenses by a non-U.S. Government entity should ensure the form is submitted and approved prior to the date of travel. See Section 4.4 for more information) The same applies to expense payments made by non-government sources properly authorized under an agency gift acceptance statute, the Government Employees Training Act, 5 U.S.C. §4111, or the Foreign Gifts and Decorations Act, 5 U.S.C. §7342.

(iv) **Receive** means that the employee actually or constructively receives the compensation and has the right to exercise dominion and control over the compensation and to direct its subsequent use. Compensation received by an employee includes compensation which is:

- (A) Paid to another person, including a charitable organization, on the basis of designation, recommendation, or other specification by the employee; or
- (B) Paid with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative.

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

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

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

(i) The regularly established curriculum of:

- (A) An institution of higher education as defined at 20 U.S.C. §1141(a),
- (B) An elementary school as defined at 20 U.S.C. §2891(8), or
- (C) A secondary school as defined at 20 U.S.C. §2891(21).

(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 applies to cost accounting principles applicable to contracts with the government.

Example 2: An attorney employed by the Equal Employment Opportunity Commission (EEOC) 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 (NEH) is invited by a private university to teach a course that is a survey of government policies in support of artists,

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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 non-performance 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 non-public information.

Example 4: An FBI Professional staff employee may teach and receive compensation for teaching a regularly scheduled course entitled "Criminal Procedure" for the Criminal Justice program at a local accredited university even though a substantial amount of the course addresses federal criminal procedure rules and Fourth Amendment law that the employee routinely handles in her FBI duties. She still would have to obtain advance approval to engage in this outside employment under the procedures set for in Section 4.8 of this Guide.

(b) Reference to official position. An employee who is engaged in teaching, speaking or writing as outside employment or as an outside activity may 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, with the following exceptions:

- (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.
- (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.

(c) 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 non-public information, or otherwise complies with this section. (The FBI does require such a review; see Sections 4.9.3 & 4.9.5 of this Guide and the FBI Prepublication Review (PR) Manual.)

Example 1: A meteorologist employed with the National Oceanic and Atmospheric Administration (NOAA) 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

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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 (CDC) 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.

4.9.2. Teaching

4.9.2.1. Teaching in an Official Capacity

(a) Teaching on official time may be authorized by the respective SAC or division head when the topic is related to the mission of the FBI and the recipients of the instruction are:

- (1) Federal, state, or local government employees, as long as the instruction benefits the FBI mission. (For guidance on providing instruction to international personnel, consult with IOD and OGC).
- (2) Ordinary citizens, when the appropriate SAC/Division Head approves the training as a liaison activity that advances the FBI image and encourages the cooperation of the public or where the SAC/Division Head authorizes the training as part of a community outreach effort. The latter should be coordinated with the Field Office's Media Coordinator or, for Headquarters Divisions, with the Office of Public Affairs (OPA).
- (3) Students attending an accredited university or other organized training institution, if the responsible SAC or division head determines that the benefits to the FBI of training students who pay to attend classes outweighs the appearance that it would be an improper use of government resources. Such a determination should be based on a consideration of the following factors:
 - (i) The investment in time and effort to prepare such training
 - (ii) The benefits to the FBI of providing the instruction (e.g., educating the public on the FBI mission and priorities, assisting in the recruitment of college students by establishing contact with an FBI professional in the academic environment, enhancing our public image as experts in law enforcement and anti-terrorism, and offering FBI personnel liaison opportunities with other experts in the field).

4.9.2.2. Teaching in Personal Capacity

(a) Teaching in a classroom-type setting that is done on a recurring basis or for compensation, whether or not the subject matter of the course is related to an FBI employee's official position,

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requires pre-approval as outside employment. (See Section 4.8 of this Guide for an explanation of FBI outside employment approval policies and procedures.)

(b) Occasional, non-compensated teaching on a subject matter unrelated to an employee's duties that does not draw upon information obtained by virtue of employment and is not otherwise related to the FBI, and which occurs infrequently so that it is not a recurring obligation, would not normally be construed as outside employment.

Example 1: An FBI Special Agent is asked by a college friend to teach lifesaving techniques for a one-hour session in the friend's undergraduate course at an accredited university. The one-time request to teach about a subject matter unrelated to the SA's FBI duties would not require pre-publication review of the related course materials nor pre-approval as outside employment (although the activity could not conflict with the SA's duties and would have to be performed on the SA's time). If the friend asks the SA to teach the topic regularly, then pre-approval as outside employment would be necessary (even if the SA is not compensated). (See Section 4.8 of this Guide for an explanation of FBI outside employment approval policies and procedures.)

(c) Teaching that involves the use of FBI non-public information or that discusses the policy and procedures of the FBI must be pre-approved through the FBI's Pre-Publication Review procedures, whether or not the teaching is compensated. (See the FBI Prepublication Review (PR) Manual.)

4.9.3. 28 C.F.R. § 50.2 Release of information by Personnel of the Department of Justice Relating to Criminal and Civil Proceedings

(a) General

(1) The availability to news media of information in criminal and civil cases has become a subject of increasing concern in the administration of justice. The purpose of this statement is to formulate specific guidelines for the release of such information by Department of Justice personnel.

(2) While the release of information for the purpose of influencing a trial is always improper, there are valid reasons for making information about administering the law available to the public. The task of striking a fair balance between the protection of individuals accused of crime or involved in civil proceedings with the government and public understanding of the problems of controlling crime and administering government depends largely on the sound judgment of those responsible for administering the law and of representatives of the press and other media.

(3) Inasmuch as the Department of Justice has generally fulfilled its responsibilities with awareness and understanding of the competing needs in this area, this statement considerably reflects and formalizes the standards to which representatives of the department have adhered in the past. Nonetheless, guidelines for all Department of Justice personnel will help in ensuring uniformity of practice.

(4) Because of the difficulty and importance of the questions they raise, some portions covered by this statement, such as the authorization to make available federal conviction records or a description of items seized at the time of arrest, should continually be reviewed by the

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department on the basis of experience and suggestions from those outside as well as within the department.

(b) Guidelines to criminal actions

(1) The guidelines below apply to the release of information to news media from the time a person is the subject of a criminal investigation until any proceeding resulting from such an investigation has been terminated by trial or otherwise.

(2) At no time may personnel of the Department of Justice furnish any statement or information for the purpose of influencing the outcome of a defendant's trial, nor may personnel of the Department furnish any statement or information that could reasonably be expected to be disseminated by means of public communication, if such a statement or information may reasonably be expected to influence the outcome of a pending or future trial.

(3) Personnel of the Department of Justice, subject to specific limitations imposed by law or court rule or order, may make public the following information:

(i) The defendant's name, age, residence, employment, marital status, and similar background information

(ii) The substance or text of the charge, such as a complaint, indictment, or information

(iii) The identity of the investigating and/or arresting agency and the length or scope of an investigation

(iv) The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of physical items seized at the time of arrest

Disclosures should include only incontrovertible, factual matters, but should not include subjective observations. In addition, where background information or information relating to the circumstances of an arrest or investigation would be highly prejudicial or where the release thereof would serve no law enforcement function, such information should not be made public.

(4) Personnel of the Department may not disseminate any information concerning a defendant's prior criminal record.

(5) Because of the particular danger of resulting prejudice, statements during the period approaching and during trial should strenuously be avoided. Any such statement or release may be made only when circumstances absolutely demand a disclosure of information and may include only that information which is clearly not prejudicial.

(6) The release of certain types of information may create prejudice without serving a significant law enforcement function. Therefore, personnel of the department should refrain from making available the following:

(i) Observations about a defendant's character

(ii) Statements, admissions, confessions, or alibis attributable to a defendant, or the refusal or failure of the accused to make a statement

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- (iii) Reference to investigative procedures such as fingerprints, polygraph examinations, ballistic tests, or laboratory tests, or to the refusal by the defendant to submit to such tests or examinations
 - (iv) Statements concerning the identity, testimony, or credibility of prospective witnesses
 - (v) Statements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial
 - (vi) Any opinion as to the accused's guilt, or the possibility of a plea of guilty to the offense charged, or the possibility of a plea to a lesser offense
- (7) Department of Justice personnel should take no action to encourage or assist news media in photographing or televising a defendant or accused person being held or transported in federal custody. Departmental representatives should not make available photographs of a defendant unless it serves a law enforcement function.
- (8) This statement of policy is not intended to restrict the release of information concerning a defendant who is a fugitive from justice.
- (9) Because this statement sets forth general guidelines, it may occasionally limit the release of unprejudicial information. If a representative of the department believes that in the fairness of justice the information should be released, he may request the permission of the Attorney General or the Deputy Attorney General to do so.
- (c) Guidelines to civil actions. Department of Justice personnel associated with a civil action may not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial and which relates to:
- (1) Evidence regarding the occurrence or transaction involved.
 - (2) The character, credibility, or criminal records of a party, witness, or prospective witness.
 - (3) The performance or results of any examinations or tests or the refusal or failure of a party to submit to such.
 - (4) An opinion of the merits of the claims or defenses of a party, except as required by law or administrative rule.
 - (5) Any other matter reasonably likely to interfere with a fair trial of the action.

4.9.4. FBI Policy on Speaking and Writing Involving the Media

The work that employees perform for the FBI is frequently of national importance and is, therefore, the subject of great public attention and interest. Nevertheless, each employee has a responsibility to maintain the confidentiality of information learned by virtue of his/her FBI duties. Sensitive law enforcement information must not be disclosed in any form without specific prior authorization. Information is not releasable merely because it is attributed to an unidentified "Federal law enforcement official." Such disclosures cause serious damage to our investigations and risk unfairly tarnishing the reputation of those involved in these

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investigations who enjoy the presumption of innocence and are entitled to the due process of law.

As noted above, all FBI personnel are required to protect from unauthorized disclosure all information acquired by virtue of their employment. Inquiries from representatives of the media should be referred to the appropriate divisional media representative, SAC, or the Office of Public Affairs at Headquarters. It is the responsibility of these professionals to respond appropriately to press inquiries consistent with applicable law and Attorney General Guidelines. The following applies to all media inquiries and contacts:

(a) Media Contacts:

- (1) Detailed policy on handling media inquiries and related matters (print, television, Internet, and recorded news outlets) is contained in the Public Affairs Guide. Prepublication Review (PR) Manual

The definitions of "Media" are broad in scope and outlined in that Guide.

- (2) To ensure a coordinated and uniform response concerning major operations and sensitive issues, notice of all contacts with national news media organizations should be reported to the OPA National Press Office as soon as possible.

- (3) FBIHQ divisions should keep the OPA National Press Office advised as early as practical of any significant cases or programs that could result in national press or media attention.

- (4) Inquiries from members of the press or news media related to recent or breaking news or matters requiring a response within a short time frame should be referred immediately to the National Press Office for coordination. Inquiries from members of the press or news media related to long-term projects and requests from authors or filmmakers should be referred to the Investigative Publicity and Public Affairs Unit, OPA.

(b) Editorials, Letters to the Editor, and Other Opinion Matter in the Media

- (1) Prior review of submissions to newspapers or other media on issues unrelated to FBI work or not based, in whole or in part, on information acquired by virtue of FBI employment, is not required.

- (2) FBI employees who wish to make written submissions to media that relate to the work of the FBI or are based upon information obtained by virtue of employment with the FBI must comply with pre-publication review requirements outlined in the Prepublication Review (PR) Manual.

Example 1: An FBI employee wishes to submit an editorial comment expressing his views on global warming to a local newspaper. Because the topic of global warming is not related to the employee's official FBI duties, the editorial may be submitted without pre-publication review. The employee may not, however, use his FBI official position or title to buttress the editorial. (See Section 4.9.1(b) above. Also see Section 4.7 of this Guide concerning Misuse of Position.)

Example 2: A local newspaper runs an editorial criticizing the "excessive" use of force by local police in a situation involving a barricaded suspect. An FBI Hostage Rescue Team employee wants to submit, in the employee's personal capacity, an opinion piece to the newspaper that counters the editorial by discussing the appropriate use of force by tactical response teams to

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protect citizens from unnecessary violence. Since the subject of his response concerns law enforcement matters, the employee must submit the draft editorial for pre-publication review. Again, the employee cannot use his FBI official position or title to buttress any argument advanced in the editorial (although he may generally refer to his expertise as a law enforcement officer in such matters). (See Section 4.9.1(b) above. Also see Section 4.7 of this Guide concerning Misuse of Position.)

Example 3: A newspaper editorial is critical of an FBI program regarding surveillance of criminal suspects. The Assistant Director for the Criminal Investigation Division drafts a response to the editorial in his official capacity. Normally, official writings of this nature must be coordinated with the Office of Public Affairs but are not subject to pre-publication review.

4.9.5. Writing Novels, Scripts, and Other Works

Employees who engage in writing should note the following:

(a) Writings made as part of an employee's performance of official duties are government works, and the employee cannot exercise copyright control, even if all or some of the work is produced during traditionally non-duty hours. Such works are not discussed further in this section. Any non-official use of these official writings must be cleared in advance by the employee's immediate supervisor and chain of command.

Example: As part of her official duties, an FBI Lab employee produces a scientific paper on a computer algorithm that allows criminal investigators to sort millions of bits of raw data taken from a crime scene. The employee is a scientist who requested and received permission from the FBI to conduct the research to develop the algorithm on government time and using lab personnel and resources. She now wants to publish the paper in a non-government professional journal to assist other state and local crime scene investigators and for her own benefit (scientists are commonly expected to publish in their scientific fields). Since the paper is a government owned product, the employee must request permission to publish the document through her supervisors and submit it to RMD for pre-publication review as discussed below.

(b) Writings that are related to the FBI or that use information obtained by virtue of FBI employment must be submitted for pre-publication review as outlined in the Prepublication Review (PR) Manual.

(c) Writings that are wholly unrelated to the FBI and are not based on any information acquired by virtue of FBI employment do not require pre-publication review.

(d) Publication or engaging in business activities related to writings (e.g., promotion and advertising, script development, public appearances, consultant work for television and movie interests), whether compensated or uncompensated, requires the concerned employee to obtain prior approval as outside employment. (See Section 4.8 of this Guide.)

Example 1: An FBI Headquarters professional staff employee writes, in the employee's personal time, a children's book that is selected by a publisher for printing. This writing would not have to undergo pre-publication review in the FBI but the employee would have to get outside employment approval for selling the manuscript, promoting the book, and so forth.

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Example 2: The same FBI employee is now approached by a network producer who wishes to have the employee consult with a new children's Television show based upon the original book. The employee must seek pre-approval to engage in this outside employment as it exceeds the scope of approval granted in the first example.

4.9.6. 17 U.S.C. §107 Subject Matter and Scope of Copyright, Limitations on Exclusive Rights: Fair Use

Section 107. Notwithstanding the provisions of Sections (17 U.S.C. §§) 106 and 106A, the fair use of copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use, the factors to be considered include:

- (1) The purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) The nature of the copyrighted work;
- (3) The amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) The effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished may not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.

4.9.7. Copyright Considerations for Teaching, Speaking, or Writing

Employees must observe copyright protections for materials they use when engaging in teaching, speaking, or writing activities. Published government works do not hold copyright protection and may generally be used in teaching, speaking, or writing. Privately published materials are usually copyright protected and normally contain a copyright notice on or near the first page of the work or in a footnote near the beginning of the article. With respect to the use of copyrighted works, employees must consider:

(a) Copyright laws invest the copyright holder with the exclusive right to control the reproduction and derivative use of any copyrighted material. This protection is extended to "original works of authorship fixed in any tangible medium." Therefore, copyrighted materials are not to be reproduced for internal use or public distribution without the permission of the copyright owner unless such reproduction is allowed by a statutory exception to this general requirement.

(b) The doctrine of "fair use" is a statutory exception most likely applicable to reproduction for non-commercial teaching, speaking, or writing purposes. (See 17 U.S.C. §107 in Section 4.9.6 above.) Fair use generally permits the reproduction of a portion of copyrighted material without the copyright owner's permission for purposes such as criticism, comment, news reporting, teaching, scholarship, or research. In determining whether the use is fair, factors to be considered are:

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- (1) The purpose of the copying,
 - (2) Whether the copying is for commercial or nonprofit educational purposes,
 - (3) The portion copied in relation to the whole work,
 - (4) The type of work copied (e.g., books, photographs, or charts), and
 - (5) The potential diminution of the market or value of the copyrighted work.
- (c) Permissible ranges of copying are not specifically specified in the statute, but usually, making a copy of a single section of a book, an article from a periodical or newspaper, or a chart, drawing, or photograph from a book, periodical, or newspaper would be permissible. Also note:
- (1) As a general rule, copying must be limited and must not substitute for the purchase of reprints or books from the publisher.
 - (2) Copying an entire book, especially a textbook, for use in a course is not appropriate without permission from the copyright holder.
 - (3) Whenever copyrighted material is reproduced, the notice of copyright should be included on the first page of the copied material.
- (d) Issues involving copyright protections for official teaching, speaking, or writing should be referred to Office of the General Counsel, FBIHQ. For copyright issues an employee encounters in carrying out non-official teaching, speaking, or writing, the employee should consult with the educational institution, his/her private counsel, or contact the source of the copyrighted material for permission to use the protected matter.

4.9.8. FBI Policy Regarding Political Speech

(Statutory and regulatory guidance regarding involvement by FBI employees in political speech are contained in Section 7 of this Guide.)

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5. Financial Disclosure

Legend

Black font: Statutory, Office of Government Ethics and other Agency Policy and Procedures
Blue font: DOJ Policy and Procedures
Red font: FBI Policy and Procedures

5.1. Purpose of Financial Disclosure

The public expects that FBI employees will always place the public's interest over their own when performing official responsibilities. One of the tools that assists us in ensuring that all FBI employees conduct their duties consistent with this public trust is the Ethics Financial Disclosure Reporting Program. These reporting/disclosure forms are specifically designed to help each employee and their supervisors identify any personal financial interests (including those of our immediate family and some friends, relatives and non-Federal entities in which we are or were personally involved) that may conflict with, or appear to conflict with, the performance of official duties. Ensuring that we identify and mitigate any actual or apparent conflicts will ensure that each of us complies with the law in order to continue the FBI legacy of earning the public trust and support essential to completing our mission.

5.2. FBI Employees Required to File Ethics Financial Disclosure Forms (FBI Specific Requirements)

5.2.1. Public Financial Disclosure Reports (OGE-278e Form)

The OGE-278e form ("Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT"), created by the Office of Government Ethics, is to be completed by all FBI employees in SES and SL positions, as well as employees whose rate of basic pay is fixed other than under the General Schedule, at a rate equal to, or greater than, 120 percent of the minimum rate of basic pay for GS-15 of the General Schedule. Additionally, the OGE-278e form is required from employees filling the aforementioned positions in an "acting" capacity for more than 60 consecutive days (per DOJ guidance) in a calendar year.

5.2.2. Confidential Financial Disclosure Reports (OGE Form 450)

The OGE-450 form is also mandated by the Office of Government Ethics and is completed by FBI personnel who do not fill out either the OGE-278e "Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT" form (noted above) or an FBI Conflict of Interest Certification (CIC) form (discussed below) and who fall in one of the following categories:

a. FBI Headquarters personnel who serve as:

1. GS-15 supervisors (including those assigned to Legal Attaches, detail assignments, etc.);

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2. Unit Chiefs, regardless of grade;
 3. Procurement and contracting officials (including CORs and contracting officers, but excluding purchase card holders' who may only make single purchases \$3,000 or less and are not assigned to the Finance Division or unless a CIC form, noted below, is authorized by the cognizant supervisor after consulting OIC ethics attorneys);
 4. Government Purchase Card holders assigned to the Finance Division, regardless of grade; and
 5. GS-15 or below employees who have been determined by their supervisors to perform official FBI duties that require them to exercise significant judgment on behalf of the Government:
 - A. Regarding contracting or procurement;
 - B. Regarding the administration or monitoring of grants, subsidies, licenses, or other benefits; or,
 - C. As a special government employee serving with or without compensation (except that Special Government employees have different reporting requirements than other OGE form 450 filers, see section 5.5.1.2.)
 - D. As an employee who performs significant duties that which will directly and substantially affect the economic interests of a nonfederal entity or entities when management needs to evaluate personal holdings of the employee, spouse, and dependent children in order to effectively assign and supervise employees official duties.
 6. Employees acting in a covered position mentioned above for more than 60 days.
- b. Field Division personnel who serve as:
1. Assistant Special Agents in Charge (ASACs);
 2. Supervisory Special Agents (and employees in similar supervisory positions, e.g., SIA's, Supervisory MAPA's);
 3. Administrative Officers (AOs), Office Services Managers (OSMs), Office Managers (OM), appropriately designated assistants such as Supervisory Administrative Specialists (SAS) and Assistant Office Services Managers (AOSM);
 4. Procurement and contracting officials (including CORs and contracting officers, but excluding purchase card holders who may only make single purchases \$3000 or less or unless a CIC form, as noted below, is authorized by the cognizant supervisor after consulting OIC ethics attorneys);
 5. All Chief Division Counsels at the GS-14 level;
 6. (All employees included in subparagraphs 5 and 6 to paragraph a. above).

5.2.3. Conflict of Interest Certification forms

- a. This form is FBI-generated and is completed in situations where the employee only performs occasional or single procurement or contracting functions. Employees in the

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following categories may be authorized by their supervisors, after consultation with an OIC ethics attorney, to complete the CIC form (*See Ethics Guide Reference Library* for a Conflict of Interest Certification form):

1. Employees who occasionally serve in the role of an FBI Contracting Officer Representative (COR); which may include Special Agents and/or certain professional staff employees (e.g., senior electronics technicians, information systems analysts, or individual program experts who provide technical support regarding contracts).
- b. When to File CIC Form. A CIC must be executed each time a project is assigned or reassigned.

5.3. Procedures Concerning Financial Disclosure Reports

5.3.1. Office of Government Ethics Regulations

(The following section outlines procedures involving ethics-related financial disclosure forms.)

5.3.1.1. 5 C.F.R. § 2634.601 Report forms

- (a) The Office of Government Ethics provides two standard forms, the OGE-278e "Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT" and the OGE-278-T Transaction Report for reporting the information described in subpart B of this part on executive branch public disclosure. (As of May 2015, both are electronically distributed and therefore not supplied through GSA.) The Office of Government Ethics also provides two uniform formats relating to confidential financial disclosure: OGE Form 450 (Confidential Financial Disclosure Report) for reporting the information described in subpart I of this part on executive branch confidential disclosure; and OGE Optional Form 450-A (Confidential Certificate of No New Interests) for voluntary use by certain employees in lieu of filing an annual OGE Form 450, if authorized by their agency, in accordance with § 2634.905(d) of subpart I of this part. Supplies of the two confidential forms are to be reproduced locally by each agency, from a camera-ready copy or an electronic format made available by the Office of Government Ethics. (*See Ethics Guide Reference Library* for an OGE-278e or an OGE-278T form, an OGE-450 form, and a Conflict of Interest Certification form.)
- (b) Subject to the prior written approval of the Director of the Office of Government Ethics, an agency may require employees to file additional confidential financial disclosure forms which supplement either or both of the standard forms referred to in paragraph (a) of this section, if necessary because of special or unique agency circumstances. The Director may approve such agency forms when, in his opinion, the supplementation is shown to be necessary for a comprehensive and effective agency ethics program to identify and resolve conflicts of interest. See §§ 2634.103 and 2634.901.
- (c) The information collection and recordkeeping requirements have been approved by the Office of Management and Budget under control number 3209-0001 for the OGE-278e, and control number 3209-0006 for OGE Form 450/SF 450. OGE Optional Form 450-A has been determined not to require an OMB paperwork control number, as its use is strictly optional for employees, it is used exclusively by current Government employees, and it does not require affirmative disclosure of substantive information.

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5.3.1.2. 5 C.F.R. § 2634.602 Filing of reports

(a) Except as otherwise provided in this section, the reporting individual shall file financial disclosure reports required under this part with the designated agency ethics official or his delegate at the agency where the individual is employed, or was employed immediately prior to termination of employment, or in which he will serve. Detailees shall file with their primary agency. Reports are due at the times indicated in § 2634.201 of subpart B (public disclosure) or §2634.903 of subpart I (confidential disclosure) of this part, unless an extension is granted pursuant to the provisions of subparts B or I of this part.

(b) The President, the Vice President, any independent counsel, and persons appointed by independent counsel under 28 U.S.C. chapter 40, shall file the public financial disclosure reports required under this part with the Director of the Office of Government Ethics.

(c)

(1) Each agency receiving the public financial disclosure reports required to be filed under this part by the following individuals shall transmit copies to the Director of the Office of Government Ethics:

(i) The Postmaster General;

(ii) The Deputy Postmaster General;

(iii) The Governors of the Board of Governors of the United States Postal Service;

(iv) The designated agency ethics official;

(v) Employees of the Executive Office of the President who are appointed under 3 U.S.C. 105(a)(2)(A) or (B) or 3 U.S.C. 107(a)(1)(A) or (b)(1)(A)(i), and employees of the Office of Vice President who are appointed under 3 U.S.C. 106(a)(1)(A) or (B); and

(vi) Officers and employees in, and nominees to, offices or positions which require confirmation by the Senate, other than members of the uniformed services.

(2) Prior to transmitting a copy of a report to the Director of the Office of Government Ethics, the designated agency ethics official or his delegate shall review that report in accordance with § 2634.605 of this subpart, except for his own report, which shall be reviewed by the agency head or by a delegate of the agency head.

(3) For nominee reports, the Director of the Office of Government Ethics shall forward a copy to the Senate committee that is considering the nomination. (See § 2634.605(c) of this subpart for special procedures regarding the review of such reports.)

(d) The Director of the Office of Government Ethics shall file his financial disclosure report with his Office, which shall make it immediately available to the public in accordance with this part.

(e) Candidates for President and Vice President identified in §2634.201(d), other than an incumbent President or Vice President, shall file their financial disclosure reports with the Federal Election Commission, which shall review and send copies of such reports to the Director of the Office of Government Ethics.

(f) Members of the uniformed services identified in §2634.202(c) shall file their financial disclosure reports with the Secretary concerned, or his delegate.

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5.3.1.3. 5 C.F.R. § 2634.603 Custody of and access to public reports

(a) Each agency shall make available to the public in accordance with the provisions of this section those public reports filed with the agency by reporting individuals described under subpart B of this part.

(b) This section does not require public availability of those reports filed by:

(1) Any individual in the Central Intelligence Agency, the Defense Intelligence Agency, or the National Security Agency, or any individual engaged in intelligence activities in any agency of the United States, if the President finds or has found that, due to the nature of the office or position occupied by that individual, public disclosure of the report would, by revealing the identity of the individual or other sensitive information, compromise the national interest of the United States. Individuals referred to in this paragraph who are exempt from the public availability requirement may also be authorized, notwithstanding §2634.701, to file any additional reports necessary to protect their identity from public disclosure, if the President finds or has found that such filings are necessary in the national interest; or

(2) An independent counsel whose identity has not been disclosed by the Court under 28 U.S.C. chapter 40, or any person appointed by that independent counsel under such chapter.

(c) Each agency shall, within thirty days after any public report is received by the agency, permit inspection of the report by, or furnish a copy of the report to, any person who makes written application as provided by agency procedure. Agency reviewing officials and the support staffs who maintain the files, the staff of the Office of Government Ethics, and Special Agents of the Federal Bureau of Investigation who are conducting a criminal inquiry into possible conflict of interest violations need not submit an application. The agency may utilize Office of Government Ethics Form 201 for such applications. An application shall state:

(1) The requesting person's name, occupation, and address;

(2) The name and address of any other person or organization on whose behalf the inspection or copy is requested; and

(3) That the requesting person is aware of the prohibitions on obtaining or using the report set forth in paragraph (f) of this section.

(d) Applications for the inspection of or copies of public reports shall also be made available to the public throughout the period during which the report itself is made available, utilizing the procedures in paragraph (c) of this section.

(e) The agency may require a reasonable fee, established by agency regulation, to recover the direct cost of reproduction or mailing of a public report, excluding the salary of any employee involved. A copy of the report may be furnished without charge or at a reduced charge if the agency determines that waiver or reduction of the fee is in the public interest. The criteria used by an agency to determine when a fee will be reduced or waived shall be established by regulation. Agency regulations contemplated by paragraph (e) of this section do not require approval pursuant to § 2634.103.

(f) It is unlawful for any person to obtain or use a public report:

(1) For any unlawful purpose;

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- (2) For any commercial purpose, other than by news and communications media for dissemination to the general public;
- (3) For determining or establishing the credit rating of any individual; or
- (4) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

Example 1. The deputy general counsel of Agency X is responsible for reviewing the public financial disclosure reports filed by persons within that agency. The agency personnel director, who does not exercise functions within the ethics program, wishes to review the disclosure report of an individual within the agency. The personnel director would just file an application to review the report. However, the supervisor of an official with whom the deputy general counsel consults concerning matters arising in the review process need not file such an application.

Example 2. A state law enforcement agent is conducting an investigation which involves the private financial dealings of an individual who has filed a public financial disclosure report. The agent must complete a written application in order to inspect or obtain a copy.

Example 3. A financial institution has received an application for a loan from an official which indicates her present financial status. The official has filed a public financial disclosure statement with her agency. The financial institution cannot be given access to the disclosure form for purposes of verifying the information contained on the application.

(g)(1) Any public report filed with an agency or transmitted to the Director of the Office of Government Ethics under this section shall be retained by the agency, and by the Office of Government Ethics when it receives a copy. The report shall be made available to the public for a period of six years after receipt. After the six-year period, the report shall be destroyed unless needed in an ongoing investigation, except that in the case of an individual who filed the report pursuant to §2634.201(c) as a nominee and was not subsequently confirmed by the Senate, or who filed the report pursuant to § 2634.201(d) as a candidate and was not subsequently elected, the report, unless needed in an ongoing investigation, shall be destroyed one year after the individual either is no longer under consideration by the Senate or is no longer a candidate for nomination or election to the Office of President or Vice President. See also the OGE/GOVT-1 Government-wide Executive Branch Privacy Act system of records (available for inspection at the Office of Government Ethics), as well as any applicable agency system of records.

(2) For purposes of paragraph (g)(1) of this section, in the case of a reporting individual with respect to whom a trust has been certified under subpart D of this part, a copy of the qualified trust agreement, the list of assets initially placed in the trust, and all other publicly available documents relating to the trust shall be retained and made available to the public until the periods for retention of all other reports of the individual have lapsed under paragraph (g)(1) of this section.

5.3.1.4. 5 C.F.R. § 2634.604 Custody of and denial of public access to confidential reports

(a) Any report filed with an agency under subpart I of this part shall be retained by the agency for a period of six years after receipt. After the six-year period, the report shall be destroyed unless needed in an ongoing investigation. See also the OGE/GOVT-2 Government-wide

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executive branch Privacy Act system of records (available for inspection at the Office of Government Ethics), as well as any applicable agency system of records.

(b) The reports filed pursuant to subpart I of this part are confidential. No member of the public shall have access to such reports, except pursuant to the order of a Federal court or as otherwise provided under the Privacy Act. See 5 U.S.C. 552a and the OGE/GOVT-2 Privacy Act system of records (and any applicable agency system); 5 U.S.C. app. (Ethics in Government Act of 1978, section 107(a)); sections 201(d) and 502(b) of Executive Order 12674, as modified by Executive Order 12731; and § 2634.901(d).

5.3.1.5. 5 C.F.R. § 2634.605 Review of reports

(a) In general. The designated agency ethics official shall normally serve as the reviewing official for reports submitted to his agency. That responsibility may be delegated, except in the case of certification of nominee reports required by paragraph (c) of this section. See also § 2634.105(q). (DOJ Policy delegates the responsibility to the Director, who further delegates it to the FBI Deputy Designated Agency Ethics Official (DDAEO). The DDAEO performs duties as the reviewing official for all FBI public disclosure reports except that of the Director's and the DDAEO's own report.) He shall note on any report or supplemental report the date on which it is received. Except as indicated in paragraph (c) of this section, all reports shall be reviewed within 60 days after the date of filing. Reports reviewed by the Director of the Office of Government Ethics shall be reviewed within 60 days from the date on which they are received by that Office. Final certification in accordance with paragraph (b)(2) of this section may, of necessity, occur later, where additional information is being sought or remedial action is being taken under this section.

(b) Responsibilities of reviewing officials—

(1) Initial review. The reviewing official may request an intermediate review by the filer's supervisor. (FBI policy requires an initial review by the filer's immediate supervisor when filing an OGE-450 or a CIC form, but not when filing an OGE-278e form.) In the case of a filer who is detailed to another agency for more than 60 days during the reporting period, the reviewing official shall obtain an intermediate review by the agency where the filer served as a detailee. After obtaining any intermediate review or determining that such review is not required, the reviewing official shall examine the report to determine, to his satisfaction that:

(i) Each required item is completed; and

(ii) No interest or position disclosed on the form violates or appears to violate:

(A) Any applicable provision of chapter 11 of title 18, United States Code;

(B) The Act, as amended, and the implementing regulations;

(C) Executive Order 12674, as modified by Executive Order 12731, and the implementing regulations; or

(D) Any other agency-specific statute or regulation which governs the filer.

(2) Signature by reviewing official. If the reviewing official determines that the report meets the requirements of paragraph (b)(1) of this section, he shall certify it by signature and date. (As of May 2015, the form is now processed electronically and digitally signed and time stamped by the INTEGRITY.gov application.) The reviewing official need not audit the

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report to ascertain whether the disclosures are correct. Disclosures shall be taken at "face value" as correct, unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. However, a report which is signed by a reviewing official certifies that the filer's agency has reviewed the report, and that the reviewing official has concluded that each required item has been completed and that on the basis of information contained in such report the filer is in compliance with applicable laws and regulations noted in paragraph (b)(1)(ii) of this section.

(3) Requests for, and review based on, additional information. If the reviewing official believes that additional information is required, he shall request that it be submitted by a specified date. This additional information shall be made a part of the report. If the reviewing official concludes, on the basis of the information disclosed in the report and any additional information submitted, that the report fulfills the requirements of paragraph (b)(1) of this section, the reviewing official shall sign and date the report.

(4) Compliance with applicable laws and regulations. If the reviewing official concludes that information disclosed in the report may reveal a violation of applicable laws and regulations as specified in paragraph (b)(1)(ii) of this section, the official shall:

- (i) Notify the filer of that conclusion;
- (ii) Afford the filer a reasonable opportunity for an oral or written response; and
- (iii) Determine, after considering any response, whether or not the filer is then in compliance with applicable laws and regulations specified in paragraph (b)(1)(ii) of this section. If the reviewing official concludes that the report does fulfill the requirements, he shall sign and date the report. If he determines that it does not, he shall:
 - (A) Notify the filer of the conclusion;
 - (B) Afford the filer an opportunity for personal consultation if practicable;
 - (C) Determine what remedial action under paragraph (b)(5) of this section should be taken to bring the report into compliance with the requirements of paragraph (b)(1)(ii) of this section; and
 - (D) Notify the filer in writing of the remedial action which is needed, and the date by which such action should be taken.

(5) Remedial action.

- (i) Except in unusual circumstances, which must be fully documented to the satisfaction of the reviewing official, remedial action shall be completed not later than three months from the date on which the filer received notice that the action is required.
- (ii) Remedial action may include, as appropriate:
 - (A) Divestiture of a conflicting interest (see subpart J of this part);
 - (B) Resignation from a position with a non-Federal business or other entity;
 - (C) Restitution;
 - (D) Establishment of a qualified blind or diversified trust under the Act and subpart D of this part;

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- (E) Procurement of a waiver under 18 U.S.C. 208(b)(1) or (b)(3);
- (F) Preparation of a written instrument of recusal (disqualification); or
- (G) Voluntary request by the filer for transfer, reassignment, limitation of duties, or resignation.

(6) Compliance or referral.

- (i) If the filer complies with a written request for remedial action under paragraph (b)(4) of this section, the reviewing official shall indicate, in the comment section of the report, what remedial action has been taken. The official shall also sign and date the report.
 - (ii) If the filer does not comply by the designated date with the written request for remedial action transmitted under paragraph (b)(4) of this section, the reviewing official shall, in the case of a public filer under subpart B of this part, notify the head of the agency and the Office of Government Ethics, for appropriate action. Where the filer is in a position in the executive branch (other than in the uniformed services or the Foreign Service), appointment to which requires the advice and consent of the Senate, the Director of the Office of Government Ethics shall refer the matter to the President. In the case of the Postmaster General or Deputy Postmaster General, the Director of the Office of Government Ethics shall recommend to the Governors of the Board of Governors of the United States Postal Service the action to be taken. For confidential filers, the reviewing official will follow agency procedures.
- (c) Expedited procedure in the case of individuals appointed by the President and subject to confirmation by the Senate. In the case of a report filed by an individual described in §2634.201(c) who is nominated by the President for appointment to a position that requires the advice and consent of the Senate:
- (1) The Executive Office of the President shall furnish the applicable financial disclosure report form to the nominee. It shall forward the completed report to the designated agency ethics official at the agency where the nominee is serving or will serve, or it may direct the nominee to file the completed report directly with the designated agency ethics official.
 - (2) The designated agency ethics official shall complete an accelerated review of the report, in accordance with the standards and procedures in paragraph (b) of this section. If that official concludes that the report reveals no conflict of interest under applicable laws and regulations, the official shall:
 - (i) Attach to the report a description (when available) of the position to be filled by the nominee;
 - (ii) Personally certify the report by signature, and date the certification;
 - (iii) Write an opinion letter to the Director of the Office of Government Ethics, personally certifying that there is no unresolved conflict of interest under applicable laws and regulations, and discussing:
 - (A) Any actual or apparent conflicts of interest that were detected during the review process; and

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(B) The resolution of those real or apparent conflicts, including any specific commitment, ethics agreement entered under the provisions of subpart H of this part, or other undertaking by the nominee to resolve any such conflicts. A copy of any commitment, agreement, or other undertaking which is reduced to writing shall be sent to the Director, in accordance with subpart H of this part; and

(iv) Deliver the letter and the report to the Director of the Office of Government Ethics, within three working days after the designated agency ethics official receives the report.

Note: The designated agency ethics official's certification responsibilities in § 2634.605(c) are non-delegable and must be accomplished by him personally, or by the agency's alternate designated agency ethics official, in his absence. See § 2638.203 of this chapter.

(3) The Director of the Office of Government Ethics shall review the report and the letter from the designated agency ethics official. If the Director is satisfied that no unresolved conflicts of interest exist, then the Director shall sign and date the report form. The Director shall then submit the report with a letter to the appropriate Senate committee, expressing the Director's opinion whether, on the basis of information contained in the report, the nominee has complied with all applicable conflict laws and regulations.

(4) If, in the case of any nominee or class of nominees, the expedited procedure specified in this paragraph cannot be completed within the time set forth in paragraph (c)(2)(iv) of this section, the designated agency ethics official shall inform the Director. When necessary and appropriate, the Director may modify the rule of that paragraph for a nominee or a class of nominees with respect to a particular department or agency.

2634.605(a). The thirty-day grace period on imposing a late filing fee is adequate allowance for administrative delays in the receipt of reports by an agency.

5.3.1.6. 5 C.F.R. 2634.103 Executive Agency Supplemental Regulations

(a) This regulation is intended to provide uniformity for executive branch financial disclosure systems. However, an agency may, subject to the prior written approval of the Office of Government Ethics, issue supplemental regulations implementing this part, if necessary to address special or unique agency circumstances. Such regulations:

(1) Shall be consistent with the Act, Executive Orders 12674 and 12731, and this part; and

(2) Shall impose no additional reporting requirements on either public or confidential filers, unless specifically authorized by the Office of Government Ethics as supplemental confidential reporting.

Note: Supplemental regulations will not be used to satisfy the separate requirement of 5 U.S.C. App. (Ethics in Government Act of 1978, Section 402(d)(1)) that each agency have established written procedures on how to collect, review, evaluate, and, where appropriate, make publicly available, financial disclosure statements filed with it.

(b) Requests for approval of supplemental regulations under paragraph (a) of this section shall be submitted in writing to the Office of Government Ethics, and shall set forth the agency's need for any proposed supplemental reporting requirements. See Sec. 2634.901 (b) and (c).

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(c) Agencies should review all of their existing financial disclosure regulations to determine which of those regulations must be modified or revoked in order to conform to the requirements of this part. Any amendatory agency regulations shall be processed in accordance with paragraphs (a) and (b) of this section.

5.3.1.7. 5 C.F.R. 2634.105 Definitions

For purposes of this part:

(a) Act means the Ethics in Government Act of 1978 (Pub. L. 95-521, as amended), as modified by the Ethics Reform Act of 1989 (Pub. L. 101-194, as amended).

(b) Agency means any executive agency as defined in 5 U.S.C. 105 (any executive department, Government corporation, or independent establishment in the executive branch), any military department as defined in 5 U.S.C. 102, and the Postal Service and the Postal Rate Commission. It does not include the General Accounting Office.

(c) Confidential filer. For the definition of "confidential filer," see Sec. 2634.904.

(d) Dependent child means, when used with respect to any reporting individual, any individual who is a son, daughter, stepson, or stepdaughter and who:

(1) Is unmarried, under age 21, and living in the household of the reporting individual; or

(2) Is a dependent of the reporting individual within the meaning of section 152 of the Internal Revenue Code of 1986, 26 U.S.C. 152.

(e) Designated agency ethics official means the primary officer or employee who is designated by the head of an agency to administer the provisions of title I of the Act and this part within an agency, and in his absence the alternate who is designated by the head of the agency. The term also includes a delegate of such an official, unless otherwise indicated. See subpart B of part 2638 of this chapter on the appointment and additional responsibilities of a designated agency ethics official and alternate.

(f) Executive branch means any agency as defined in paragraph (b) of this section and any other entity or administrative unit in the executive branch.

(g) Filer is used interchangeably with "reporting individual," and may refer to a "confidential filer" as defined in paragraph (c) of this section, a "public filer" as defined in paragraph (m) of this section, or a nominee or candidate as described in Sec. 2634.201.

(h) Gift means a payment, advance, forbearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor, but does not include:

(1) Bequests and other forms of inheritance;

(2) Suitable mementos of a function honoring the reporting individual;

(3) Food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(4) Food and beverages which are not consumed in connection with a gift of overnight lodging;

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(5) Communications to the offices of a reporting individual, including subscriptions to newspapers and periodicals;

(6) Consumable products provided by home-State businesses to the offices of the President or Vice President, if those products are intended for consumption by persons other than the President or Vice President; or

(7) Exclusions and exceptions as described at Sec. 2634.304(c) and (d).

(i) Honorarium means a payment of money or anything of value for an appearance, speech, or article.

(j) Income means all income from whatever source derived. It includes but is not limited to the following items: earned income such as compensation for services, fees, commissions, salaries, wages and similar items; gross income derived from business (and net income if the individual elects to include it); gains derived from dealings in property including capital gains; interest; rents; royalties; dividends; annuities; income from the investment portion of life insurance and endowment contracts; pensions; income from discharge of indebtedness; distributive share of partnership income; and income from an interest in an estate or trust. The term includes all income items, regardless of whether they are taxable for Federal income tax purposes, such as interest on municipal bonds. Generally, income means "gross income" as determined in conformity with the Internal Revenue Service principles at 26 C.F.R. 1.61-1 through 1.61-15 and 1.61-21.

(k) Personal hospitality of any individual means hospitality extended for a nonbusiness purpose by an individual, not a corporation or organization, at the personal residence of or on property or facilities owned by that individual or his family.

(l) Personal residence means any real property used exclusively as a private dwelling by the reporting individual or his spouse, which is not rented out during any portion of the reporting period. The term is not limited to one's domicile; there may be more than one personal residence, including a vacation home.

(m) Public filer. For the definition of "public filer," see Sec. 2634.202.

(n) Reimbursement means any payment or other thing of value received by the reporting individual (other than gifts, as defined in paragraph (h) of this section) to cover travel-related expenses of such individual, other than those which are:

(1) Provided by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(2) Required to be reported by the reporting individual under 5 U.S.C. 7342 (the Foreign Gifts and Decorations Act); or

(3) Required to be reported under section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. 434) (relating to reports of campaign contributions).

Note: Payments which are not made to the individual are not reimbursements for purposes of this part. Thus, payments made to the filer's employing agency to cover official travel-related expenses do not fit this definition of reimbursement. For example, payments being accepted by the agency pursuant to statutory authority such as 31 U.S.C. 1353, as implemented by 41 C.F.R. part 304-1, are not considered reimbursements under this part 2634, because they are not

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payments received by the reporting individual. On the other hand, travel payments made to the employee by an outside entity for private travel are considered reimbursements for purposes of this part. Likewise, travel payments received from certain nonprofit entities under authority of 5 U.S.C. 4111 are considered reimbursements, even though for official travel, since that statute specifies that such payments must be made to the individual directly (with prior approval from the individual's agency).

(o) Relative means an individual who is related to the reporting individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great uncle, great aunt, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the reporting individual, and shall be deemed to include the fiancé or fiancée of the reporting individual.

(p) Reporting individual is used interchangeably with "filer," and may refer to a "confidential filer" as defined in Sec. 2634.904, a "public filer" as defined in Sec. 2634.202, or a nominee or candidate as described in Sec. 2634.201.

(q) Reviewing official means the designated agency ethics official or his delegate, the Secretary concerned, the head of the agency, or the Director of the Office of Government Ethics.

(r) Secretary concerned has the meaning set forth in 10 U.S.C. 101(8) (relating to the Secretaries of the Army, Navy, Air Force, and for certain Coast Guard matters, the Secretary of Transportation); and, in addition, means:

(1) The Secretary of Commerce, in matters concerning the National Oceanic and Atmospheric Administration;

(2) The Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and

(3) The Secretary of State with respect to matters concerning the Foreign Service.

(s) Special Government employee has the meaning given to that term by the first sentence of 18 U.S.C. 202(a): an officer or employee of an agency who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis.

(t) Value means a good faith estimate of the fair market value if the exact value is neither known nor easily obtainable by the reporting individual without undue hardship or expense. In the case of any interest in property, see the alternative valuation options in Sec. 2634.301(e). For gifts and reimbursements, see Sec. 2634.304(e).

5.4. Public Financial Disclosure

5.4.1. Office of Government Ethics Regulations

5.4.1.1. 5 C.F.R. § 2634.201 General requirements, filing dates, and extensions

(a) Incumbents. A public filer as defined in §2634.202 of this subpart who, during any calendar year, performs the duties of his position or office, as described in that section, for a period in excess of 60 days shall file a public financial disclosure report containing the information

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prescribed in subpart C of this part, on or before May 15 of the succeeding year. (See Ethics Guide Reference Library for OGE-278e-related information.)

Example 1. An SES official commences performing the duties of his position on November 15. He will not be required to file an incumbent report for that calendar year.

Example 2. An employee, who is classified at GS-15, is assigned to fill an SES position in an acting capacity, from October 15 through December 31. Having performed the duties of a covered position for more than 60 days during the calendar year, he will be required to file an incumbent report. In addition, he must file a new entrant report the first time he serves more than 60 days in a calendar year in the position, in accordance with § 2634.201(b) and §2634.204(c)(1).

(b) New entrants.

(1) Within 30 days of assuming a public filer position or office described in § 2634.202 of this subpart, an individual shall file a public financial disclosure report containing the information prescribed in subpart C of this part.

(2) However, no report shall be required if the individual:

(i) Has, within 30 days prior to assuming such position, left another position or office for which a public financial disclosure report under the Act was required to be filed; or

(ii) Has already filed such a report as a nominee or candidate for the position.

Example: Y, an employee of the Treasury Department who has previously filed reports in accordance with the rules of this section, terminates employment with that Department on January 12, 1991, and begins employment with the Commerce Department on February 10, 1991, in a Senior Executive Service position. Y is not a new entrant since he has assumed a position described in § 2634.202 of this subpart within thirty days of leaving another position so described. Accordingly, he need not file a new report with the Commerce Department.

Note: While Y did not have to file a new entrant report with the Commerce Department, that Department should request a copy of the last report which he filed with the Treasury Department, so that Commerce could determine whether or not there would be any conflicts or potential conflicts in connection with Y's new employment. Additionally, Y will have to file an incumbent report covering the 1990 calendar year, in accordance with paragraph (a) of this section, due not later than May 15, 1991, with Commerce, which should provide a copy to Treasury so that both may review it.

Example 1. An FBI employee is temporarily placed in an "acting" section chief position (normally filled by an SES) for an undetermined amount of time. If the position is filled before 60 days, then the acting section chief will not need to file an OGE-278e. If the position is not filled within 60 days, however, then the acting section chief must file a "New Entrant" OGE-278 within 15 days following the 60th day of filling the position. (See subsection 5.4.1.4. of this PG.) Also, the acting section chief will need to file a Termination OGE-278e within 30 days of concluding service in such an acting capacity.

(c) Nominees.

(1) At any time after a public announcement by the President or President-elect of his intention to nominate an individual to an executive branch position, appointment to which

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requires the advice and consent of the Senate, such individual may, and in any event within five days after the transmittal of the nomination to the Senate shall, file a public financial disclosure report containing the information prescribed in subpart C of this part.

(2) This requirement shall not apply to any individual who is nominated to a position as:

- (i) An officer of the uniformed services; or
- (ii) A Foreign Service Officer.

Note: Although the statute, 5 U.S.C. app. (Ethics in Government Act of 1978, section 101(b)(1)), exempts uniformed service officers only if they are nominated for appointment to a grade or rank for which the pay grade is 0-6 or below, the Senate confirmation committees have adopted a practice of exempting all uniformed service officers, unless otherwise specified by the committee assigned.

(3) Section 2634.605(c) provides expedited procedures in the case of individuals described in paragraph (c)(1) of this section. Those individuals referred to in paragraph (c)(2) of this section as being exempt from filing nominee reports shall file new entrant reports, if required by paragraph (b) of this section.

(d) Candidates. A candidate (as defined in section 301 of the Federal Election Campaign Act of 1971, 2 U.S.C. 431) for nomination or election to the office of President or Vice President (other than an incumbent) shall file a public financial disclosure report containing the information prescribed in subpart C of this part, in accordance with the following:

- (1) Within 30 days of becoming a candidate or on or before May 15 of the calendar year in which the individual becomes a candidate, whichever is later, but in no event later than 30 days before the election; and
- (2) On or before May 15 of each successive year an individual continues to be a candidate. However, in any calendar year in which an individual continues to be a candidate but all elections relating to such candidacy were held in prior calendar years, the individual need not file a report unless he becomes a candidate for a vacancy during that year.

Example: P became a candidate for President in January 1991. P will be required to file a public financial disclosure report on or before May 15, 1991. If P had become a candidate on June 1, 1991, he would have been required to file a disclosure report within 30 days of that date.

The STOCK Act, Pub.L. 112-105 – Requirement for All Public Filers

Under the STOCK Act, employees required to file an OGE-278e (“Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT”) form are also required to file monthly OGE-278T (“Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT: Periodic Transaction Report”) forms by the 15th of each month. (See subsection 5.4.2. for information concerning filing procedures and subsection 5.4.1.12. (c) for information concerning filing periods and report content.)

(e) Termination of employment.

- (1) On or before the thirtieth day after termination of employment from a public filer position or office described in § 2634.202 of this subpart, an individual shall file a public financial disclosure report containing the information prescribed in subpart C of this part.

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(2) However, if within 30 days of such termination the individual assumes employment in another position or office for which a public report under the Act is required to be filed, no report shall be required by the provisions of this paragraph. See the related Example in paragraph (b) of this section.

(f) Extensions. The reviewing official may, for good cause shown, grant to any public filer or class thereof an extension of time for filing which shall not exceed 45 days. The reviewing official may, for good cause shown, grant an additional extension of time which shall not exceed 45 days. The employee shall set forth in writing specific reasons why such additional extension of time is necessary. The reviewing official must approve or deny such requests in writing. Such records shall be maintained as part of the official report file. (For extensions on confidential financial disclosure reports, see § 2634.903(d).)

5.4.1.2. 5 C.F.R. § 2634.202 Public filer defined

The term public filer includes:

- (a) The President;
- (b) The Vice President;
- (c) Each officer or employee in the executive branch, including a special Government employee as defined in 18 U.S.C. 202(a), whose position is classified above GS-15 of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate equal to or greater than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each member of a uniformed service whose pay grade is at or in excess of O-7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification;
- (d) Each employee who is an administrative law judge appointed pursuant to 5 U.S.C. 3105;
- (e) Any employee not otherwise described in paragraph (c) of this section who is in a position in the executive branch which is excepted from the competitive service by reason of being of a confidential or policy-making character, unless excluded by virtue of a determination under § 2634.203 of this subpart;
- (f) The Postmaster General, the Deputy Postmaster General, each Governor of the Board of Governors of the United States Postal Service and each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is equal to or greater than 120% of the minimum rate of basic pay for GS-15 of the General Schedule;
- (g) The Director of the Office of Government Ethics and each agency's primary designated agency ethics official;
- (h) Any civilian employee not otherwise described in paragraph (c) of this section who is employed in the Executive Office of the President (other than a special Government employee, as defined in 18 U.S.C. 202(a)) and holds a commission of appointment from the President; and
- (i) Anyone whose employment in a position or office described in paragraphs (a) through (h) of this section has terminated, but who has not yet satisfied the filing requirements of § 2634.201(e) of this subpart.

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Note: References in this section and in §§ 2634.203 and 2634.904 to position classifications have been adjusted to reflect elimination of General Schedule classifications GS-16, GS-17, and GS-18 by the Federal Employees Pay Comparability Act of 1990, as incorporated in section 529 of Public Law 101-509.

5.4.1.3. 5 C.F.R. § 2634.203 Persons excluded by rule

(a) In general. Any individual or group of individuals described in § 2634.202(e) of this subpart (relating to positions of a confidential or policy-making character) may be excluded by rule from the public reporting requirements of this subpart when the Director of the Office of Government Ethics determines, in his sole discretion, that such exclusion would not affect adversely the integrity of the Government or the public's confidence in the integrity of the Government.

(b) Exclusion determination. The determination required by paragraph (a) of this section has been made for the following group of individuals who, therefore, may be excluded from the public reporting requirements of this subpart, pursuant to the procedures in paragraph (c) of this section: Individuals in any position classified at GS-15 of the General Schedule or below, or the rate of basic pay for which is less than 120% of the minimum rate of basic pay fixed for GS-15, who have no policy-making role with respect to agency programs. Such individuals may include chauffeurs, private secretaries, stenographers, and others holding positions of a similar nature whose exclusion would be consistent with the basic criterion set forth in paragraph (a) of this section. See § 2634.904(d) for possible coverage by confidential disclosure rules.

(c) Procedure

(1) The exclusion of any individual from reporting requirements pursuant to this section will be effective as of the time the employing agency files with the Office of Government Ethics a list and description of each position for which exclusion is sought, and the identity of any incumbent employees in those positions. Exclusions should be requested prior to due dates for the reports which such employees would otherwise have to file.

(2) If the Office of Government Ethics finds that one or more positions have been improperly excluded, it will advise the agency and set a date for the filing of the report.

5.4.1.4. 5 C.F.R. § 2634.204 Employment of sixty days or less

(a) In general. Any public filer or nominee who, as determined by the official specified in this paragraph, is not reasonably expected to perform the duties of an office or position described in § 2634.201(c) or § 2634.202 of this subpart for more than 60 days in any calendar year shall not be subject to the reporting requirements of § 2634.201 (b), (c), or (e) of this subpart. This determination will be made by:

(1) The designated agency ethics official or Secretary concerned, in a case to which the provisions of § 2634.201 (b) or (e) of this subpart (relating to new entrant and termination reports) would otherwise apply; or

(2) The Director of the Office of Government Ethics, in a case to which the provisions of § 2634.201(c) of this subpart (relating to nominee reports) would otherwise apply.

(b) Alternative reporting. Any new entrant who is exempted from filing a public financial report under paragraph (a) of this section and who is a special Government employee is subject to confidential reporting under § 2634.903(b). See § 2634.904(b).

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(c) Exception. If the public filer or nominee actually performs the duties of an office or position referred to in paragraph (a) of this section for more than 60 days in a calendar year, the public report otherwise required by:

- (1) Section 2634.201 (b) or (c) of this subpart (relating to new entrant and nominee reports) shall be filed within 15 calendar days after the sixtieth day of duty; and
- (2) Section 2634.201(e) of this subpart (relating to termination reports) shall be filed as provided in that paragraph.

5.4.1.5. 5 C.F.R. § 2634.301 Interests in property

(a) In general. Each financial disclosure report filed pursuant to this part, whether public or confidential, shall include a brief description of any interest in property held by the filer at the end of the reporting period in a trade or business, or for investment or the production of income, having a fair market value in excess of \$1,000. In the case of public financial disclosure reports, the report shall designate the category of value of the property in accordance with paragraph (d) of this section. Each item of real and personal property shall be disclosed separately. Note that for Individual Retirement Accounts (IRA's), brokerage accounts, trusts, mutual or pension funds and other entities with portfolio holdings, each underlying asset must be separately disclosed, unless the entity qualifies for special treatment under § 2634.310 of this subpart.

(b) Types of property reportable. Subject to the exceptions in paragraph (c) of this section, examples of the types of property required to be reported include, but are not limited to:

- (1) Real estate;
- (2) Stocks, bonds, securities, and futures contracts;
- (3) Livestock owned for commercial purposes;
- (4) Commercial crops, either standing or held in storage;
- (5) Antiques or art held for resale or investment;
- (6) Beneficial interests in trusts and estates;
- (7) Deposits in banks or other financial institutions;
- (8) Pensions and annuities;
- (9) Mutual funds;
- (10) Accounts or other funds receivable; and
- (11) Capital accounts or other asset ownership in a business.

(c) Exceptions. The following property interests are exempt from the reporting requirements under paragraphs (a) and (b) of this section:

- (1) Any personal liability owed to the filer, spouse, or dependent child by a spouse, or by a parent, brother, sister, or child of the filer, spouse, or dependent child;
- (2) Personal savings accounts (defined as any form of deposit in a bank, savings and loan association, credit union, or similar financial institution) in a single financial institution or holdings in a single money market mutual fund, aggregating \$5,000 or less in that institution or fund;

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(3) A personal residence of the filer or spouse, as defined in § 2634.105(l); and (4) Financial interests in any retirement system of the United States (including the Thrift Savings Plan) or under the Social Security Act.

(d) Valuation categories. The valuation categories specified for property items on public financial disclosure reports are as follows:

- (1) Not more than \$15,000;
- (2) Greater than \$15,000 but not more than \$50,000;
- (3) Greater than \$50,000 but not more than \$100,000;
- (4) Greater than \$100,000 but not more than \$250,000;
- (5) Greater than \$250,000 but not more than \$500,000;
- (6) Greater than \$500,000 but not more than \$1,000,000; and
- (7) Greater than \$1,000,000;
- (8) Provided that, with respect to items held by the filer alone or held jointly by the filer with the filer's spouse and/or dependent children, the following additional categories over \$1,000,000 shall apply:
 - (i) Greater than \$1,000,000 but not more than \$5,000,000;
 - (ii) Greater than \$5,000,000 but not more than \$25,000,000;
 - (iii) Greater than \$25,000,000 but not more than \$50,000,000; and
 - (iv) Greater than \$50,000,000.

(e) Valuation of interests in property. A good faith estimate of the fair market value of interests in property may be made in any case in which the exact value cannot be obtained without undue hardship or expense to the filer. Fair market value may also be determined by:

- (1) The purchase price (in which case, the filer should indicate date of purchase);
- (2) Recent appraisal;
- (3) The assessed value for tax purposes (adjusted to reflect the market value of the property used for the assessment if the assessed value is computed at less than 100 percent of that market value);
- (4) The year-end book value of non-publicly traded stock, the year-end exchange value of corporate stock, or the face value of corporate bonds or comparable securities;
- (5) The net worth of a business partnership;
- (6) The equity value of an individually owned business; or
- (7) Any other recognized indication of value (such as the last sale on a stock exchange).

Example 1. An official has a \$4,000 savings account in Bank A. His spouse has a \$2,500 certificate of deposit issued by Bank B and his dependent daughter has a \$200 savings account in Bank C. The official does not have to disclose the deposits, as the total value of the deposits in any one bank does not exceed \$5,000. Note, however, that the source, and if he is a public filer the amount, of interest income from any bank is required to be reported under § 2634.302(b) of

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this subpart if it exceeds the reporting threshold for income. See § 2634.309 of this subpart for disclosure coverage of spouses and dependent children.

Example 2. Public filer R has a collection of post-impressionist paintings which have been carefully selected over the years. From time to time, as new paintings have been acquired to add to the collection, R has made sales of both less desirable works from his collection and paintings of various schools which he acquired through inheritance. Under these circumstances, R must report the value of all the paintings he retains as interests in property pursuant to this section, as well as income from the sales of paintings pursuant to § 2634.302(b) of this subpart. Recurrent sales from a collection indicate that the collection is being held for investment or the production of income.

Example 3. A reporting individual has investments which her broker holds as an IRA and invests in stocks, bonds, and mutual funds. Each such asset having a fair market value in excess of \$1,000 at the close of the reporting period must be separately listed, and also the value must be shown if she is a public filer. See § 2634.311(c) of this subpart for attachment of brokerage statements in lieu of listing, in the event of extensive holdings. (As of May 2015, the FBI does not allow attachment of brokerage statements. All reportable items are to be individually listed in the appropriate section of the OGE-278e form.) Note that for a mutual fund held in this IRA investment account, its underlying assets must also be separately detailed, unless it qualifies as an excepted investment fund, pursuant to § 2634.310 of this subpart.

5.4.1.6. 5 C.F.R. § 2634.302 Income

(a) Non-investment income.

(1) Each financial disclosure report filed pursuant to this part, whether public or confidential, shall disclose the source, type, and in the case of public financial disclosure reports the actual amount or value, of earned or other non-investment income in excess of \$200 from any one source which is received by the filer or has accrued to his benefit during the reporting period, including

- (i) Salaries, fees, commissions, wages and any other compensation for personal services (other than from United States Government employment);
- (ii) Retirement benefits (other than from United States Government employment, including the Thrift Savings Plan, or from Social Security);
- (iii) Any honoraria, and the date services were provided, including payments made or to be made to charitable organizations on behalf of the filer in lieu of honoraria; and
- (iv) Any other non-investment income, such as prizes, awards, or discharge of indebtedness.

Note: In calculating the amount of an honorarium, subtract any actual and necessary travel expenses incurred by the recipient and one relative. For example, if such expenses are paid or reimbursed by the honorarium source, they shall not be counted as part of the honorarium payment; if the expenses are paid or reimbursed by the individual receiving the honorarium, the amount of honorarium shall be reduced by the amount of such expenses.

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Example 1. An official is a participant in a retirement plan of Coastal Airlines. Pursuant to such plan, the official and his spouse receive passage on some Coastal flights without charge, and they receive passage on other flights at a discounted fare. The difference between what Coastal charges members of the public generally and what the official and his spouse are charged for a particular flight is deemed income in-kind and must be disclosed by this reporting individual if it exceeds the \$200 threshold.

Example 2. An official serves on the board of directors at a bank, for which he receives a \$500 fee each calendar quarter. He also receives an annual fee of \$1,500 for service as trustee of a private trust. In both instances, such fees received or earned during the reporting period must be disclosed, and if he is a public filer the actual amount must be shown.

(2) In the case of payments to charitable organizations in lieu of honoraria, public filers shall also file a separate confidential listing of recipients, along with dates and amounts of payments, to the extent known. (See 5 U.S.C. app. 102(a)(1)(A) and app. 501(c).)

(b) Investment income. Each financial disclosure report filed pursuant to this part, whether public or confidential, shall disclose:

(1) The source and type of investment income, characterized as dividends, rents, interest, capital gains, or income from qualified or excepted trusts or excepted investment funds (see § 2634.310 of this subpart), which is received by the filer or accrued to his benefit during the reporting period, and which exceeds \$200 in amount or value from any one source. Examples include, but are not limited to, income derived from real estate, collectible items, stocks, bonds, notes, copyrights, pensions, mutual funds, the investment portion of life insurance contracts, loans, and personal savings accounts (as defined in § 2634.301(c)(2) of this subpart). Note that for entities with portfolio holdings, such as Individual Retirement Accounts (IRA's), brokerage accounts, trusts, and mutual or pension funds, each underlying source of income must be separately disclosed, unless the entity qualifies for special treatment under § 2634.310 of this subpart. For public financial disclosure reports, the amount or value of income from each reported source shall also be disclosed and categorized in accordance with the following table:

- (i) Not more than \$1,000;
- (ii) Greater than \$1,000 but not more than \$2,500
- (iii) Greater than \$2,500 but not more than \$5,000;
- (iv) Greater than \$5,000 but not more than \$15,000;
- (v) Greater than \$15,000 but not more than \$50,000;
- (vi) Greater than \$50,000 but not more than \$100,000;
- (vii) Greater than \$100,000 but not more than \$1,000,000; and
- (viii) Greater than \$1,000,000;
- (ix) Provided that, with respect to investment income of the filer alone or joint investment income of the filer with the filer's spouse and/or dependent children, the following additional categories over \$1,000,000 shall apply:
 - (A) Greater than \$1,000,000 but not more than \$5,000,000; and

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(B) Greater than \$5,000,000.

(2) The source, type, and in the case of public financial disclosure reports the actual amount or value, of gross income from a business, distributive share of a partnership, joint business venture income, payments from an estate or an annuity or endowment contract, or any other items of income not otherwise covered by paragraphs (a) or (b)(1) of this section which are received by the filer or accrued to his benefit during the reporting period and which exceed \$200 from any one source.

Example 1. An official rents out a portion of his residence. He receives rental income of \$600 from one individual for four months and \$1,200 from another individual for the remaining eight months of the year covered by his incumbent financial disclosure report. He must identify the property, specify the type of income (rent), and if he is a public filer indicate the category of the total amount of rent received. (He must also disclose the asset information required by §2634.301 of this subpart.)

Example 2. A reporting individual has three savings accounts with Bank A. One is in his name and earned \$85 in interest during the reporting period. One is in a joint account with his spouse and earned \$120 in interest. One is in his name and his dependent daughter's name and earned \$35 in interest. Since the aggregate interest income from this source exceeds \$200, the official must disclose the name of the bank, the type of income, and if he is a public filer, the category of the total amount of interest earned from all three accounts. (He must also disclose the accounts as assets under § 2634.301 of this subpart if, in the aggregate, they total more than \$5,000 in that bank.)

Example 3. An official has an ownership interest in a fast-food restaurant, from which she receives \$10,000 in annual income. She must specify on her financial disclosure report the type of income, such as partnership distributive share or gross business income, and if she is a public filer indicate the actual amount of such income. (Additionally, she must describe the business and categorize its asset value, pursuant to § 2634.301 of this subpart).

5.4.1.7. 5 C.F.R. § 2634.303 Purchases, sales, and exchanges

(a) In general. Except as indicated in § 2634.308(b) of this subpart, each public financial disclosure report filed pursuant to subpart B of this part shall include a brief description, the date and value (using the categories of value in § 2634.301(d) of this subpart) of any purchase, sale, or exchange by the filer during the reporting period, in which the amount involved in the transaction exceeds \$1,000:

(1) Of real property, other than a personal residence of the filer or spouse, as defined in § 2634.105(1) of this part; and

(2) Of stocks, bonds, commodity futures, mutual fund shares, and other forms of securities.

(b) Exceptions.

(1) Any transaction solely by and between the reporting individual, his spouse, and dependent children need not be reported under paragraph (a) of this section.

(2) Transactions involving Treasury bills, notes, and bonds; money market mutual funds or accounts; and personal savings accounts (as defined in § 2634.301(c)(2) of this subpart) need not be reported when occurring at rates, terms, and conditions available generally to

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members of the public. Likewise, transactions involving portfolio holdings of trusts and investment funds described in § 2634.310 (b) and (c) of this subpart need not be reported.

(3) Any transaction which occurred at a time when the reporting individual was not a Federal Government officer or employee need not be reported under paragraph (a) of this section.

Example 1. An official sells her personal residence in Virginia for \$100,000 and purchases a personal residence in the District of Columbia for \$200,000. She need not report the sale of the Virginia residence or the purchase of the D.C. residence.

Example 2. An official sells his beach home in Maryland for \$50,000. Because he has rented it out for one month every summer, it does not qualify as a personal residence. He must disclose the sale under this section and any capital gain over \$200 realized on the sale under § 2634.302 of this subpart.

Example 3. An official sells a ranch to his dependent daughter. The official need not report the sale because it is a transaction between the reporting individual and a dependent child; however, any capital gain, except for that portion attributable to a personal residence, is required to be reported under § 2634.302 of this subpart.

Example 4. An official sells an apartment building and realizes a loss of \$100,000. He must report the sale of the building if the sale price of the property exceeds \$1,000; however, he need not report anything under § 2634.302 of this subpart, as the sale did not result in a capital gain.

5.4.1.8. 5 C.F.R. § 2634.304 Gifts and reimbursements

(a) Gifts. Except as indicated in §§ 2634.308(b) and 2634.907(a), each financial disclosure report filed pursuant to this part, whether public or confidential, shall contain the identity of the source, a brief description, and in the case of public financial disclosure reports the value, of all gifts aggregating more than \$305 (\$375 in 2014) in value that are received by the filer during the reporting period from any one source. For in-kind travel-related gifts, include a travel itinerary, dates, and nature of expenses provided.

(b) Reimbursements. Except as indicated in §§ 2634.308(b) and 2634.907(a), each financial disclosure report filed pursuant to this part, whether public or confidential, shall contain the identity of the source, a brief description (including a travel itinerary, dates, and the nature of expenses provided), and in the case of public financial disclosure reports the value, of any travel-related reimbursements aggregating more than \$305 (\$375 in 2014) in value, which are received by the filer during the reporting period from any one source.

(c) Exclusions. Reports need not contain any information about gifts and reimbursements to which the provisions of this section would otherwise apply which are received from relatives (see § 2634.105(o)) or during a period in which the filer was not an officer or employee of the Federal Government. Additionally, any food, lodging, or entertainment received as "personal hospitality of any individual," as defined in § 2634.105(k), need not be reported. See also exclusions specified in the definitions of gift and reimbursement, at § 2634.105(h) and (n).

(d) Aggregation exception. Any gift or reimbursement with a fair market value of \$150 or less need not be aggregated for purposes of the reporting rules of this section. However, the acceptance of gifts, whether or not reportable, is subject to the restrictions imposed by Executive Order 12674, as modified by Executive Order 12731, and the implementing regulations on standards of ethical conduct.

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Example 1. An official accepts a print, a pen and pencil set, and a letter opener from a community service organization he has worked with solely in his private capacity. He determines, in accordance with paragraph (e) of this section, that these gifts are valued as follows:

Gift 1--Print: \$190

Gift 2--Pen and pencil set: \$145

Gift 3--Letter opener: \$20

The official must disclose Gifts 1 and 2, since together they aggregate more than \$305 (\$375 in 2014) in value from the same source. Gift 3 need not be aggregated, because its value does not exceed \$150.

Example 2. An official receives the following gifts from a single source: (1) Dinner for two at a local restaurant--\$120; (2) Round-trip taxi fare to meet donor at the restaurant--\$25; (3) Dinner at donor's city residence--(value uncertain); (4) Round-trip airline transportation and hotel accommodations to visit Epcot Center in Florida--\$400. (5) Weekend at donor's country home, including duck hunting and tennis match--(value uncertain). The official need only disclose Gift 4. Gift 1 falls within the exclusion in § 2634.105(h)(4) for food and beverages not consumed in connection with a gift of overnight lodging. Gifts 3 and 5 need not be disclosed because they fall within the exception for personal hospitality of an individual. Gift 2 need not be aggregated and reported, because its value does not exceed \$150.

Example 3. An official receives free tickets from an outside source for himself and his spouse to attend an awards banquet at a local club. The value of each ticket is \$180. Even though this is a gift which exceeds the more than \$305 (\$375 in 2014) threshold amount for disclosure, the official need not report it, because of the exclusion in § 2634.105(h)(4) for food and beverages not consumed in connection with a gift of overnight lodging.

Note: Prior to accepting this gift of tickets, the individual should consult ethics officials at his agency to determine whether standards of conduct rules will permit acceptance, depending on whether or not the donor is a prohibited source and the exact nature of the event.

Example 4. An official is asked to speak at an out-of-town meeting on a matter which is unrelated to her official duties and her agency. The round-trip airfare exceeds \$305 (\$375 in 2014). If the official pays for the ticket and is then reimbursed by the organization to which she spoke, she must disclose this reimbursement under paragraph (b) of this section. If the organization simply provided the ticket, that must be disclosed as a gift under paragraph (a) of this section.

Example 5. An FBI SAC receives an invitation from a college roommate (who is not doing business or seeking to do business, or being investigated by the FBI) to attend a school reunion event at the friend's expense. The gift of air transportation and accommodations is valued at \$1,750.00. If the gift is determined to be acceptable under other standard of conduct regulations and is accepted, then it must be reported as the air transportation and hotel accommodation removes the gift from the exception noted in §2634.105(k) relating to "personal" hospitality and the gift exceeds the reporting threshold value of \$375.

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(e) Valuation of gifts and reimbursements. The value to be assigned to a gift or reimbursement is its fair market value. For most reimbursements, this will be the amount actually received. For gifts, the value should be determined in one of the following manners:

- (1) If the gift has been newly purchased or is readily available in the market, the value shall be its retail price. The filer need not contact the donor, but may contact a retail establishment selling similar items to determine the present cost in the market.
- (2) If the item is not readily available in the market, such as a piece of art, a handmade item, or an antique, the filer may make a good faith estimate of the value of the item.
- (3) The term readily available in the market means that an item generally is available for retail purchase in the metropolitan area nearest to the official's residence.

Example. Items such as a pen and pencil set, letter opener, leather case or engraved pen are generally available in the market and can be determined by contacting stores which sell like items and ascertaining the retail price of each.

Note: The market value of a ticket entitling the holder to attend an event which includes food, refreshments, entertainment or other benefits is the face value of the ticket, which may exceed the actual cost of the food and other benefits. The value of food and beverages may be excludable under § 2634.105(h)(4), if applicable, by making a good faith estimate, or by determining their actual cost from the caterer, restaurant, or similar source.

(f) Waiver rule in the case of certain gifts—

(1) In general. In unusual cases, the value of a gift as defined in § 2634.105(h) need not be aggregated for reporting threshold purposes under this section by public filers, and therefore the gift need not be reported on an OGE-278e, if the Director of OGE receives a written request for and issues a waiver, after determining that:

- (i) Both the basis of the relationship between the grantor and the grantee and the motivation behind the gift are personal; and

Example: The Secretary of Education and her spouse receive the following two wedding gifts:

A. Gift 1--A crystal decanter valued at \$285 from the Secretary's former college roommate and lifelong friend, who is a real estate broker in Wyoming.

B. Gift 2--A gift of a print valued at \$300 from a business partner of the spouse, who owns a catering company.

- (ii) No countervailing public purpose requires public disclosure of the nature, source, and value of the gift.

Example: Under these circumstances, the Director of OGE may grant a request for a waiver of the requirement to aggregate and report on an OGE-278e each of these gifts.

(2) Public disclosure of waiver request. If approved in whole or in part, the cover letter requesting the waiver shall be subject to the public disclosure requirements in § 2634.603 of this part.

(3) Procedure.

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- (i) A public filer seeking a waiver under this paragraph (f) shall submit a request to the Office of Government Ethics, through his agency. The request shall be made by a cover letter which identifies the filer and his position and which states that a waiver is requested under this section.
- (ii) On an enclosure to the cover letter, the filer shall set forth:
 - (A) The identity and occupation of the donor;
 - (B) A statement that the relationship between the donor and the filer is personal in nature;
 - (C) A statement that neither the donor nor any person or organization who employs the donor or whom the donor represents, conducts or seeks business with, engages in activities regulated by, or is directly affected by action taken by, the agency employing the filer. If the preceding statement cannot be made without qualification, the filer shall indicate those qualifications, along with a statement demonstrating that he plays no role in any official action which might directly affect the donor or any organization for which the donor works or serves as a representative; and
 - (D) A brief description of the gift and the value of the gift.
- (iii) With respect to the information required in paragraph (f)(3)(ii) of this section, if a gift has more than one donor, the filer shall provide the necessary information for each donor.

5.4.1.9. 5 C.F.R. § 2634.305 Liabilities

- (a) In general. Each financial disclosure report filed pursuant to this part, whether public or confidential, shall identify and include a brief description of the filer's liabilities over \$10,000 owed to any creditor at any time during the reporting period, and the name of the creditors to whom such liabilities are owed. For public financial disclosure reports, the report shall designate the category of value of the liabilities in accordance with § 2634.301(d) of this subpart, using the greatest amount owed to the creditor during the period.
- (b) Exceptions. The following are not required to be reported under paragraph (a) of this section:
 - (1) Personal liabilities owed to a spouse or to the parent, brother, sister, or child of the filer, spouse, or dependent child;
 - (2) Any mortgage secured by a personal residence of the filer or his spouse;

NOTE: Although the STOCK Act preserves the (b)(2) mortgage exception for most OGE-278e filers, the President, Vice-President, and most PAS appointees and nominees (e.g., FBI Director) must now report mortgage information about the residences they own. If the mortgaged residence does not produce rental income and is not otherwise reportable as an asset, the STOCK Act does not require filers to report the residence as an asset; however, a mortgage liability on the same residence must be reported in the liabilities section of Integrity. The information required to be disclosed includes the name of the lender, the terms and conditions of the loan, and a notation as to whether the residence is a personal residence or investment property. A filer is not required, however, to disclose the location of the residence secured by the mortgage.

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(3) Any loan secured by a personal motor vehicle, household furniture, or appliances, provided that the loan does not exceed the purchase price of the item which secures it; and

(4) Any revolving charge account with an outstanding liability which does not exceed \$10,000 at the close of the reporting period.

Example: An incumbent official has the following debts outstanding at the end of the calendar year:

1. Mortgage on personal residence--\$80,000.
2. Mortgage on rental property--\$50,000.
3. VISA Card--\$1,000.
4. Master Card--\$11,000.
5. Loan balance of \$15,000, secured by family automobile purchased for \$16,200.
6. Loan balance of \$10,500, secured by antique furniture purchased for \$8,000.
7. Loan from parents--\$20,000.

The loans indicated in items 2, 4, and 6 must be disclosed. Loan 1 is exempt from disclosure under paragraph (b)(2) of this section because it is secured by the personal residence. Loan 3 need not be disclosed under paragraph (b)(4) of this section because it is considered to be a revolving charge account with an outstanding liability that does not exceed \$10,000 at the end of the reporting period. Loan 5 need not be disclosed under paragraph (b)(3) of this section because it is secured by a personal motor vehicle which was purchased for more than the value of the loan. Loan 7 need not be disclosed because the creditors are persons specified in paragraph (b)(1) of this section.

5.4.1.10. 5 C.F.R. § 2634.306 Agreements and arrangements

Each financial disclosure report filed pursuant to this part, whether public or confidential, shall identify the parties to and the date of, and shall briefly describe the terms of, any agreement or arrangement of the filer in existence at any time during the reporting period with respect to:

- (a) Future employment;
- (b) A leave of absence from employment during the period of the reporting individual's Government service;
- (c) Continuation of payments by a former employer other than the United States Government; and
- (d) Continuing participation in an employee welfare or benefit plan maintained by a former employer.

5.4.1.11. 5 C.F.R. § 2634.307 Outside positions

(a) In general. Each financial disclosure report filed pursuant to this part, whether public or confidential, shall identify all positions held at any time by the filer during the reporting period, as an officer, director, trustee, general partner, proprietor, representative, executor, employee, or consultant of any corporation, company, firm, partnership, trust, or other business enterprise, any

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nonprofit organization, any labor organization, or any educational or other institution other than the United States.

(b) Exceptions. The following need not be reported under paragraph (a) of this section:

- (1) Positions held in any religious, social, fraternal, or political entity; and
- (2) Positions solely of an honorary nature, such as those with an emeritus designation.

5.4.1.12. 5 C.F.R. § 2634.308 Reporting periods and contents of public financial disclosure reports

(a) Incumbents. Each public financial disclosure report filed pursuant to § 2634.201(a) shall include on the standard form prescribed by the Office of Government Ethics consistent with subpart F of this part and in accordance with instructions issued by that Office, a full and complete statement of the information required to be reported according to the provisions of subpart C of this part, for the preceding calendar year (except for §§ 2634.303 and 2634.304, relating to transactions and gifts/reimbursements, for which the reporting period does not include any portion of the previous calendar year during which the filer was not a Federal employee), and in the case of §§ 2634.306 and 2634.307, to include the additional period up to the date of filing. (See Ethics Guide Reference Library for FBI Incumbent OGE-278e Filer Checklist.)

(b) New entrants, nominees, and candidates. Each public financial disclosure report filed pursuant to § 2634.201(b), (c), or (d) shall include, on the standard form prescribed by the Office of Government Ethics consistent with subpart F of this part and in accordance with instructions issued by that Office, a full and complete statement of the information required to be reported according to the provisions of subpart C of this part, except for § 2634.303 (relating to purchases, sales, and exchanges of certain property) and § 2634.304 (relating to gifts and reimbursements). (See Ethics Guide Reference Library for FBI New Entrant OGE-278e Filer Checklist.) The following special rules apply:

- (1) Interests in property. For purposes of § 2634.301 of this subpart, the report shall include all interests in property specified by that section which are held on or after a date which is fewer than thirty-one days before the date on which the report is filed.
- (2) Income. For purposes of § 2634.302 of this subpart, the report shall include all income items specified by that section which are received or accrued during the period beginning on January 1 of the preceding calendar year and ending on the date on which the report is filed, except as otherwise provided by § 2634.606 relating to updated disclosure for nominees.
- (3) Liabilities. For purposes of § 2634.305 of this subpart, the report shall include all liabilities specified by that section which are owed during the period beginning on January 1 of the preceding calendar year and ending fewer than thirty-one days before the date on which the report is filed.
- (4) Agreements and arrangements. For purposes of § 2634.306 of this subpart, the report shall include only those agreements and arrangements which still exist at the time of filing.
- (5) Outside positions. For purposes of § 2634.307 of this subpart, the report shall include all such positions held during the preceding two calendar years and the current calendar year up to the date of filing.

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(6) Certain sources of compensation. Except in the case of the President, the Vice President, or a candidate referred to in § 2634.201(d), the report shall also identify the filer's sources of compensation which exceed \$5,000 during either of the preceding two calendar years or during the current calendar year up to the date of filing, and shall briefly describe the nature of the duties performed or services rendered by the reporting individual for each such source of compensation. Information need not be reported, however, which is considered confidential as a result of a privileged relationship, established by law, between the reporting individual and any person. The report also need not contain any information with respect to any person for whom services were provided by any firm or association of which the reporting individual was a member, partner, or employee, unless such individual was directly involved in the provision of such services.

Example: A nominee who is a partner or employee of a law firm and who has worked on a matter involving a client from whom the firm received over \$5,000 in fees during a calendar year must report the name of the client only if the value of the services rendered by the nominee exceeded \$5,000. The name of the client would not normally be considered confidential.

New entrants, incumbents, nominees, or candidates. Pursuant to the STOCK Act, OGE-278e filers are also required to file OGE-278T reports. The specific requirement states that filers MUST report any financial transactions concerning the sale, purchase, or exchange of stocks or commodities (NOT mutual funds) valued over \$1,000 for themselves, their spouses, and/or dependent children no later than 30 days after receiving notification or 45 days after such transaction takes place, whichever comes first. Filers are required to report any transactions during that period unless reported previously. (See subsection 5.4.2.(a)(3) for filing procedures.)

(c) Termination reports. Each public financial disclosure report filed under § 2634.201(e) shall include, on the standard form prescribed by the Office of Government Ethics consistent with subpart F of this part and in accordance with instructions issued by that Office, a full and complete statement of the information required to be reported according to the provisions of subpart C of this part, for the period beginning on the last date covered by the most recent public financial disclosure report filed by the reporting individual under this part, or on January 1 of the preceding calendar year, whichever is later, and ending on the date on which the filer's employment terminates. (See Ethics Guide Reference Library for FBI OGE-278e Termination Filer Checklist.)

5.4.1.13. 5 C.F.R. § 2634.309 Spouses and dependent children

(a) Special disclosure rules. Each report required by the provisions of either subpart B or subpart I of this part shall also include the following information with respect to the spouse or dependent children of the reporting individual:

(1) Income. For purposes of § 2634.302 of this subpart:

(i) With respect to a spouse, the source but not the amount of items of earned income (other than honoraria) which exceed \$1,000 from any one source; and if items of earned income are derived from a spouse's self-employment in a business or profession, the nature of the business or profession but not the amount of the earned income;

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(ii) With respect to a spouse, the source, and for a public financial disclosure report the actual amount or value, of any honoraria received by or accrued to the spouse (or payments made or to be made to charity on the spouse's behalf in lieu of honoraria) which exceed \$200 from any one source, and the date on which the services were provided; and

(iii) With respect to a spouse or dependent child, the type and source, and for a public financial disclosure report the amount or value (category or actual amount, in accordance with § 2634.302 of this subpart), of all other income exceeding \$200 from any one source, such as investment income from interests in property (if the property itself is reportable according to § 2634.301 of this subpart).

Example 1. The spouse of a filer is employed as a teller at Bank X and earns \$23,000 per year. The report must disclose that the spouse is employed by Bank X. The amount of the spouse's earnings need not be disclosed, either on a public or confidential financial disclosure report.

Example 2. The spouse of a reporting individual is self-employed as a pediatrician. The report must disclose that he is a physician, but need not disclose the amount of income, either on a public or confidential financial disclosure report.

(2) Gifts and reimbursements. For purposes of § 2634.304 of this subpart, gifts and reimbursements received by a spouse or dependent child which are not received totally independent of their relationship to the filer.

(3) Interests in property, transactions, and liabilities. For purposes of §§ 2634.301, 2634.303 (applicable only to public filers), and 2634.305 of this subpart, all information concerning property interests, transactions, or liabilities referred to by those sections of a spouse or dependent child, unless the following three conditions are satisfied:

(i) The filer certifies that the item represents the spouse's or dependent child's sole financial interest or responsibility, and that the filer has no specific knowledge regarding that item;

(ii) The item is not in any way, past or present, derived from the income, assets or activities of the filer; and

(iii) The filer neither derives, nor expects to derive, any financial or economic benefit from the item.

Note: One who prepares a joint tax return with his spouse will normally derive a financial or economic benefit from assets held by the spouse, and will also be charged with knowledge of such items; therefore he could not avail himself of this exception. Likewise, a trust for the education of one's minor child normally will convey a financial benefit to the parent. If so, the assets of the trust would be reportable on a financial disclosure statement.

(b) Exception. For reports filed as a new entrant, nominee, or candidate under § 2634.201(b), (c), or (d), or as a new entrant under § 2634.908(b), no information regarding gifts and reimbursements or transactions is required for a spouse or dependent child.

(c) Divorce and separation. A reporting individual need not report any information about:

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- (1) A spouse living separate and apart from the reporting individual with the intention of terminating the marriage or providing for permanent separation;
- (2) A former spouse or a spouse from whom the reporting individual is permanently separated; or
- (3) Any income or obligations of the reporting individual arising from dissolution of the reporting individual's marriage or permanent separation from a spouse.

5.4.1.14. 5 C.F.R. § 2634.310 Trusts, estates, and investment funds

(a) In general.

- (1) Except as otherwise provided in this section, each financial disclosure report shall include the information required by this subpart or subpart I of this part about the holdings of and income from the holdings of any trust, estate, investment fund or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, the filer, his spouse, or dependent child.
- (2) No information, however, is required about a nonvested beneficial interest in the principal or income of an estate or trust. A vested interest is a present right or title to property, which carries with it an existing right of alienation, even though the right to possession or enjoyment may be postponed to some uncertain time in the future. This includes a future interest when one has a right, defeasible or indefeasible, to the immediate possession or enjoyment of the property, upon the ceasing of another's interest. Accordingly, it is not the uncertainty of the time of enjoyment in the future, but the uncertainty of the right of enjoyment (title and alienation), which differentiates a "vested" and a "nonvested" interest.

Note to paragraph (a): Nothing in this section requires the reporting of the holdings or income of a revocable inter vivos trust (also known as a "living trust") with respect to which the filer, his spouse or dependent child has only a remainder interest, whether or not vested, provided that the grantor of the trust is neither the filer, the filer's spouse, nor the filer's dependent child. Furthermore, nothing in this section requires the reporting of the holdings or income of a revocable inter vivos trust from which the filer, his spouse or dependent child receives any discretionary distribution, provided that the grantor of the trust is neither the filer, the filer's spouse, nor the filer's dependent child.

(b) Qualified trusts and excepted trusts.

- (1) A filer should not report information about the holdings of or income from holdings of, any qualified blind trust (as defined in § 2634.402) or any qualified diversified trust (as defined in § 2634.402). For a qualified blind trust, a public financial disclosure report shall disclose the category of the aggregate amount of the trust's income attributable to the beneficial interest of the filer, his spouse, or dependent child in the trust. For a qualified diversified trust, a public financial disclosure report shall disclose the category of the aggregate amount of income with respect to such a trust which is actually received by the filer, his spouse, or dependent child, or applied for the benefit of any of them.
- (2) In the case of an excepted trust, a filer should indicate the general nature of its holdings, to the extent known, but will not otherwise need to report information about the trust's holdings or income from holdings. The category of the aggregate amount of income from an excepted trust which is received by or accrued to the benefit of the filer, his spouse, or

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dependent child shall be reported on public financial disclosure reports. For purposes of this part, the term "excepted trust" means a trust:

- (i) Which was not created directly by the filer, spouse, or dependent child; and
- (ii) The holdings or sources of income of which the filer, spouse, or dependent child have no specific knowledge through a report, disclosure, or constructive receipt, whether intended or inadvertent.

(c) Excepted investment funds.

(1) No information is required under this paragraph (a) of this section about the underlying holdings of or income from underlying holdings of an excepted investment fund as defined in paragraph (c)(2) of this section, except that the fund itself shall be identified as an interest in property and/or a source of income. Public financial disclosure reports must also disclose the category of value of the fund interest held; aggregate amount of income from the fund which is received by or accrued to the benefit of the filer, his spouse, or dependent child; and value of any transactions involving shares or units of the fund.

(2) For purposes of financial disclosure reports filed under the provisions of this part, an "excepted investment fund" means a widely held investment fund (whether a mutual fund, regulated investment company, common trust fund maintained by a bank or similar financial institution, pension or deferred compensation plan, or any other investment fund), if:

- (i) (A) The fund is publicly traded or available; or
(B) The assets of the fund are widely diversified; and
- (ii) The filer neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

(3) A fund is widely diversified if it holds no more than 5% of the value of its portfolio in the securities of anyone issuer (other than the United States Government) and no more than 20% in any particular economic or geographic sector.

5.4.1.15. 5 C.F.R. § 2634.704 Late Filing Fee

(a) In general. In accordance with section 104(d) of the Act, any reporting individual who is required to file a public financial disclosure report [including the OGE-278T report] by the provisions of this part shall remit a late filing fee of \$200 to the appropriate agency, payable to the U.S. Treasury, if such report is filed more than thirty days after the later of:

- (1) The date such report is required to be filed pursuant to the provisions of this part; or
- (2) The last day of any filing extension period granted pursuant to §2634.201(f).

(b) Exceptions.

- (1) The designated agency ethics official may waive the late filing fee if he determines that the delay in filing was caused by extraordinary circumstances, including the agency's failure to notify a new entrant, first-time annual filer, or termination filer of the requirement to file the public financial disclosure report, which made the delay reasonably necessary.
- (2) Employees requesting a waiver of the late filing fee from the designated agency ethics official must request the waiver in writing with supporting documentation. The designated

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agency ethics official's determination must be made in writing to the employee with a copy placed in the employee's public financial disclosure report file. The designated agency ethics official may consult with the Office of Government Ethics prior to approving any waiver of the late filing fee.

(c) Procedure.

(1) The designated agency ethics official shall maintain a record of the due dates for all public reports which the employees of that agency must file, along with the new filing dates under extensions which have been granted. (As of May 2015, this is tracked electronically within the INTEGRITY.gov application.) Each report received by the agency shall be marked with the date of receipt. For any report which has not been received by the end of the period specified in paragraph (a) of this section, the agency shall advise the delinquent filer, in writing, that:

(i) Because his financial disclosure report is more than thirty days overdue, a \$200 late filing fee will become due at the time of filing, by reason of section 104(d) of the Act and § 2634.704;

(ii) The filer is directed to remit to the agency, with the completed report, the \$200 fee, payable to the United States Treasury;

(iii) If the filer fails to remit the \$200 fee when filing his late report, it shall be subject to agency debt collection procedures; and

(iv) If extraordinary circumstances exist that would justify a request for a fee waiver, pursuant to paragraph (b) of this section, such request and supporting documentation must be submitted immediately.

(2) Upon receipt from the reporting individual of the \$200 late filing fee, the collecting agency shall note the payment in its records, and shall then forward the money to the U.S. Treasury for deposit as miscellaneous receipts, in accordance with 31 U.S.C. 3302 and section 8030.30 of Volume 1 of the Treasury Financial Manual. If payment is not forthcoming, agency debt collection procedures shall be utilized, which may include salary or administrative offset, initiation of a tax refund offset, or other authorized action.

(d) Late filing fee not exclusive remedy. The late filing fee is in addition to other sanctions which may be imposed for late filing. See §2634.701 of this subpart.

(e) Confidential filers. The late filing fee does not apply to confidential filers. Late filing of confidential reports will be handled administratively under § 2634.701(d) of this subpart.

(f) Date of filing. The date of filing for purposes of determining whether a public financial disclosure report is filed more than thirty days late under this section will be the date of receipt by the agency, which should be noted on the report in accordance with § 2634.605(a). (As of May 2015, this is done electronically by the INTEGRITY.gov application.) The thirty-day grace period on imposing a late filing fee is adequate allowance for administrative delays in the receipt of reports by an agency.

5.4.2. Public Financial Disclosure - FBI Procedures and Requirements

(See Ethics Guide Reference Library for information related to OGE-278e Public Financial Disclosure reporting and review.)

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a. Filing of the OGE-278e and OGE-278T reports.

1. A completed OGE-278e electronically submitted by the filer is electronically forwarded to OIC for final processing and review by the FBI DDAEO.

2. Timing of Reports generally. Incumbent OGE 278e report forms are due by May 15th of each year and cover the incumbent's financial holdings for the previous calendar year (except if the employee filed a New Entrant form after November 1 of the prior year, then the New Entrant form also serves as his or her incumbent form for that year). New entrant reports are due within 30 days of an employee becoming an SES/SL FBI employee or assuming the duties of a position normally filled by an SES/SL employee in an "acting" status for more than 60 days. Termination OGE-278e reports must be filed within 30 days of terminating SES service (or acting capacity greater than 60 days). For more detailed information regarding filing deadlines for the OGE-278e, see subsection 5.4.1.1, of this PG.

3. OGE-278T reports are due by the 15th of each month.

b. Resolution of Questionable Entries on the OGE-278e Form. If an OIC attorney and/or the FBI's DDAEO determines that an actual or apparent financial conflict of interest or a similar issue exists, additional information may be requested from the filer to assist in taking appropriate action. Actions that may be taken to resolve conflicts or other issues may include, but are not limited to: divestiture; recusal; waiver pursuant to 18 U.S.C. § 208(b); or establishment of a qualified trust as permitted by 5 C.F.R. § 2634.401 et seq.

c. Requests for Extensions. Requests for extensions to file OGE-278e/OGE-278T reports must be made in writing to OIC in advance of the filing deadline and allow for sufficient time for coordination/referral to the DDAEO. All requests shall detail the reason(s) necessitating the requested extension. E-mail requests are acceptable. For planning purposes, requests for extensions should normally be submitted 4 business days prior to the filing deadline.

d. Annual Training. (See training chapter of this Guide for more information.) All OGE-278e filers must receive at least one hour of official duty time for training each year that meets the standards of 5 C.F.R. § 2638.704, subject to the exceptions in that regulation.

e. Maintenance of Reports. Completed and reviewed forms will be maintained for a minimum of six years and thereafter may be destroyed. Filers are encouraged to retain copies of their forms for their own records.

5.5. Confidential Financial Disclosure (OGE 450 and CIC Filing)

(For FBI Policy regarding who is required to file an OGE 450 Confidential Financial Disclosure Report, see section 5.2.2.)

5.5.1. Office of Government Ethics Regulations for OGE 450 and CIC Filers

5.5.1.1. 5 C.F.R. § 2634.901 Policies of confidential financial disclosure reporting

(a) The confidential financial reporting system set forth in this subpart is designed to complement the public reporting system established by title I of the Act. High-level officials in the executive branch are required to report certain financial interests publicly to ensure that every citizen can have confidence in the integrity of the Federal Government. It is equally important in order to guarantee the efficient and honest operation of the Government that other, less senior,

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executive branch employees, whose Government duties involve the exercise of significant discretion in certain sensitive areas, report their financial interests and outside business activities to their employing agencies, to facilitate the review of possible conflicts of interest. These reports assist an agency in administering its ethics program and counseling its employees. Such reports are filed on a confidential basis.

(b) The confidential reporting system seeks from employees only that information which is relevant to the administration and application of criminal conflict of interest laws, administrative standards of conduct, and agency-specific statutory and program-related restrictions. The basic content of the reports required by Sec. 2634.907 of this subpart reflects that certain information is generally relevant to all agencies. However, depending upon an agency's authorized activities and any special or unique circumstances, additional information may be necessary. In these situations, and subject to the prior written approval of the Director of the Office of Government Ethics, agencies may formulate supplemental reporting requirements by following the procedures of Sec. 2634.103 and 2634.601(b).

(c) This subpart also allows an agency to request, on a confidential basis, additional information from persons who are already subject to the public reporting requirements of this part. The public reporting requirements of the Act address Governmentwide concerns. The reporting requirements of this subpart allow agencies to confront special or unique agency concerns. If those concerns prompt an agency to seek more extensive reporting from employees who file public reports, it may proceed on a confidential, nonpublic basis, with prior written approval from the Director of the Office of Government Ethics, under the procedures of Sec. 2634.103 and 2634.601(b).

(d) The reports filed pursuant to this subpart are specifically characterized as "confidential," and are required to be withheld from the public, pursuant to section 107(a) of the Act. Section 107(a) leaves no discretion on this issue with the agencies. See also Sec. 2634.604. Further, Executive Order 12674 as modified by Executive Order 12731 provides, in section 201(d), for a system of nonpublic (confidential) executive branch financial disclosure to complement the Act's system of public disclosure. The confidential reports provided for by this subpart contain sensitive commercial and financial information, as well as personal privacy-protected information. These reports and the information which they contain are, accordingly, exempt from being released to the public, under exemptions 3 (A) and (B), 4, and 6 of the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(3) (A) and (B), (b)(4), and (b)(6). Additional FOIA exemptions may apply to particular reports or portions of reports. Agency personnel shall not publicly release the reports or the information which these reports contain, except pursuant to an order issued by a Federal court, or as otherwise provided under applicable provisions of the Privacy Act (5 U.S.C. 552a), and in the OGE/GOVT-2 Governmentwide executive branch Privacy Act system of records, as well as any applicable agency records system. If an agency statute requires the public reporting of certain information and, for purposes of convenience, an agency chooses to collect that information on the confidential report form filed under this subpart, only the special statutory information may be released to the public, pursuant to the terms of the statute under which it was collected.

(e) Executive branch agencies hire or use the paid and unpaid services of many individuals on an advisory or other less than full-time basis as special Government employees. These employees may include experts and consultants to the Government, as well as members of Government

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advisory committees. It is important for those agencies that utilize such services, and for the individuals who provide the services, to anticipate and avoid real or apparent conflicts of interest. The confidential financial disclosure system promotes that goal, with special Government employees among those required to file confidential reports.

(f) For additional policies and definitions of terms applicable to both the public and confidential reporting systems, see Sec. 2634.104 and 2634.105.

5.5.1.2. 5 C.F.R. § 2634.903 General requirements, filing dates, and extensions

(a) Incumbents. A confidential filer who holds a position or office described in Sec. 2634.904(a) of this subpart and who performs the duties of that position or office for a period in excess of 60 days during the calendar year (including more than 60 days in an acting capacity) shall file a confidential report as an incumbent, containing the information prescribed in Sec. 2634.907 and 2634.908 of this subpart on or before February 15 of the following year. This requirement does not apply if the employee has left Government service prior to the due date for the report. No incumbent reports are required of special Government employees described in Sec. 2634.904(a)(2) of this subpart, but they must file new entrant reports under Sec. 2634.903(b) of this subpart upon each appointment or reappointment. For confidential filers under Sec. 2634.904(a)(3) of this subpart, consult agency supplemental regulations.

(b) New entrants.

(1) Not later than 30 days after assuming a new position or office described in Sec. 2634.904(a) of this subpart (which also encompasses the reappointment or redesignation of a special Government employee, including one who is serving on an advisory committee), a confidential filer shall file a confidential report containing the information prescribed in Sec. 2634.907 and 2634.908 of this subpart. For confidential filers under Sec. 2634.904(a)(3) of this subpart, consult agency supplemental regulations.

(2) However, no report shall be required if the individual:

- (i) Has, within 30 days prior to assuming his position, left another position or office referred to in Sec. 2634.904(a) of this subpart or in Sec. 2634.202, and has previously satisfied the reporting requirements applicable to that former position, but a copy of the report filed by the individual while in that position should be made available to the appointing agency, and the individual must comply with any agency requirement for a supplementary report for the new position;
- (ii) Has already filed such a report in connection with consideration for appointment to the position. The agency may request that the individual update such a report if more than six months has expired since it was filed; or
- (iii) Is not reasonably expected to perform the duties of an office or position referred to in Sec. 2634.904(a) of this subpart for more than 60 days in the following twelve-month period, as determined by the designated agency ethics official or delegate. That may occur most commonly in the case of an employee who temporarily serves in an acting capacity in a position described by Sec. 2634.904(a)(1) of this subpart. If the individual actually performs the duties of such position for more than 60 days in the twelve-month period, then a confidential financial disclosure report must be filed within 15 calendar days after the sixtieth day of such service in the position. *(To see a similar scenario, refer*

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to Example 3, Section 5.4.1.1, of this Guide.) Paragraph (b)(2)(iii) of Sec. 2634.903 does not apply to new entrants filing as special Government employees under Sec. 2634.904(a)(2) of this subpart.

(3) Notwithstanding the filing deadline prescribed in paragraph (b)(1) of this section, agencies may at their discretion, require that prospective entrants into positions described in Sec. 2634.904(a) of this subpart file their new entrant confidential financial disclosure reports prior to serving in such positions, to insure that there are no insurmountable ethics concerns. Additionally, a special Government employee who has been appointed to serve on an advisory committee shall file the required report before any advice is rendered by the employee to the agency, or in no event, later than the first committee meeting.

(c) Advisory committee definition. For purposes of this subpart, the term advisory committee shall have the meaning given to that term under section 3 of the Federal Advisory Committee Act (5 U.S.C. app). Specifically, it means any committee, board, commission, council, conference, panel, task force, or other similar group which is established by statute or reorganization plan, or established or utilized by the President or one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government. Such term includes any subcommittee or other subgroup of any advisory committee, but does not include the Advisory Commission on Intergovernmental Relations, the Commission on Government Procurement, or any committee composed wholly of full-time officers or employees of the Federal Government.

(d) Extensions—

(1) Agency extensions. The agency reviewing official may, for good cause shown, grant to any employee or class of employees a filing extension or several extensions totaling not more than 90 days.

(2) Certain service during period of national emergency. In the case of an active duty military officer or enlisted member of the Armed Forces, a Reserve or National Guard member on active duty under orders issued pursuant to title 10 or title 32 of the United States Code, a commissioned officer of the Uniformed Services (as defined in 10 U.S.C. 101), or any other employee, who is deployed or sent to a combat zone or required to perform services away from his permanent duty station in support of the Armed Forces or other governmental entities following a declaration by the President of a national emergency, the agency reviewing official may grant such individual a filing extension to last no longer than 90 days after the last day of:

(i) The individual's service in the combat zone or away from his permanent duty station; or

(ii) The individual's hospitalization as a result of injury received or disease contracted while serving during the national emergency.

(3) Agency procedures. Each agency may prescribe procedures to provide for the implementation of the extensions provided for by this paragraph.

(e) Termination reports not required. An employee who is required to file a confidential financial disclosure report is not required to file a termination report upon leaving the filing position.

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5.5.1.3. 5 C.F.R. § 2634.904 Confidential filer defined

(a) The term confidential filer includes:

(1) Each officer or employee in the executive branch whose position is classified at GS-15 or below of the General Schedule prescribed by 5 U.S.C. 5332, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate which is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each officer or employee of the United States Postal Service or Postal Rate Commission whose basic rate of pay is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule; each member of a uniformed service whose pay grade is less than O-7 under 37 U.S.C. 201; and each officer or employee in any other position determined by the designated agency ethics official to be of equal classification; if:

(i) The agency concludes that the duties and responsibilities of the employee's position require that employee to participate personally and substantially (as defined in Sec. 2635.402(b)(4) and 2640.103(a)(2) of this chapter) through decision or the exercise of significant judgment, and without substantial supervision and review, in taking a Government action regarding:

(A) Contracting or procurement;

(B) Administering or monitoring grants, subsidies, licenses, or other federally conferred financial or operational benefits;

(C) Regulating or auditing any non-Federal entity; or

(D) Other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-Federal entity; or

(ii) The agency concludes that the duties and responsibilities of the employee's position require the employee to file such a report to avoid involvement in a real or apparent conflict of interest, and to carry out the purposes behind any statute, Executive order, rule, or regulation applicable to or administered by the employee. Positions which might be subject to a reporting requirement under this subparagraph include those with duties which involve investigating or prosecuting violations of criminal or civil law.

Example 1 to paragraph (a)(1). A contracting officer develops the requests for proposals for data processing equipment of significant value which is to be purchased by his agency. He works with substantial independence of action and exercises significant judgment in developing the requests. By engaging in this activity, he is participating personally and substantially in the contracting process. The contracting officer should be required to file a confidential financial disclosure report.

Example 2 to paragraph (a)(1). An agency environmental engineer inspects a manufacturing plant to ascertain whether the plant complies with permits to release a certain effluent into a nearby stream. Any violation of the permit standards may result in civil penalties for the plant, and in criminal penalties for the plant's management based upon any action which they took to create the violation. If the agency engineer determines that the plant does not meet the permit requirements, he can require the plant to terminate release of the effluent until the plant satisfies the permit standards. Because the engineer exercises substantial discretion in regulating the plant's activities, and because his final decisions will have a substantial economic effect on the

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plant's interests, the engineer should be required to file a confidential financial disclosure report.

Example 3 to paragraph (a)(1). A GS-13 employee at an independent grant making agency conducts the initial agency review of grant applications from nonprofit organizations and advises the Deputy Assistant Chairman for Grants and Awards about the merits of each application. Although the process of reviewing the grant applications entails significant judgment, the employee's analysis and recommendations are reviewed by the Deputy Assistant Chairman, and the Assistant Chairman, before the Chairman decides what grants to award. Because his work is subject to "substantial supervision and review," the employee is not required to file a confidential financial disclosure report unless the agency determines that filing is necessary under Sec. 2634.904(a)(1)(ii).

Example 4 to paragraph (a)(1). As a senior investigator for a criminal law enforcement agency, an employee often leads investigations, with substantial independence, of suspected felonies. The investigator usually decides what information will be contained in the agency's report of the suspected misconduct. Because he participates personally and substantially through the exercise of significant judgment in investigating violations of criminal law, and because his work is not substantially supervised, the investigator should be required to file a confidential financial disclosure report.

Example 5 to paragraph (a)(1). An investigator is principally assigned as the field agent to investigate alleged violations of conflict of interest laws. The investigator works under the direct supervision of an agent-in-charge. The agent-in-charge reviews all of the investigator's work product and then uses those materials to prepare the agency's report which is submitted under his own name. Because of the degree of supervision involved in the investigator's duties, the investigator is not required to file a confidential disclosure report unless the agency determines that filing is necessary under Sec. 2634.904(a)(1)(ii).

(2) Unless required to file public financial disclosure reports by subpart B of this part, all executive branch special Government employees.

Example 1 to paragraph (a)(2). A consultant to an agency periodically advises the agency regarding important foreign policy matters. The consultant must file a confidential report if he is retained as a special Government employee and not an independent contractor.

Example 2 to paragraph (a)(2). A special Government employee serving as a member of an advisory committee (who is not a private group representative) attends four committee meetings every year to provide advice to an agency about pharmaceutical matters. No compensation is received by the committee member, other than travel expenses. The advisory committee member must file a confidential disclosure report because she is a special Government employee.

(3) Each public filer referred to in Sec. 2634.202 on public disclosure who is required by agency regulations and forms issued in accordance with Sec. 2634.103 and 2634.601(b) to file a supplemental confidential financial disclosure report which contains information that is more extensive than the information required in the reporting individual's public financial disclosure report under this part.

(4) Any employee who, notwithstanding his exclusion from the public financial reporting requirements of this part by virtue of a determination under Sec. 2634.203, is covered by the criteria of paragraph (a)(1) of this section.

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(b) Any individual or class of individuals described in paragraph (a) of this section, including special Government employees unless otherwise noted, may be excluded from all or a portion of the confidential reporting requirements of this subpart, when the agency head or designee determines that the duties of a position make remote the possibility that the incumbent will be involved in a real or apparent conflict of interest.

Example 1 to paragraph (b). A special Government employee who is a draftsman prepares the drawings to be used by an agency in soliciting bids for construction work on a bridge. Because he is not involved in the contracting process associated with the construction, the likelihood that this action will create a conflict of interest is remote. As a result, the special Government employee is not required to file a confidential financial disclosure report.

Example 2 to paragraph (b). An agency has just hired a GS-5 Procurement Assistant who is responsible for typing and processing procurement documents, answering status inquiries from the public, performing office support duties such as filing and copying, and maintaining an on-line contract database. The Assistant is not involved in contracting and has no other actual procurement responsibilities. Thus, the possibility that the Assistant will be involved in a real or apparent conflict of interest is remote, and the Assistant is not required to file.

5.5.1.4. 5 C.F.R. § 2634.905 Use of Alternative Procedures

(a) With the prior written approval of OGE, an agency may use an alternative procedure in lieu of filing the OGE Form 450 or OGE Optional Form 450-A. (Note: The FBI does not use the OGE-450A form.) The alternative procedure may be an agency-specific form to be filed in place thereof. An agency must submit for approval a description of its proposed alternative procedure to OGE. (See Ethics Guide Reference Library for a Conflict of Interest Certification form.)

Example to paragraph (a). A nonsupervisory auditor at an agency is regularly assigned to cases involving possible loan improprieties by financial institutions. Prior to undertaking each enforcement review, the auditor reviews the file to determine if she, her spouse, minor or dependent child, or any general partner, organization in which she serves as an officer, director, trustee, employee, or general partner, or organization with which she is negotiating or has an agreement or an arrangement for future employment, or a close friend or relative is a subject of the investigation, or will be in any way affected by the investigation. Once she determines that there is no such relationship, she signs and dates a certification which verifies that she has reviewed the file and has determined that no conflict of interest exists. She then files the certification with the head of her auditing division at the agency. On the other hand, if she cannot execute the certification, she informs the head of her auditing division. In response, the division will either reassign the case or review the conflicting interest to determine whether a waiver would be appropriate. This alternative procedure, if approved by the Office of Government Ethics in writing, may be used in lieu of requiring the auditor to file a confidential financial disclosure report.

(b) (Note: The use of the OGE Optional Form 450-A is not authorized for FBI employees, so this section of the regulation was omitted.)

5.5.1.5. 5 C.F.R. § 2634.906 Review of confidential filer status

The head of each agency, or an officer designated by the head of the agency for that purpose (at the FBI this official is the FBI Deputy Designated Agency Ethics Official), shall review any complaint by an individual that his position has been improperly determined by the agency to be

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one which requires the submission of a confidential financial disclosure report pursuant to this subpart. A decision by the agency head or designee regarding the complaint shall be final and conclusive for all purposes, notwithstanding any other provision of law or regulation. This procedure is the sole and exclusive means of seeking review of an agency's decision to designate positions and the employees therein for filing confidential financial disclosure reports.

Note: The provision in this section for a final decision by the agency head or designee is intended to preclude administrative or negotiated grievances, arbitration procedures, and any other review or appeal, either within or outside the agency. This finality of the agency head's (or designee's) decision is necessary in order to maintain the prompt and orderly administration of the executive branch confidential financial disclosure system.

5.5.1.6. 5 C.F.R. § 2634.907 Report contents

(a) Other than the reports described in Sec. 2634.904(a)(3) of this subpart, each confidential financial disclosure report shall comply with instructions issued by the Office of Government Ethics and include on the standardized form prescribed by OGE (see Sec. 2634.601 of subpart F of this part) the information described in paragraphs (b) through (g) of this section for the filer. Each report shall also include the information described in paragraph (h) of this section for the filer's spouse and dependent children.

(b) Noninvestment income. Each financial disclosure report shall disclose the source of earned or other noninvestment income in excess of \$200 received by the filer from any one source or which has accrued to the filer's benefit during the reporting period, including:

- (1) Salaries, fees, commissions, wages and any other compensation for personal services (other than from United States Government employment);
- (2) Any honoraria, including payments made or to be made to charitable organizations on behalf of the filer in lieu of honoraria; and

Note to paragraph (b)(2): In determining whether an honorarium exceeds the \$200 threshold, subtract any actual and necessary travel expenses incurred by the filer and one relative, if the expenses are paid or reimbursed by the filer. If such expenses are paid or reimbursed by the honorarium source, they shall not be counted as part of the honorarium payment.

- (3) Any other noninvestment income, such as prizes, scholarships, awards, gambling income or discharge of indebtedness.

Example to paragraphs (b)(1) and (b)(3). A filer teaches a course at a local community college, for which she receives a salary of \$1,000 per year. She also received, during the previous reporting period, a \$250 award for outstanding local community service. She must disclose both.

(c) Assets and investment income. Each financial disclosure report shall disclose separately:

- (1) Each item of real and personal property having a fair market value in excess of \$1,000 held by the filer at the end of the reporting period in a trade or business, or for investment or the production of income, including but not limited to:

- (i) Real estate;
- (ii) Stocks, bonds, securities, and futures contracts;
- (iii) Livestock owned for commercial purposes;

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- (iv) Commercial crops, either standing or held in storage;
- (v) Antiques or art held for resale or investment;
- (vi) Vested beneficial interests in trusts and estates;
- (vii) Pensions and annuities;
- (viii) Sector mutual funds (see definition at Sec. 2640.102(q) of this chapter);
- (ix) Accounts or other funds receivable; and
- (x) Capital accounts or other asset ownership in businesses.

(2) The source of investment income (dividends, rents, interest, capital gains, or the income from qualified or excepted trusts or excepted investment funds (see paragraph (i) of this section)), which is received by the filer or accrued to his benefit during the reporting period, and which exceeds \$200 in amount or value from any one source, including but not limited to income derived from:

- (i) Real estate;
- (ii) Collectible items;
- (iii) Stocks, bonds, and notes;
- (iv) Copyrights;
- (v) Vested beneficial interests in trusts and estates;
- (vi) Pensions;
- (vii) Sector mutual funds (see definition at Sec. 2640.102(q) of this chapter);
- (viii) The investment portion of life insurance contracts;
- (ix) Loans;
- (x) Gross income from a business;
- (xi) Distributive share of a partnership;
- (xii) Joint business venture income; and
- (xiii) Payments from an estate or an annuity or endowment contract.

Note to paragraphs (c)(1) and (c)(2): For Individual Retirement Accounts (IRAs), brokerage accounts, trusts, mutual or pension funds, and other entities with portfolio holdings, each underlying asset must be separately disclosed, unless the entity qualifies for special treatment under paragraph (i) of this section.

(3) Exemptions. The following assets and investment income are exempt from the reporting requirements of paragraphs (c)(1) and (c)(2) of this section:

- (i) A personal residence, as defined in Sec. 2634.105(l), of the filer or spouse;
- (ii) Accounts (including both demand and time deposits) in depository institutions, including banks, savings and loan associations, credit unions, and similar depository financial institutions;

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- (iii) Money market mutual funds and accounts;
- (iv) U.S. Government obligations, including Treasury bonds, bills, notes, and savings bonds;
- (v) Government securities issued by U.S. Government agencies;"
- (vi) Financial interests in any retirement system of the United States (including the Thrift Savings Plan) or under the Social Security Act; and
- (vii) Diversified mutual funds. ("Diversified" means that the fund does not have a stated policy of concentrating its investments in any industry, business, single country other than the United States, or bonds of a single State within the United States and, in the case of an employee benefit plan, means that the plan's trustee has a written policy of varying plan investments. Whether a mutual fund meets this standard may be determined by checking the fund's prospectus or by calling a broker or the manager of the fund.)

Example 1 to paragraph (c). A filer owns a beach house which he rents out for several weeks each summer, receiving annual rental income of approximately \$5,000. He must report the rental property, as well as the city and state in which it is located.

Example 2 to paragraph (c). A filer's investment portfolio consists of several stocks, U.S. Treasury bonds, several cash bank deposit accounts, an account in the Government's Thrift Savings Plan, and shares in sector mutual funds and diversified mutual funds. He must report the name of each sector mutual fund in which he owns shares, and the name of each company in which he owns stock, valued at over \$1,000 at the end of the reporting period or from which he received income of more than \$200 during the reporting period. He need not report his diversified mutual funds, U.S. Treasury bonds, bank deposit accounts, or Thrift Savings Plan holdings.

(d) Liabilities. Each financial disclosure report filed pursuant to this subpart shall identify liabilities in excess of \$10,000 owed by the filer at any time during the reporting period, and the name and location of the creditors to whom such liabilities are owed, except:

- (1) Personal liabilities owed to a spouse or to the parent, brother, sister, or child of the filer, spouse, or dependent child;
- (2) Any mortgage secured by a personal residence of the filer or his spouse;
- (3) Any loan secured by a personal motor vehicle, household furniture, or appliances, provided that the loan does not exceed the purchase price of the item which secures it;
- (4) Any revolving charge account;
- (5) Any student loan; and
- (6) Any loan from a bank or other financial institution on terms generally available to the public.

Example to paragraph (d). A filer owes \$2,500 to his mother-in-law and \$12,000 to his best friend. He also has a \$15,000 balance on his credit card, a \$200,000 mortgage on his personal residence, and a car loan. Under the financial disclosure reporting requirements, he need not report the debt to his mother-in-law, his credit card balance, his mortgage, or his car loan. He must, however, report the debt of over \$10,000 to his best friend.

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(e) Positions with non-Federal organizations—

(1) In general. Each financial disclosure report filed pursuant to this subpart shall identify all positions held at any time by the filer during the reporting period, other than with the United States, as an officer, director, trustee, general partner, proprietor, representative, executor, employee, or consultant of any corporation, company, firm, partnership, trust, or other business enterprise, any nonprofit organization, any labor organization, or any educational or other institution.

(2) Exemptions. The following positions are exempt from the reporting requirements of paragraph (e)(1) of this section:

(i) Positions held in religious, social, fraternal, or political entities; and

(ii) Positions solely of an honorary nature, such as those with an emeritus designation.

Example to paragraph (e). A filer holds outside positions as the trustee of his family trust, the secretary of a local political party committee, and the "Chairman emeritus" of his town's Lions Club. He also is a principal of a tutoring school on weekends. The individual must report his outside positions as trustee of the family trust and as principal of the school. He does not need to report his positions as secretary of the local political party committee or "Chairman emeritus" because each of these positions is exempt.

(f) Agreements and arrangements. Each financial disclosure report filed pursuant to this subpart shall identify the parties to, and shall briefly describe the terms of, any agreement or arrangement of the filer in existence at any time during the reporting period with respect to:

(1) Future employment (including the date on which the filer entered into the agreement for future employment);

(2) A leave of absence from employment during the period of the filer's Government service;

(3) Continuation of payments by a former employer other than the United States Government; and

(4) Continuing participation in an employee welfare or benefit plan maintained by a former employer.

Example 1 to paragraph (f). A filer plans to retire from Government service in eight months. She has negotiated an arrangement for part-time employment with a private-sector company, to commence upon her retirement. On her financial disclosure report, she must identify the future employer, and briefly describe the terms of, this agreement and disclose the date on which she entered into the agreement.

Example 2 to paragraph (f). A new employee who has entered a position which requires the filing of a confidential form is on a leave of absence from his private-sector employment. During his Government tenure, he will continue to receive deferred compensation from this employer, and will continue to participate in its pension plan. He must report and briefly describe his arrangements for a leave of absence, for the receipt of deferred compensation, and for participation in the pension plan.

(g) Gifts and travel reimbursements—

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- (1) Gifts. Each annual financial disclosure report filed pursuant to this subpart shall contain a brief description of all gifts aggregating more than \$305 (\$375 in 2014) in value that are received by the filer during the reporting period from any one source, as well as the identity of the source. For in-kind travel-related gifts, the report shall include a travel itinerary, the dates, and the nature of expenses provided.
- (2) Travel reimbursements. Each annual financial disclosure report filed pursuant to this subpart shall contain a brief description (including a travel itinerary, dates, and the nature of expenses provided) of any travel-related reimbursements aggregating more than \$305 (\$375 in 2014) in value that are received by the filer during the reporting period from any one source, as well as the identity of the source.
- (3) Aggregation exception. Any gift or travel reimbursement with a fair market value of \$150 or less need not be aggregated for purposes of the reporting rules of this section. However, the acceptance of gifts, whether or not reportable, is subject to the restrictions imposed by Executive Order 12674, as modified by Executive Order 12731, and the implementing regulations on standards of ethical conduct.
- (4) Valuation of gifts and travel reimbursements. The value to be assigned to a gift or travel reimbursement is its fair market value. For most reimbursements, this will be the amount actually received. For gifts, the value should be determined in one of the following manners:
 - (i) If the gift has been newly purchased or is readily available in the market, the value shall be its retail price. The filer need not contact the donor, but may contact a retail establishment selling similar items to determine the present cost in the market.
 - (ii) If the item is not readily available in the market, such as a piece of art, a handmade item, or an antique, the filer may make a good faith estimate of the value of the item.
 - (iii) The term "readily available in the market" means that an item generally is available for retail purchase in the metropolitan area nearest to the filer's residence.
- (5) New entrants, as described in Sec. 2634.903(b) of this subpart, need not report any information on gifts and travel reimbursements.
- (6) Exemptions. Reports need not contain any information about gifts and travel reimbursements received from relatives (see Sec. 2634.105(o)) or during a period in which the filer was not an officer or employee of the Federal Government. Additionally, any food, lodging, or entertainment received as "personal hospitality of any individual", as defined in Sec. 2634.105(k), need not be reported. See also exclusions specified in the definitions of "gift" and "reimbursement" at Sec. 2634.105(h) and (n).

Example 1 to paragraph (g). A filer accepts a briefcase, a pen and pencil set, a paperweight, and a palm pilot from a community service organization he has worked with solely in his private capacity. He determines that the value of these gifts is:

Gift 1--Briefcase: \$200

Gift 2--Pen and Pencil Set: \$35

Gift 3--Paperweight: \$5

Gift 4--Palm Pilot: \$275

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The filer must disclose gifts 1 and 4 since, together, they aggregate more than \$305 (\$375 in 2014) in value from the same source. He need not aggregate or report gifts 2 and 3 because each gift's value does not exceed \$150.

(h) Disclosure rules for spouses and dependent children—

(1) Noninvestment income.

(i) Each financial disclosure report required by the provisions of this subpart shall disclose the source of earned income in excess of \$1,000 from any one source, which is received by the filer's spouse or which has accrued to the spouse's benefit during the reporting period. If earned income is derived from a spouse's self-employment in a business or profession, the report shall also disclose the nature of the business or profession. The filer is not required to report other noninvestment income received by the spouse such as prizes, scholarships, awards, gambling income, or a discharge of indebtedness.

(ii) Each report shall disclose the source of any honoraria received by or accrued to the spouse (or payments made or to be made to charity on the spouse's behalf in lieu of honoraria) in excess of \$200 from any one source during the reporting period.

Example to paragraph (h)(1). A filer's husband has a seasonal part-time job as a sales clerk at a department store, for which he receives a salary of \$1,000 per year. He also received, during the previous reporting period, a \$250 award for outstanding local community service, and an honorarium of \$250 from the state university. The filer need not report either her husband's outside earned income or award because neither exceeded \$1,000. She must, however, report the source of the honorarium because it exceeded \$200.

(2) Assets and investment income. Each confidential financial disclosure report shall disclose the assets and investment income described in paragraph (c) of this section and held by the spouse or dependent child of the filer, unless the following three conditions are satisfied:

(i) The filer certifies that the item represents the spouse's or dependent child's sole financial interest, and that the filer has no specific knowledge regarding that item;

(ii) The item is not in any way, past or present, derived from the income, assets or activities of the filer; and

(iii) The filer neither derives, nor expects to derive, any financial or economic benefit from the item.

Note to paragraph (h)(2): One who prepares a joint tax return with his spouse will normally derive a financial or economic benefit from assets held by the spouse, and will also be charged with knowledge of such items; therefore, he could not avail himself of this exception. Likewise, a trust for the education of one's minor child normally will convey a financial benefit to the parent. If so, the assets of the trust would be reportable on a financial disclosure report.

(3) Liabilities. Each confidential financial disclosure report shall disclose all information concerning liabilities described in paragraph (d) of this section and owed by a spouse or dependent child, unless the following three conditions are satisfied:

(i) The filer certifies that the item represents the spouse's or dependent child's sole financial responsibility, and that the filer has no specific knowledge regarding that item;

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- (ii) The item is not in any way, past or present, derived from the activities of the filer; and
- (iii) The filer neither derives, nor expects to derive, any financial or economic benefit from the item.

(4) Gifts and travel reimbursements.

- (i) Each annual confidential financial disclosure report shall disclose gifts and reimbursements described in paragraph (g) of this section and received by a spouse or dependent child which are not received totally independently of their relationship to the filer.
- (ii) A filer who is a new entrant as described in Sec. 2634.903(b) of this subpart is not required to report information regarding gifts and reimbursements received by a spouse or dependent child.

(5) Divorce and separation. A filer need not report any information about:

- (i) A spouse living separate and apart from the filer with the intention of terminating the marriage or providing for permanent separation;
- (ii) A former spouse or a spouse from whom the filer is permanently separated; or
- (iii) Any income or obligations of the filer arising from dissolution of the filer's marriage or permanent separation from a spouse.

Example to paragraph (h)(5). A filer and her husband are living apart in anticipation of divorcing. The filer need not report any information about her spouse's sole assets and liabilities, but she must continue to report their joint assets and liabilities.

(i) Trusts, estates, and investment funds—

(1) In general.

- (i) Except as otherwise provided in this section, each confidential financial disclosure report shall include the information required by this subpart about the holdings of any trust, estate, investment fund or other financial arrangement from which income is received by, or with respect to which a beneficial interest in principal or income is held by, the filer, his spouse, or dependent child.
- (ii) No information, however, is required about a nonvested beneficial interest in the principal or income of an estate or trust. A vested interest is a present right or title to property, which carries with it an existing right of alienation, even though the right possession or enjoyment may be postponed to some uncertain time in the future. This includes a future interest when one has a right, defeasible or indefeasible, to the immediate possession or enjoyment of the property, upon the ceasing of another's interest. Accordingly, it is not the uncertainty of the time of enjoyment in the future, but the uncertainty of the right of enjoyment (title and alienation), which differentiates a "vested" and a "nonvested" interest.

Note to paragraph (i)(1): Nothing in this section requires the reporting of the holdings of a revocable inter vivos trust (also known as a "living trust") with respect to which the filer, his spouse or dependent child has only a remainder interest, whether or not vested, provided that the grantor of the trust is neither the filer, the filer's spouse, nor the filer's

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dependent child. Furthermore, nothing in this section requires the reporting of the holdings of a revocable inter vivos trust from which the filer, his spouse or dependent child receives any discretionary distribution, provided that the grantor of the trust is neither the filer, the filer's spouse, nor the filer's dependent child.

Example. An FBI filer must disclose the assets of a trust left by a deceased parent for which he is a beneficiary, even if his other parent acts as a trustee and no immediate financial benefit accrues to the employee during the life of the surviving parent/trustee.

(2) Qualified trusts and excepted trusts.

(i) A filer should not report information about the holdings of any qualified blind trust (as defined in Sec. 2634.403) or any qualified diversified trust (as defined in Sec. 2634.404).

(ii) In the case of an excepted trust, a filer should indicate the general nature of its holdings, to the extent known, but does not otherwise need to report information about the trust's holdings. For purposes of this part, the term "excepted trust" means a trust:

(A) Which was not created directly by the filer, spouse, or dependent child; and

(B) The holdings or sources of income of which the filer, spouse, or dependent child have no specific knowledge through a report, disclosure, or constructive receipt, whether intended or inadvertent.

(3) Excepted investment funds.

(i) No information is required under paragraph (i)(1) of this section about the underlying holdings of an excepted investment fund as defined in paragraph (i)(3)(ii) of this section, except that the fund itself shall be identified as an interest in property and/or a source of income.

(ii) For purposes of financial disclosure reports filed under the provisions of this subpart, an "excepted investment fund" means a widely held investment fund (whether a mutual fund, regulated investment company, common trust fund maintained by a bank or similar financial institution, pension or deferred compensation plan, or any other investment fund), if:

(A)(1) The fund is publicly traded or available; or

(2) The assets of the fund are widely diversified; and

(B) The filer neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

(iii) A fund is widely diversified if it holds no more than 5% of the value of its portfolio in the securities of any one issuer (other than the United States Government) and no more than 20% in any particular economic or geographic sector.

(j) Special rules.

(1) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed under this subpart. However, if the individual has authority to exercise control over the fund's assets for personal use rather than campaign or political purposes, that portion of the fund over which such authority exists must be reported.

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(2) In lieu of entering data on a part of the report form designated by the Office of Government Ethics, a filer may attach to the reporting form a copy of a brokerage report, bank statement, or other material, which, in a clear and concise fashion, readily discloses all information which the filer would otherwise have been required to enter on the concerned part of the report form. (As of May 2015, attaching brokerage statements is no longer permitted by the FBI. The filer is required to declare all reportable items electronically in the INTEGRITY.gov application in the appropriate sections of the OGE-278e form.)

(k) For reports of confidential filers described in Sec. 2634.904(a)(3) of this subpart, each supplemental confidential financial disclosure report shall include only the supplemental information:

(1) Which is more extensive than that required in the reporting individual's public financial disclosure report under this part; and

(2) Which has been approved by the Office of Government Ethics for collection by the agency concerned, as set forth in supplemental agency regulations and forms, issued under Sec. 2634.103 and 2634.601(b) (see Sec. 2634.901(b) and (c) of this subpart).

5.5.1.7. 5 C.F.R. § 2634.908 Reporting periods

(a) Incumbents. Each confidential financial disclosure report filed under § 2634.903(a) of this subpart shall include on the standard form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, a full and complete statement of the information required to be reported according to the provisions of this subpart for the preceding calendar year or for any portion of that period not covered by a previous confidential or public financial disclosure report filed under this part.

(b) New entrants. Each confidential financial disclosure report filed under § 2634.903(b) of this subpart shall include, on the standard form prescribed by the Office of Government Ethics and in accordance with instructions issued by the Office, a full and complete statement of the information required to be reported according to the provisions of this subpart for the preceding twelve months from the date of filing.

5.5.1.8. 5 C.F.R. § 2634.909 Procedures, penalties, and ethics agreements

(a) The provisions of subpart F of this part govern the filing procedures and forms for, and the custody and review of, confidential disclosure reports filed under this subpart.

(b) For penalties and remedial action which apply in the event that the reporting individual fails to file, falsifies information, or files late with respect to confidential financial disclosure reports, see subpart G of this part.

(c) Subpart H of this part on ethics agreements applies to both the public and confidential reporting systems under this part.

**5.5.2. Confidential Financial Disclosure/CIC/ "No Conflicts" Form - FBI
Procedures and Requirements**

a. Administration.

1. Each HQ Division shall designate a Financial Disclosure Report Coordinator who shall ensure all administrative requirements concerning the filing of Ethics Financial Disclosure

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Forms are implemented in the Division. OIC will annually request the names and contact information for the Divisional coordinator.

2. In the Field, this responsibility shall be reposed in the Division CDC.
3. See Ethics Guide Reference Library for an OGE-450 Program Manager Checklist.

b. Filing of an OGE-450 Report, a CIC, and a "No Conflicts" Form

1. Filing an OGE-450 Report.

A. Completed OGE-450s are to be signed and dated by the filer and forwarded to his/her immediate supervisor (IS), for review. If a filer's interests did not change from last year, the filer may complete the top part of the first page of the form, sign and date it, write across Part I the words "SEE ATTACHED" and attach a copy of last year's certified report. The initial and secondary review can then be performed.

B. Timing of Reports generally. Incumbent OGE Form 450 report forms are due by February 15th of each year and cover the previous calendar year. New entrant reports are due within 30 days of an employee entering a position identified in section 5.2 or assuming the duties of one of those positions in an "acting" status for more than 60 days. Note that Special Government Employees are not required to file incumbent reports, but must file a new entrant OGE Form 450 upon each designation or re-designation of any appointment assigning them to their duties. For more detailed filing information regarding filing deadlines, see section 5.5.1.2 of this guide.

B.1. **"No Conflicts" Form.** As of 2013, all FBI OGE-450 filers are required to complete an "Employee Certification – No Known Conflicts of Interest with Federal Duties" form (No Conflicts form). New entrant (including acting) and annual filers must complete and submit the No Conflicts form with each submission of a completed OGE-450 report. (See Ethics Guide Reference Library for an OGE-450 No Conflicts form.) 2. CIC form. A CIC form must be filed within 30 days after a project is assigned or reassigned to the employee who is required to file the form. CIC filers are not required to fill out the No Conflicts form.

c. Review of OGE-450 Report and CIC Form. (See Ethics Guide Reference Library for Reviewers Guidance - OGE-450 and CIC Forms.)

1. OGE-450 Report in Field Divisions and FBIHQ.

(A) It is the responsibility of the Designated Financial Disclosure Coordinator in HQ Divisions (or the CDC in the Field) along with the immediate supervisor of any designated filer to ensure that all filers submit timely, complete and signed OGE-450 reports by the established deadline.

(B) Initial Review. A filer's immediate supervisor (IS) (the FBI employee who acts as the rating official for the filer's annual performance appraisal) shall conduct the initial review (IR) of the submitted report within 30 days of receipt. After review, the Report shall be promptly forwarded by the Division Coordinator/CDC to the designated Final Reviewer.

(C) Final Review. Secondary review is to be performed by the Final Reviewer (FR) within 30 days of receipt of the report from the IR. The FR shall review the OGE-450 report and ensure it is complete and that no apparent or actual conflict of interests or other issues exist. Once the FR determines these requirements are met, the FR shall sign the OGE-450

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and return it to the Coordinator/CDC so that it can be maintained in accordance with the regulations. FR designation is as follows:

(i) Field Divisions. In a Field Office, the FR is normally the field office's Chief Division Counsel (CDC) or an ADC designated by the CDC. The CDC's financial disclosure report shall be reviewed in final by the SAC. If the CDC reports directly to the SAC/ADIC, the SAC/ADIC will serve as the FR and no initial review is required.

(ii) FBIHQ. In headquarters divisions, the FR is the individual designated by the Filer's Division Head. The FR may be the Division Head, but this duty may be delegated. To ensure appropriate leadership attention is made to these forms, such delegation shall not be below the GS-15 Unit Chief/Section Chief level without specific DDEAO approval. If the OGE 450 or CIC filer reports directly to the Division Head, then the Division Head will serve as the FR and no initial review is required

2. Conflict of Interest Certification (CIC) Report Forms. The procedures and responsibilities noted above for OGE Form 450 apply, except that CIC forms need only be reviewed by the IS who is the same individual who acts as the initial reviewer for the OGE-450. The IS should date-stamp the CIC upon receipt to certify compliance with established deadlines. Once the form is complete (where there is no questionable conflict), the IS should return the CIC form to the Coordinator/CDC so that it can be maintained in accordance with the regulations.

d. Resolution of Questionable OGE-450s and CICs.

1. OGE-450s and CICs. If the immediate supervisor (IS) and/or the final reviewer (FR) determine that an actual or apparent financial conflict of interests or other issues exist, additional information may be requested from the filer to assist in taking appropriate action. OIC Ethics Attorneys can and should be consulted to provide advice in such cases. Actions that may be taken to resolve the conflict include, but are not limited to: divestiture; recusal; waiver pursuant to 18 U.S.C. § 208(b); or establishment of a qualified trust as permitted by 5 C.F.R. § 2634.401 *et seq.* Should resolution prove difficult or further problems arise, the FR should forward the signed or unsigned report to the SAC or Division Head for further consideration.

2. Upon receipt of a questionable OGE-450 or CIC, the SAC or Division Head shall take whatever action is necessary to resolve an actual or apparent conflict or otherwise to ensure compliance with the law. Conflicts which cannot be satisfactorily resolved should be brought to the attention of OIC Ethics Attorneys for advice and guidance.

e. Requests for Extensions. The FR may grant an extension in filing the OGE 450 for up to 60 days past the due date for good cause. All requests for extension and any granted extensions shall be made in writing in advance of the filing deadline (or in exigent circumstances, a verbal extension may be granted but the actual extension must be annotated as soon as possible in writing). An additional 30 day extension may be granted by the FR. Such requests and extensions shall be in writing, but the FR must confer with the DDAEO prior to approving this additional extension.

f. Recalcitrant Filers. In situations where an employee fails to respond to the original notification of the duty to file, and no extension has been granted, two follow-up reminders must be issued. The first reminder should be sent on February 1st (two weeks before the deadline) and the second on March 1st (two weeks after the deadline.) If a filer remains recalcitrant, he or she should be reported to the appropriate AD/SAC by March 15th, who should then provide, through

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an e-mail communication, a final deadline of March 31st. If the report is not filed by March 31st, the filer's insubordination must be referred to the Internal Investigations Section, INSD for appropriate action. OIC should be copied on such communications. This process is applicable to employees who fail to file an OGE-450 form, a "No Conflicts" form, or a CIC form.

g. Annual Training. *(See the training chapter of this Guide for more details.)* All OGE-450 and CIC filers must receive at least one hour of official duty time for training each year that meets the standards of 5 C.F.R. § 2638.705, subject to the exceptions in that regulation. Note that every three years, OGE-450 and CIC filers must, like OGE-278e filers, receive that annual training in a *verbal* form, pursuant to 5 C.F.R. § 2638.705.

h. Maintenance of OGE-450 and CIC Forms.

1. Generally. OGE-450s are to be maintained in folders titled "Confidential Financial Disclosure Reports" by the division's front office or by the division's Financial Disclosure Coordinator. The forms shall be maintained in date order. CICs will be maintained in a second folder titled "Confidential Financial Disclosure Reports/CICs," also in date order. These folders will be maintained in a secure manner, and every effort shall be made to protect the privacy of the filers (access to the files shall only be granted to those with an official need to access the information). Both OGE-450 and CIC forms will be maintained for a period of six years, after which they shall be destroyed, unless needed for an ongoing investigation or other official matter.

2. Departure from Office. When a filer/employee transfers out of an office, the employee's previously submitted OGE-450s and/or CICs should be transferred with the employee to his/her new assignment in a sealed envelope. In the event that an employee terminates employment, previously submitted forms are to be placed in a sealed envelope and labeled with the employee's name and the words "Confidential Financial Disclosure Reports and/or Conflict of Interest Certifications." These envelopes should be dated, maintained by the Division Financial Disclosure Coordinator or CDC at the employee's last duty station in a secure location for six years, and then destroyed, unless needed for an ongoing investigation or other official matter.

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6. Seeking Post-Government Service Employment and Post-Government Service Employment Restrictions

Legend

Black font: Statutory, Office of Government Ethics and other Agency Policy and Procedures

Blue font: DOJ Policy and Procedures

Red font: FBI Policy and Procedures

As employees transition from government service to the private sector, they must adhere to the standards of ethical conduct that apply to their search for post-government service employment while in the FBI and some that extend beyond their separation from the Bureau. The laws and regulations governing post-government-service employment activities are numerous and complex. Most of these are included in Section 6.6 of this Guide. This section details the law relevant to your employment, both during and following your FBI service, and outlines practical examples to help you navigate through this confusing area of the law.

While this section is detailed, it will not answer every question that may arise concerning your own particular circumstances. If you have any doubts about the propriety of a particular course of action after reading the relevant sections in this section, please seek legal advice from the Chief Division Counsel who serves your last office or from the attorneys in the Office of Integrity and Compliance.

Notice to Senior Employees. ("Senior employees" are those whose basic pay is equal to or greater than 86.5% of the rate for level II of the Executive Schedule, which is \$155,441 for 2013. This amount is set annually and is subject to change). The Office of Government Ethics (OGE) has asked that we particularly point out that, as more fully discussed in this section, most former FBI Senior Executive Service (SES) level employees are prohibited by virtue of 18 U.S.C. §207(c) from making certain communications to or appearances before any part of the FBI. This prohibition may also extend to communications to any agencies to which you were detailed within one year before ending FBI service.

6.1. Introduction

(a) Various laws restrict the employment activities of individuals who leave government service. The restrictions are based upon the need to:

Prevent activity that conflicts with the interests of the United States

Promote economy in the federal government

Preserve the public's confidence in government integrity

(b) We discuss these laws in detail in the sections that follow. Not every section will be of interest or pertain to every employee. All employees, however, are subject to some restrictions, and a few are subject to many. Employees whose duties involve procuring goods or services (e.g., contracting officer and procurement officials) are subject to special restrictions. If you had such duties, you should read Section 6.4 which discusses these special restrictions in detail. In

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addition, if you intend to disseminate FBI information or information relating to your FBI employment, you must first obtain written approval of the anticipated disclosure; even former employees are prohibited from speaking or writing about FBI matters regardless of whether they will be compensated for these disclosures or will otherwise engage in post-government service employment. (See Section 6.5 of this Guide for more information.)

(c) Each employee is responsible for determining which post-government service employment activities he or she may legally pursue. Ethics counselors are available to advise and assist. FBI ethics counselors include the Deputy Designated Agency Ethics Official for the Bureau, the Office of Integrity and Compliance attorneys, and your Chief Division Counsel.

(d) While ethics counselors advise personnel on the propriety of proposed activities, five limitations regarding this advice must be recognized.

(1) In many cases, ethics counselors cannot render authoritative opinions because the interpretation of many of these laws is a function of other government agencies. For example, construing criminal statutes is a function of the Attorney General and of the courts. Consequently, ethics counselor opinions in these areas, including opinions expressed in this section, are advisory only.

(2) Questions submitted to ethics counselors should involve concrete situations. The facts of each case should be disclosed fully because legal analysis is totally dependent on the facts of each given case. Different facts may produce totally different outcomes.

(3) While following a legal opinion obtained from either an ethics counselor or a private attorney may demonstrate good faith and may provide significant protection against disciplinary action or criminal prosecution, failure to provide pertinent information when seeking legal advice may invalidate any opinion provided.

(4) The field of law discussed in this section changes frequently. Ask your ethics counselor for advice on the existence and meaning of new legislation or regulations.

(5) Ethics counselors are attorneys for the government. While they will answer your questions and provide opinions on the applicability of the law to factual situations, they are not "your" lawyers. Statements made or documents provided to ethics counselors are not privileged communication. You do not enter into an attorney-client relationship when you consult an ethics counselor. If you do not wish to disclose certain matters to the government, you may wish to retain a private attorney.

6.2. Searching For a Job While Still an FBI Employee

(a) **Requirements.** All federal employees must comply with both statutory and regulatory limitations governing the search for outside employment. These restrictions are discussed in detail in the following paragraphs. In addition to the general restrictions that apply to all employees, specific restrictions apply to employees who have had duties involving the procurement of goods or services. (See Section 6.4. for more details.)

(a)(1) STOCK Act, Pub.L. 112-105, – Post-Employment Negotiation Restrictions

Any public financial disclosure report filer who engages in "negotiations" or reaches an agreement for post-government service employment or compensation must advise the

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FBI DDEAO **within three business days** of commencing negotiations or reaching agreement. The STOCK Act requires that the notification be "signed" by the employee.

Employees may notify the DDAEO by providing:

1. A written statement signed by the employee; or
2. An e-mail certified using the PKI system.

(b) Prohibition on participating in government matters involving prospective employers

(1) Criminal Prohibition. Section 208 of Title 18, United States Code (U.S.C.), prohibits you from participating "personally and substantially" in any particular government matter in which any private entity with which you are negotiating or have an arrangement for future employment has a financial interest.

(i) The maximum penalty for a violation of this statute is a fine equal to the amount of compensation received or \$50,000, whichever is greater, and imprisonment for five years.³

(ii) **Participate Personally and Substantially in Particular Matters.** To participate "personally and substantially" means to take action as a government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise. To participate "personally" means to do so directly, and includes the participation of a subordinate when actually directed by you in the matter. "Substantially" means that your involvement was of significance to the matter. The particular matters subject to this prohibition include, but are not limited to, judicial or other proceedings, applications, requests for rulings or other determinations, contracts, claims, controversies, charges, accusations, investigations, and arrests. See Section 6.6.2 of this Section.

Example 1: You negotiate for prospective employment with Company X while performing quality assurance inspections for the FBI of products produced by Company X. You have violated the law. This would be true even if you recommended that the government not accept any products from Company X.

(2) Eliminating Conflicts Through Disqualification. To avoid violating this statute, disqualify yourself from participating in any government matters in which your prospective employer has a financial interest. Disqualification is accomplished by not participating in the particular matter.⁴ You should notify your superior of any disqualification action so that FBI responsibilities do not go unfulfilled. Although it is not mandatory that you file a disqualification statement in writing,⁵ we recommend that you do so. (See Ethics Guide Reference Library for a Sample Disqualification Document). (Note that if the disqualification prevents you from performing the essential functions of your position, some alternative resolution may be necessary.)

³ 18 U.S.C. '216.

⁴ 5 C.F.R. §2635.604(b).

⁵ Unless required to do so as part of an ethics agreement with the Office of Government Ethics or specifically asked by an ethics counselor to do so. 5 C.F.R. '2635.604(c).

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(i) Negotiating for Employment. The term "negotiating" is broadly construed.⁶ The implementing regulation defines "negotiation" as:

"... a 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."⁷

(ii) Duration of the Disqualification. For a violation of Section 208 to occur, a formal offer of employment need not be made by either the employee or prospective employer.⁸ Taking official action that affects the interests of a particular company after engaging in a job interview with that same company may constitute prohibited conduct.⁹ Therefore, you should disqualify yourself from taking any official action that might affect a potential employer whenever there is any contact between you and the company concerning the possibility of a future job, unless the sole contact is initiated by the company and you immediately reject the offer. A situation often arises where contact is made, employment negotiations ensue, and you later decide that you do not want the job. In such a case, you should disqualify yourself and inform your supervisor of the contact after the initial discussions. After rejecting the job, file another written notice with your supervisor, stating that you are no longer disqualified from acting in your official capacity with respect to the private entity concerned since the job has been rejected.

(3) Regulatory Prohibitions. The prohibitions on searching for employment in the standards of conduct are broader than those in the criminal conflict-of-interest statute.¹⁰ The standards of conduct require that before you begin "seeking employment" you disqualify yourself from taking any governmental action involving a prospective employer.¹¹

(i) Seeking Employment. An employee has begun "seeking employment"¹² if he or she has engaged in any of the following activities, either directly or indirectly.

(A) Engaged in negotiations. (This term is discussed above.)

(B) Made a communication, solicited or unsolicited, to any person, or such person's agent or intermediary, regarding possible employment with that person. A Seeking employment@ does not, however, encompass merely requesting a job application or submitting a résumé or other employment proposal to a person who is affected by the performance or nonperformance of the employee's duties only as part of an industry or other discrete class.

⁶ *United States v. Hedges*, 912 F.2d 1397 (11th Cir. 1990); and *United States v. Schaltenbrand*, 930 F.2d 1554 (11th Cir. 1991).

⁷ 5 C.F.R. '2635.603(b)(1)(I).

⁸ See *Hedges* and *Schaltenbrand*, above at note 4.

⁹ See *Hedges* and *Schaltenbrand*, above at note 4.

¹⁰ 18 U.S.C. '208.

¹¹ 5 C.F.R. '2635.604(a).

¹² 5 C.F.R. '2635.603(b).

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In the latter circumstance, an employee will be considered to have begun seeking employment upon receipt of any response indicating an interest in employment discussions. See Section 6.6.2.10 for this and other relevant definitions.

(C) 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. A response that defers discussions does not constitute rejection of an employment proposal.

(ii) **Termination of "Seeking Employment."** An employee is "no longer seeking employment" when:

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

(B) Two months have expired after the employee's unsolicited communication provided the prospective employer has not indicated interest in such employment.¹³

(iii) **Disqualification.** An employee can avoid violating this restriction by disqualifying himself or herself from participating in any government matters in which the prospective employer has a financial interest. The disqualification procedures are the same as those set forth above.

(iv) **Appearance of Impropriety.** The standards of conduct not only prohibit actual violations of the rules, but also proscribe any acts or decisions that could reasonably be expected to create the appearance of impropriety.¹⁴ Put simply, it is not enough to protect against actual or patent violations. FBI employees are also required to refrain from any acts or decisions that might result in or create the appearance that the law or the standards of conduct have been violated from the perspective of a reasonable person with knowledge of the relevant facts.¹⁵ Applying these principles to the employment search setting, FBI employees should avoid the following activities while still employed in the Executive Branch.

(A) Permitting the prospect of employment to affect the performance or nonperformance of your official duties.

(B) Communicating nonpublic or privileged information to a prospective employer.

(C) Taking any action that would affect the public's confidence in the integrity of the government even if it is not an actual violation of the law.

¹³ See note above.

¹⁴ 5 C.F.R. § 2635.101. This includes appearances of: (a) using public office for private gain; (b) giving preferential treatment to any person or entity; (c) impeding government efficiency or economy; (d) losing impartiality; (e) knowingly making unauthorized commitments or promises of any kind purporting to bind the government; (f) engaging in outside employment or activities, including seeking or negotiating for employment, that may conflict with official duties and responsibilities; (g) using nonpublic government information or allowing the improper use of such information to further any private interest; or (h) adversely affecting the confidence of the public in the integrity of the government.

¹⁵ 5 C.F.R. § 2635.101(b).

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(D) If serving as a senior official (above the grade of GS-15), contacting a firm concerning future employment opportunities if the firm is prominently involved with the FBI in an issue of major public importance, since doing so creates the impression that the firm has undue influence with the FBI. Such action must be avoided because the negative appearance is not wholly eliminated by mere disqualification.

(4) **Waivers and Authorizations.** In very limited circumstances, a waiver or authorization may be obtained to allow an employee to take an official action that involves a prospective employer.¹⁶ Contact an ethics counselor whenever you seek to obtain a waiver or authorization.

(i) **Waiver of the Statutory Prohibition.** Even though such participation would otherwise be prohibited, an employee may participate in a particular matter involving an employer with whom he or she is negotiating for employment if the FBI's Deputy Designated Agency Ethics Official (DDAEO) makes a written determination that the conflicting financial interest, e.g., that of the potential employer, in the particular matter is not so substantial as to be deemed likely to affect the integrity of the services which the government may expect from such employee.¹⁷ The FBI seldom grants such waivers as a matter of policy.

(ii) **Authorization Despite Appearances.** In circumstances falling outside the criminal prohibition but presenting appearances of impropriety under the Standards of Conduct,¹⁸ the FBI DDAEO may permit participation in a matter by an employee who intends to "seek employment" with an entity connected with his or her duties. Again, as a matter of policy, the FBI seldom authorizes such participation.

Example 1: An employee is auditing the accounts of an FBI "LAFIS" 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 the FBI. The FBI employee says that she is interested in knowing what kind of work would be involved. They discuss the duties of the position and her qualifications. 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 FBI employee when he obtains the necessary approval for additional staffing. The employee and the contractor's official have engaged in negotiations regarding future employment. The employee must disqualify herself from taking any action that involves that contractor. If she continues to take official action regarding the contractor, she would violate both the criminal and regulatory prohibitions discussed above. To be able to take official action that involves the contractor while engaged in such negotiations, she would need to first obtain a waiver under Section 208.

Example 2: FBI Hostage Rescue Team pilot mails his résumé to ten corporations involved in manufacturing commercial aviation equipment. Pursuant to the Standards of Conduct, he has

¹⁶ 5 C.F.R. '2635.605.

¹⁷ See 18 U.S.C. '208(b)(1) and 5 C.F.R. '2635.605(a). Pursuant to DOJ Order 1200.1, Human Resources (10/23/03), Part 11, & C.1., the formal determination concerning waiver will be made by the FBI Director or his designee. The FBI Director has delegated this authority to the FBI's Deputy Designated Agency Ethics Official as permitted by & C.3.

¹⁸ 5 C.F.R. '2635.502(a).

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not begun seeking employment with any of the ten because the corporations are not directly affected by the performance or nonperformance of the pilot's duties.¹⁹ If he receives a response from a résumé recipient indicating an interest in employment discussions, the pilot will have begun seeking employment with the respondent at that time.

Example 3: A Special Agent has been working as a member of a team investigating six defense contractors in a possible contract fraud scheme. The Special Agent sends his résumé to one of the contractors. Pursuant to the Standards of Conduct, the Special Agent has begun seeking employment with that contractor and will, even in the absence of any further communication between the Agent and the contractor, be considered to be seeking employment for two months from the date on which the résumé was mailed, since the contractor is directly affected by the performance of the Agent's duties. If within these two months the contractor communicates an interest in further discussions, the Agent is considered to be seeking employment as long as the discussions continue. If, however, the Agent withdraws the résumé or is notified within the two month period that his résumé has been rejected, he will no-longer be seeking employment with the contractor as of the date he makes/receives such notification.

(c) Job Search Expenses. Looking for a job can be costly and your prospective employer may offer to defray some of the expenses. Reimbursement in cash or in kind by a prospective employer for travel, lodging, or subsistence expenses that are not extravagant or excessive in nature may be accepted by all personnel even if tendered by a DOJ contractor. If, however, the prospective employer has an interest that could be affected by the performance or nonperformance of your duties, you may accept payment for such expenses only if you first comply with the disqualification requirements discussed above.

(d) Financial disclosure of post-government-employment agreements

(1) Some FBI employees file ethics-based financial disclosure reports (i.e., the SF-278 Public Financial Disclosure Report or the OGE-450 Confidential Financial Disclosure Report). If you file either of these reports, please note that both require reporting of any future employment agreements, arrangements, or negotiations for future employment when you and the non-federal employer have agreed upon your future employment, whether or not you have settled all negotiating terms.

(2) This requirement is especially likely to affect filers of SF-278s, since you are required to file a termination report when you leave the FBI.

(3) For the SF-278, report such agreements in Schedule C, Part II, Agreements or Arrangements. For the OGE-450, report such agreements in Part IV, Agreements or Arrangements. The reported information should include:

- (i) Parties to the agreement,
- (ii) Dates of the agreement,
- (iii) A specific description of the position involved, and
- (iv) Terms of the agreement.

¹⁹ 5 C.F.R. § 2635.603(b)(ii)(B).

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(4) Note that similar requirements may apply to security-based financial disclosure reports, such as the FD-958.

6.3. Private Employment Restrictions Following Government Employment

Communications and appearances with the intent to influence the government

(a) Background

(1) **Prohibition against "Switching Sides."** Section 207 of Title 18, United States Code, is the primary source of post-government service employment restrictions applicable to officers and employees of the Executive Branch. It is designed to curb the so-called "switching sides" that occurs when a government employee leaves government service and then chooses to represent another person or entity on, or engage in, certain matters of interest to the government. Although the statute generally does not restrict the acceptance of employment in the private sector, it does restrict the scope of activities that can be undertaken on behalf of a private employer. The specific nature of the various prohibitions depends upon the degree of involvement in the particular matter while in government service and whether the former officer or employee was one of a specified group of high-ranking officials known as "senior employees."

(2) **Identifying the Applicable Law.** Former government employees are subject to the restrictions in effect at the time they left government service.²⁰ For further information on prior or subsequent versions of this statute, consult your ethics counselor.

(b) Restrictions applicable to all former government personnel. Three restrictions apply to all former officers and employees:

(1) **Lifetime Restriction.** 18 U.S.C. §207(a)(1) prohibits former officers and employees from knowingly making, with the intent to influence, any communication to, or appearance before, any officer or employee of any department, agency, court, or court-martial of the United States on behalf of any other person (except the United States) in connection with a particular matter in which the person participated personally and substantially while in government service and which involved a specific party or parties at the time of such participation. This prohibition lasts for the life of the matter and commences upon the employee's or officer's termination from government service. The focus of this prohibition is on the former officer or employee who participated in a matter while employed by the government and who later "switches sides" by representing before the United States another person on the same matter. This section of the statute does not, however, restrict a former official from providing "behind-the-scenes" or "in-house" assistance to a private employer. This prohibition also does not apply to communications to, or appearances before, Members of Congress or their legislative staffs.

(i) **Identifying Violations.** A violation of this prohibition occurs when the following four criteria are met:

- (A) The former employee worked on a particular matter while in government service;
- (B) The scope of the former employee's involvement amounted to "personal and substantial" participation;

²⁰ 5 C.F.R. §2637 (see Note).

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(C) A specific party to the particular matter had been identified at the time of the employee's involvement; and

(D) The former employee, with the intent to influence, communicated with, or appeared before, an officer or employee of the federal government on behalf of another person or entity regarding that same particular matter. These four criteria are discussed in the following paragraphs.

(ii) **Particular Matter.** A "particular matter" includes any specific contract, application, request for a ruling or other determination, rulemaking, claim, controversy, investigation, charge, accusation, arrest, or judicial or other proceeding.²¹ Not included are the formulation of general policy or other actions of general applicability in which the former officer or employee was involved, unless the outcome is narrowly focused on the interests of a discrete and identifiable class of persons.²² Thus, in most instances, a former officer or employee may represent a private employer in connection with a matter involving broad policies that he or she helped formulate. Factors to be considered in determining whether two particular matters are the same may include the extent to which the matters involve the same basic facts, the same or related issues, the same or related parties, the same confidential information, the continuing existence of an important federal interest, and how much time has elapsed between the two matters.

(iii) **Personal and Substantial Participation.** The prohibition does not arise unless the former employee's participation in the matter was "personal and substantial."²³ Personal and substantial participation can be exercised "through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action."²⁴ Personal participation refers to both the former employee's actions and those of a subordinate when actually directed by the former employee. Substantial participation means involvement that is, or reasonably appears to be, significant to the matter. Mere official responsibility over a matter, knowledge of it, or perfunctory involvement on an administrative or peripheral issue does not amount to substantial participation. Participating in a single critical step, however, may be "substantial." Although participation generally requires some form of action, inaction may be regarded as substantial participation if such inaction could cause a result within the transaction to be different.

(iv) **Specific Party or Parties.** The prohibition does not arise unless the matter involved a specific non-government party or parties at the time of the government work.²⁵ For example, a draft request for contract proposals will become a particular matter involving a specific party or parties once potential contractors are identified to the contract, for example, through submission of a proposal or involvement in sole-source negotiations. The private-sector employer need not have been identified as a party to the matter prior to the employee's

²¹ 18 U.S.C. '207(i)(3).

²² 5 C.F.R. '2640.103(a)(1).

²³ 18 U.S.C. '207(a). See also 5 C.F.R. '2637.201.

²⁴ 18 U.S.C. '207(i)(2).

²⁵ 5 C.F.R. '2637.201(c)(4).

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departure from government service. So long as some specific party (or parties) was involved before departure, the restriction will apply.

(v) Nature of Communications Prohibited. The Office of Government Ethics has provided the following guidance on the nature of the communications and appearances prohibited by this section:

A former employee is not prohibited by this restriction from providing "behind-the-scenes" assistance in connection with the representation of another person. Moreover, the restriction prohibits only those communications and appearances that are made "with the intent to influence." A "communication" can be made orally, in writing, or through electronic transmission. An "appearance" extends to a former employee's mere physical presence at a proceeding when the circumstances make it clear that his attendance is intended to influence the United States. An "intent to influence" the United States may be found if the communication or appearance is made for the purpose of seeking a discretionary government ruling, benefit, approval, or other action, or is made for the purpose of influencing government action in connection with a matter which the former employee knows involves an appreciable element of dispute concerning the particular government action to be taken. Accordingly, the prohibition does not apply to a request for publicly available documents or a request for purely factual information or the supplying of such information.²⁶

(2) Two-year Restriction.

(i) The second restriction is similar to the lifetime restriction above except that it is of shorter duration, and applies if an officer or employee had official responsibility over the matter even if he or she did not participate personally and substantially in that matter. For two years after terminating government service, 18 U.S.C. §207(a)(2) prohibits former officers or employees from making, with the intent to influence, any communication to, or appearance before, government officials in connection with a particular matter involving a specific party or parties that came under their official responsibility during their last year of government service.

(ii) The term "official responsibility" is defined as "direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove or otherwise direct government actions."²⁷ "Administrative authority" means authority for planning, organizing, or controlling matters rather than authority to review or make decisions on ancillary aspects of a matter.²⁸ The scope of an employee's official responsibility is ordinarily determined by those areas assigned by statute, regulation, Executive Order, job description or delegation of authority.²⁹

²⁶ Summary of Post-Employment Restrictions of 18 U.S.C. § 207, dated 2/17/00, section II.B.1, issued by the Office of Government Ethics.

²⁷ 18 U.S.C. § 202(b).

²⁸ 5 C.F.R. § 2637.203(c).

²⁹ See note above.

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(iii) The Office of Government Ethics has determined that all particular matters under consideration in an agency are under the official responsibility of the agency head, and each is additionally under that of any intermediate supervisor having responsibility for an official who actually participates in the matter within the scope of his or her duties. "Actually pending" means that the matter was in fact referred to, or under consideration by, persons within the former employee's area of responsibility, not that the matter merely could have been referred.³⁰ Employees can not eliminate this restriction by recusing themselves from matters that come under their official responsibility.

(iv) Former employees are not subject to this restriction unless at the time of the communication or appearance they know or reasonably should know that the matter had been pending under their official responsibility during their last year of government service. (Similar to the above case, this prohibition does not restrict in-house assistance to an employer.)

(3) Trade or Treaty Negotiations. For one year after terminating government service, 18 U.S.C. §207(b) prohibits former officers and employees from knowingly representing, aiding or advising an employer or any entity other than the United States Government regarding ongoing trade or treaty negotiations based on information to which they had access and which is exempt from disclosure under the Freedom of Information Act.

(i) This restriction begins upon separation from government service and, unlike the restrictions of 18 U.S.C. §§207(a)(1) or (2), discussed above, prohibits former officials from providing "behind-the-scenes" assistance on the basis of the covered information.

(ii) This restriction applies only if the former employee was personally and substantially involved in ongoing trade or treaty negotiations within the last year of his or her government service. It is not necessary for the former employee to have had contact with foreign parties in order to have participated personally and substantially in a trade or treaty negotiation.

(iii) The treaty negotiations covered by this section are those that result in international agreements requiring the advice and consent of the Senate.³¹

(iv) The trade negotiations covered are those that the President undertakes under Section 1102 of the Omnibus Trade and Competitiveness Act of 1988.³²

(v) A negotiation becomes "ongoing" at the point when both: (1) the determination has been made by competent authority that the outcome of the negotiation will be a treaty or trade agreement; and (2) discussions with a foreign government have begun on a text.

(c) Restrictions Applicable to Former Senior Employees. In addition to the restrictions described above, former "senior" employees are subject to two additional restrictions.

(1) A "senior" position is determined entirely by pay. A "senior" position for these purposes is one for which the rate of basic pay is equal to or greater than 86.5 percent of the rate for level II of the Executive Schedule. In practice, this means that all SES and SL personnel are subject

³⁰ See note above.

³¹ 18 U.S.C. ' 207(b)(2)(B).

³² 18 U.S.C. ' 207(b)(2)(A).

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to this provision. (2) One-year Restriction on Communicating with Former Department, Agency, or Component. For one year after serving in such a position, former "senior" employees are prohibited by virtue of Subsection §207(c) from knowingly making, with the intent to influence, any communication to or appearance before all or part of the department or agency in which the employee served in any capacity during the 1-year period prior to ending service in that "senior" position, if that communication or appearance is made on behalf of any other person (except the United States), in connection with any matter concerning which the former official seeks official action.

(i) **Purpose.** This one-year "cooling off" period is to allow for a period of adjustment to new roles for the former senior employee and the agency he or she served, and to diminish any appearances that government decisions might be affected by the improper use by an individual of his or her former senior position.

(ii) **Scope of Restriction.** Like the restrictions of 18 U.S.C. §§207(a)(1) and (a)(2), discussed above, this restriction prohibits communications to, and appearances before, the government, but does not prohibit "behind-the-scenes" assistance.

(iii) This prohibition differs from the restriction described above in several important respects:

(A) The former senior employee need not have had any involvement in, or responsibility over, the matter;

(B) The matters covered are broader and need not involve specific parties; and

(C) This restriction is limited to contact with the department or agency in which the former senior employee served during his or her last year of government service and does not extend government-wide. In essence, this one-year ban applies to any "matter," which is broader in scope than the other post-employment bans. For example, legislation, rulemaking, and policy-making can be "matters" under this prohibition even if they do not involve specific parties.

(iv) **Separate DOJ Components.** For purposes of 18 U.S.C. §207(c), DOJ is divided into a parent department and various components. (See Section 6.6.2.18 of this section for a listing of the designated DOJ components.)

(a) The implementing regulation provides:

An eligible former senior employee who served in a "parent" department or agency is not barred by 18 U.S.C. § 207(c) from making communications or appearances before any employee of any designated component of that parent, but is barred as to employees of the parent and of other components that have not been designated. An eligible former senior employee who served in a designated component of a parent department or agency is barred from communicating to or making an appearance before any employee of that component, but is not barred as to any employee of the parent or of any other component.³³

³³ 5 C.F.R. § 2641.201(e)(1).

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(b) The FBI is a designated component of DOJ.³⁴ Thus, former senior employees of the FBI may not communicate with the FBI with an intent to influence, but they may contact the Drug Enforcement Administration, the Bureau of Prisons, other designated DOJ components, or other DOJ officials outside the FBI.³⁵

(c) An eligible former senior employee who served in a "parent" department or agency is not barred by 18 U.S.C. ' 207(c) from making communications or appearances before any employee of any designated component of that parent, but is barred as to employees of the parent and other undesignated components. An eligible former senior employee who served in a designated component of a parent department or agency is barred from communicating to or making an appearance before any employee of that component, but is not barred as to any employee of the parent or of any other component.³⁶

(3) One-year Restriction on Representing a Foreign Entity. For one year after serving in such a position, a former senior employee is prohibited by virtue of Section 207(f) from knowingly representing, aiding, or advising a foreign entity with the intent of influencing an officer or employee of the U.S. Government in carrying out his or her official duties. For the purpose of this subsection:

(i) The term "foreign entity" includes the government of a foreign country and any person or group of persons exercising sovereign political jurisdiction over any country or any part of a country.³⁷ The term also includes foreign political parties and any organization or group of individuals engaged in, or seeking to engage in, the establishment, administration, or control of a foreign country or government.³⁸

(ii) A foreign commercial corporation will not generally be considered a "foreign entity" for purposes of Section 207(f) unless it exercises the function of a sovereign.

(iii) A former senior employee "represents" a foreign entity when (s)he acts as an agent or attorney for, or otherwise communicates or makes appearances on behalf of, that entity to or before any employee of a government department or agency.

(iv) A former senior employee "aids" or "advises" a foreign entity when he or she assists the entity other than by making communications or appearances. Such prohibited "behind-the-scenes" assistance includes drafting proposed communications to agencies, advising on appearances before departments, and consulting on strategies designed to persuade departmental or agency decision makers to take certain actions.

³⁴ 5 C.F.R. §2641, App. B.

³⁵ The FBI Director is subject to different restrictions in this regard. *See* 18 U.S.C. ' 207(h)(2) (the separate agency component designations permitted by ' 207(h)(1) may not be made for persons employed at a rate of pay specified or fixed in accordance with the Executive Schedule, which would include the FBI Director).

³⁶ 5 C.F.R. ' 2641.201(e)(1).

³⁷ 18 U.S.C. ' 207(f)(2).

³⁸ *See note above.*

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(v) A former senior employee's representation, aid, or advice is only prohibited if made or rendered with the intent to influence an official discretionary decision of a current departmental or agency employee.

(d) **Penalties for Violation of 18 U.S.C. §207 (c).** Pursuant to 18 U.S.C. §216(a), penalties for violation this statute are as follows:

(1) Whoever engages in the conduct constituting the offense shall be imprisoned for not more than one year or fined \$50,000, or both.

(2) Whoever willfully engages in the conduct constituting the offense shall be imprisoned for not more than five years or fined \$50,000, or both.

(e) **Exceptions and Exemptions.** 18 U.S.C. §207 contains several exceptions/exemptions. If an exception applies, a former member or employee is permitted to communicate with the government, but only to the extent that the applicable exception permits.

(1) **Exemption for Scientific or Technological Information.**³⁹

(i) Section 207 of Title 18, United States Code, provides an exemption from its provisions for communications made solely for the purpose of furnishing scientific or technological information where certain procedural requirements, discussed below, are met. This exemption applies to all of the limitations on communications discussed above except 18 U.S.C. §207(b), i.e., restrictions on trade and treaty negotiations, and 18 U.S.C. §207(f), i.e., restrictions on former senior employees representing, aiding, and advising foreign entities. The current law provides two bases for fitting within the exemption. Both are designed to allow the free exchange of scientific and technological information, and are available to all former personnel.

(ii) **Certificate of Exemption.** A former officer or employee may be exempted by the head of an agency. As a general rule, this method of exemption has been limited to those former personnel whose services are needed on a continuing and comprehensive basis.⁴⁰ In order to obtain an exemption under this method, the head of the agency concerned, in consultation with the Director, Office of Government Ethics, must execute and publish in the Federal Register a certification of exemption stating that:

(A) The individual concerned has outstanding qualifications in a scientific, technological, or other technical discipline;

(B) The individual concerned is acting with respect to a particular matter that requires such qualifications; and

(C) The national interest would be served by the individual's participation.

(iii) **Individual Agency Procedures.** A second method of obtaining an exemption is available to former FBI personnel who either have no need, or are unable to qualify for, the certificate of exemption discussed in the preceding paragraph. To qualify for this exemption,

³⁹ 18 U.S.C. '207(j)(5).

⁴⁰ 5 C.F.R. '2637.206.

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employees may provide scientific or technological information under procedures acceptable to the agency concerned.

(2) **Exceptions Applicable to Former Senior Employees.** Two specific exceptions apply to 18 U.S.C. §§207(c) (one year restriction on communications with one's former agency) and 207(d) (one year restriction on communications with one's former agency and with any individual in an Executive level position). These exceptions do not apply to 18 U.S.C. §207(f), representing a foreign entity, or the other 18 U.S.C. sections discussed above. The exceptions are:

(i) **Special Knowledge.** This exception provides that the restrictions in 18 U.S.C. §§207(c) and (d) do not apply to, among others, a former senior employee who makes a statement which is based on his or her own special knowledge in the particular area that is the subject of the statement, if no compensation is thereby received.⁴¹

(ii) **State and local governments and institutions, hospitals, and organizations.** The restrictions in 18 U.S.C. §§207(c) and (d) do not apply to an appearance, communication, or representation by, among others, a former senior employee who is an employee of a state or local government, an employee of certain accredited degree-granting institutions of higher education, or an employee of a nonprofit tax-exempt hospital or a medical research institution if the appearance, communication, or representation is on behalf of such government, institution, hospital, or organization.⁴²

(3) **Testimony.** A former employee may give testimony under oath or make statements required to be made under penalty of perjury. Former personnel may give expert opinion testimony but only if given pursuant to a court order or if not otherwise subject to the lifetime bar discussed above as it relates to the subject matter of the testimony.⁴³

(4) **Representing or Assisting International Organizations.** The restrictions do not prohibit representing, aiding, or advising an international organization in which the government participates, if the Secretary of State certifies in advance that such activity is in the government's interest.⁴⁴

6.4. Procurement Integrity Act Restrictions

(a) **Applicability.** The National Defense Authorization Act for Fiscal Year 1996⁴⁵ significantly revised the Procurement Integrity Act, and these revisions were effective on January 1, 1997.⁴⁶ Personnel who separated before January 1, 1997, are bound by the "old" Act; personnel who separate on or after January 1, 1997, are governed by the new provisions.

⁴¹ 18 U.S.C. '207(j)(4).

⁴² 18 U.S.C. '207(j)(2).

⁴³ 18 U.S.C. '207(j)(6).

⁴⁴ 18 U.S.C. '207(j)(3).

⁴⁵ Pub. L. 104-106, Div. D, Title XLIII, Subtitle A, '4303, 110 Stat. 659 (1996) (codified at 41 U.S.C. '423).

⁴⁶ 48 C.F.R. '3.104-2 (1998).

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(b) Restrictions on Disclosing or Obtaining Procurement Information. Like the old law, the revised Act prohibits present and former government employees from knowingly disclosing contractor bid or proposal information⁴⁷ or source selection information⁴⁸ before the award of the contract to which the information relates. The new law also prohibits the knowing acquisition of such information prior to the award of the contract in question.

(c) Job Search Limitations

(1) Expense Reimbursement. Unlike the old law, the new law does not set forth special rules regulating the acceptance of gratuities by personnel involved in the procurement process. This means that procurement personnel are bound by the same standards and gratuity rules that apply to all other Executive Branch employees. One effect of this change is to permit procurement personnel to accept reimbursement, either in kind or in cash, for travel expenses related to job interviews and negotiations. Before accepting such gratuities, however, all procurement personnel must disqualify themselves from further participation in any procurement or other government matter involving the paying entity⁴⁹ and follow the guidelines set forth in Section 6.2 of this guide.

(2) Reporting Contacts. The new law requires all employees who have participated personally and substantially in a procurement in excess of the "simplified acquisition threshold" (currently \$150,000) and who contact or are contacted by a bidder or offeror in that procurement about possible post-government service employment to report that contact in writing to their supervisor and their Designated Agency Ethics Official.⁵⁰

(3) Disqualification. Unless an employee immediately rejects the possibility of employment, he or she must, in addition to reporting the contact, disqualify himself or herself from further participation in the procurement until and unless the agency issues a waiver in accordance with Section 208 of Title 18, United States Code. See Section 6.2(b)(4) of this Section for more information on waivers.

(4) Penalties. An employee who fails to report an employment contact or to disqualify himself or herself without rejecting the possibility of employment is subject to a civil penalty of

⁴⁷ Defined to mean any of the following information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly: cost or pricing data, indirect costs and direct labor rates, proprietary information marked as such by the contractor, or information marked by the contractor as "contractor bid or proposal information." 48 C.F.R. '3.104-3, definition of AContractor bid or proposal information@ (1998).

⁴⁸ Defined to mean any of the following prepared for use by an agency for the purpose of evaluating a bid or proposal, if that information has not been previously made available to the public: bid prices or lists of bid prices; proposed costs or prices or lists of such costs or prices; source selection plans, technical evaluation plans, technical evaluations of proposals; cost or price evaluations of proposals; competitive range determinations; rankings of bids, proposals, or competitors; reports and evaluations of source selection panels, boards, or advisory councils; and other information marked as "source selection information" by the agency. See note above for definition of ASource selection information.@

⁴⁹ 5 C.F.R. '2635.204(e)(3).

⁵⁰ 48 C.F.R. '3.104-4(c). In the Bureau, such reports may be filed with the Office of the General Counsel, which maintains the related files for the FBI Deputy Designated Agency Ethics Official.

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\$50,000 plus twice the amount of any compensation offered.⁵¹ In addition, the government may cancel the procurement if the contract has not been awarded, initiate suspension or debarment proceedings, and initiate adverse personnel action.⁵²

(d) Employment Restrictions

(1) Who's Covered. Unlike the former law, which applied quite broadly, the employment restrictions of the revised Act apply to far fewer employees and only to large value contracts. Specifically, the law applies to any government employee who:

- (i) Served at the time of selection of the contractor or award of a contract as a procuring contracting officer, a source selection authority, a member of the source selection evaluation board, or a chief of a financial or technical evaluation team in connection with a contract in excess of \$10 million;
- (ii) Served as a program manager, deputy program manager, or administrative contracting officer in connection with a contract in excess of \$10 million; or
- (iii) Personally made a decision to award a contract, subcontract, modification, or task or delivery order in excess of \$10 million; to establish overhead or other rates valued in excess of \$10 million; to approve issuance of a contract payment or payments in excess of \$10 million; or to pay or settle a claim in excess of \$10 million.⁵³

Most procurement personnel in the FBI will not, consequently, be covered by the new law since most of our procurements are under the \$10 million thresholds.

(2) Restrictions. If you are covered, then you cannot accept any compensation from the contractor to which the contract was awarded for one year after you last served in a disqualifying capacity, as discussed above.⁵⁴ This means that you cannot accept compensation from the contractor as an employee, officer, director, or consultant.⁵⁵ (The old law permitted you to accept such compensation but limited the kinds of activities that you could engage in on behalf of the contractor.)

(3) Penalties. Persons who violate this provision are subject to a civil penalty of \$50,000, plus twice the amount of the compensation offered or received.⁵⁶ In addition, the government may cancel the procurement if the contract has not been awarded, initiate suspension or debarment proceedings, and initiate adverse personnel action.⁵⁷

⁵¹ 41 U.S.C. ' 423(c)(3), (e)(2)

⁵² 41 U.S.C. ' 423(e)(3)

⁵³ 41 U.S.C. ' 423(d)(1)

⁵⁴ 41 U.S.C. ' 423(d)

⁵⁵ You may, however, accept compensation from a distinct division or affiliate of the contractor so long as it does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract in question.

⁵⁶ 41 U.S.C. ' 423(d)(3), (e)(2).

⁵⁷ 41 U.S.C. ' 423(e)(3)(A).

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6.5. Prepublication Review

(a) Requirement. As a condition of employment, all FBI personnel agree never to divulge, publish, or reveal by word or conduct any information from the investigatory files of the Bureau, any information relating to material contained in such files, or any information or material acquired as part of the performance of their official duties or by virtue of their official status without official authorization. Similar obligations flow from employee access to classified materials and documents. To ensure that such materials and information remain protected, all FBI employees are required to present the full text of any proposed disclosure, including those related to post-government service employers, relating to information gained from their FBI employment to the FBI prior to any disclosure.

(b) Pre-Publication review Policy and Procedures. For further information, see Section 4.9 of this Guide and the FBI's Pre-Publication Review Manual at:

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6.6. Statutes and Regulations Concerning Post-Government Service Employment

6.6.1. U.S. Code Provisions

6.6.1.1. 18 U.S.C. §202 Definitions

(Note: This statute section is not completely quoted, only information pertinent to the topics are included in this Guide.)

(b) For the purposes of Sections 205 and 207 of this title, the term "official responsibility" means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct government action. (Senior employees, e.g., those who earn an annual salary over a prescribed amount, see 18 U.S.C. §207[c] and the introduction under section 6 above.)

6.6.1.2. 18 U.S.C. §207 Disqualification of Former Officers and Employees in Matters Connected with Former Duties or Official Responsibilities; Disqualification of Partners

(a) Restrictions on all officers and employees of the executive branch and certain other agencies.

(1) Permanent restrictions on representation on particular matters. Any person who is an officer or employee (including any special government employee) of the executive branch of the United States (including any independent agency of the United States), or of the District of Columbia, and who, after the termination of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia) in connection with a particular matter:

(A) In which the United States or the District of Columbia is a party or has a direct and substantial interest,

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(B) In which the person participated personally and substantially as such officer or employee, and

(C) Which involved a specific party or specific parties at the time of such participation, shall be punished as provided in Section 216 of this title.

(2) Two-year restrictions concerning particular matters under official responsibility. Any person subject to the restrictions contained in paragraph (1) who, within 2 years after the termination of his or her service or employment with the United States or the District of Columbia, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person (except the United States or the District of Columbia), in connection with a particular matter:

(A) In which the United States or the District of Columbia is a party or has a direct and substantial interest,

(B) Which such person knows or reasonably should know was actually pending under his or her official responsibility as such officer or employee within a period of 1 year before the termination of his or her service or employment with the United States or the District of Columbia, and

(C) Which involved a specific party or specific parties at the time it was so pending, shall be punished as provided in Section 216 of this title.

(3) Clarification of restrictions. The restrictions contained in paragraphs (1) and (2) shall apply:

(A) In the case of an officer or employee of the executive branch of the United States (including any independent agency), only with respect to communications to or appearances before any officer or employee of any department, agency, court, or court-martial of the United States on behalf of any other person (except the United States), and only with respect to a matter in which the United States is a party or has a direct and substantial interest; and

(B) In the case of an officer or employee of the District of Columbia, only with respect to communications to or appearances before any officer or employee of any department, agency, or court of the District of Columbia on behalf of any other person (except the District of Columbia), and only with respect to a matter in which the District of Columbia is a party or has a direct and substantial interest.

(b) One-year restrictions on aiding or advising.

(1) In general. Any person who is a former officer or employee of the executive branch of the United States (including any independent agency) and is subject to the restrictions contained in subsection (a)(1), or any person who is a former officer or employee of the legislative branch or a former Member of Congress, who personally and substantially participated in any ongoing trade or treaty negotiation on behalf of the United States within the 1-year period preceding the date on which his or her service or employment with the United States terminated, and who had access to information concerning such trade or treaty negotiation which is exempt from disclosure under Section 552 of title 5, which is so designated by the appropriate department or agency, and which the person knew or should have known was so designated, shall not, on the basis of that information, knowingly represent, aid, or advise any other person (except the

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United States) concerning such ongoing trade or treaty negotiation for a period of 1 year after his or her service or employment with the United States terminates. Any person who violates this subsection shall be punished as provided in Section 216 of this title.

(2) Definition. For purposes of this paragraph:

(A) The term "trade negotiation" means negotiations that the President determines to undertake to enter into a trade agreement pursuant to Section 1102 of the Omnibus Trade and Competitiveness Act of 1988, and does not include any action taken before that determination is made; and

(B) The term "treaty" means an international agreement made by the President that requires the advice and consent of the Senate.

(c) One-year restrictions on certain senior personnel of the executive branch and independent agencies.

(1) Restrictions. In addition to the restrictions set forth in subsections (a) and (b), any person who is an officer or employee (including any special government employee) of the executive branch of the United States (including an independent agency), who is referred to in paragraph (2), and who, within 1 year after the termination of his or her service or employment as such officer or employee, knowingly makes, with the intent to influence, any communication to or appearance before any officer or employee of the department or agency in which such person served within 1 year before such termination, on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency, shall be punished as provided in Section 216 of this title.

Example 1: A retired laboratory Assistant Director now works for a private company that develops testing equipment for forensic evidence examination. The company is interested in an FBI contract. As the former Assistant Director was an FBI Senior Executive Service employee of the Bureau, that employee may not contact the FBI for any matters related to representation of the company for the first year following departure from the FBI.

(2) Persons to whom restrictions apply:

(A) Paragraph (1) applies to a person (other than a person subject to the restrictions of subsection [d]):

(i) Employed at a rate of pay specified in or fixed according to Subsection II of Section 53 of title 5,

(ii) Employed in a position which is not referred to in clause (i) and for which that person is paid at a rate of basic pay which is equal to or greater than 86.5 percent of the rate of basic pay for level II of the Executive Schedule, or, for a period of 2 years following the enactment of the National Defense Authorization Act for Fiscal Year 2004, a person who, on the day prior to the enactment of that Act, was employed in a position which is not referred to in clause (i) and for which the rate of basic pay, exclusive of any locality-based pay adjustment under Section 5304 or Section 5304a of title 5, was equal to or greater than the rate of basic pay payable for level 5 of the Senior Executive Service on the day prior to the enactment of that Act,

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(In the FBI, this restriction applies to senior employees. A senior position is one for which the rate of basic pay is equal to or greater than 86.5% of the rate for level II of the Executive Schedule, see the introduction under section 6 above. This amount is set annually and is subject to change.)

(iii) Appointed by the President to a position under Section 105(a)(2)(B) of title 3 or by the Vice President to a position under Section 106(a)(1)(B) of title 3,

(iv) Employed in a position which is held by an active duty commissioned officer of the uniformed services who is serving in a grade or rank for which the pay grade (as specified in Section 201 of title 37) is pay grade O-7 or above; or

(v) Assigned from a private sector organization to an agency under Section 37 of title 5.

(B) Paragraph (1) shall not apply to a special government employee who serves less than 60 days in the 1-year period before his or her service or employment as such employee terminates.

(C) At the request of a department or agency, the Director of the Office of Government Ethics may waive the restrictions contained in paragraph (1) with respect to any position, or category of positions, referred to in clause (ii) or (iv) of subparagraph (A), in such department or agency if the Director determines that:

(i) The imposition of the restrictions with respect to such position or positions would create an undue hardship on the department or agency in obtaining qualified personnel to fill such position or positions, and

(ii) Granting the waiver would not create the potential for use of undue influence or unfair advantage.

(f) Restrictions relating to foreign entities.

(1) Restrictions. Any person who is subject to the restrictions contained in Subsection (c), (d), or (e) (Note: Subsection [d] and [e] refer to "very senior" government employees and members of Congress and are unrelated to FBI service) and who knowingly, within 1 year after leaving the position, office, or employment referred to in such subsection:

(A) Represents a foreign entity before any officer or employee of any department or agency of the United States with the intent to influence a decision of such officer or employee in carrying out his or her official duties, or

(B) Aids or advises a foreign entity with the intent to influence a decision of any officer or employee of any department or agency of the United States, in carrying out his or her official duties, shall be punished as provided in Section 216 of this title.

(2) Special rule for Trade Representative. With respect to a person who is the United States Trade Representative or Deputy United States Trade Representative, the restrictions described in paragraph (1) shall apply to representing, aiding, or advising foreign entities at any time after the termination of that person's service as the United States Trade Representative.

(3) Definition. For purposes of this subsection, the term "foreign entity" means the government of a foreign country as defined in Section 1(e) of the Foreign Agents Registration Act of 1938, as amended, or a foreign political party as defined in Section 1(f) of that Act.

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(g) Special rules for detailees. For purposes of this section, a person who is detailed from one department, agency, or other entity to another department, agency, or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of both departments, agencies, or such entities.

(h) Designations of separate statutory agencies and bureaus.

(1) Designations. For purposes of Subsection (c) and except as provided in paragraph (2), whenever the Director of the Office of Government Ethics determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and that there exists no potential for use of undue influence or unfair advantage based on past government service, the Director shall by rule designate such agency or bureau as a separate department or agency. On an annual basis the Director of the Office of Government Ethics shall review the designations and determinations made under this subparagraph and, in consultation with the department or agency concerned, make such additions and deletions as are necessary. Departments and agencies shall cooperate to the fullest extent with the Director of the Office of Government Ethics in the exercise of his or her responsibilities under this paragraph. (See Section 6.6.2.18 of this Section for DOJ Component/Bureau designated as "Distinct and Separate.")

(2) Inapplicability of designations. No agency or bureau within the Executive Office of the President may be designated under paragraph (1) as a separate department or agency. No designation under paragraph (1) shall apply to persons referred to in Subsection (c)(2)(A)(i) or (iii).

(i) Definitions. For purposes of this section:

(1) The term "officer or employee", when used to describe the person to whom a communication is made or before whom an appearance is made, with the intent to influence, shall include:

(A) In Subsections (a), (c), and (d), the President and the Vice President; and

(B) In Subsection (f), the President, the Vice President, and Members of Congress;

(2) The term "participated" means an action taken as an officer or employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or other such action; and

(3) The term "particular matter" includes any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, or judicial or other proceeding.

(j) Exceptions.

(1) Official government duties. The restrictions contained in this section shall not apply to acts done in carrying out official duties on behalf of the United States or the District of Columbia or as an elected official of a state or local government.

(2) State and local governments and institutions, hospitals, and organizations. The restrictions contained in Subsections (c), (d), and (e) shall not apply to acts done in carrying out official duties as an employee of:

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(A) An agency or instrumentality of a state or local government if the appearance, communication, or representation is on behalf of such government, or

(B) An accredited, degree-granting institution of higher education, as defined in Section 101 of the Higher Education Act of 1965, or a hospital or medical research organization, exempted and defined under Section 501(c)(3) of the Internal Revenue Code of 1986, if the appearance, communication, or representation is on behalf of such institution, hospital, or organization.

(3) International organizations. The restrictions contained in this section shall not apply to an appearance or communication on behalf of, or advice or aid to, an international organization in which the United States participates, if the Secretary of State certifies in advance that such activity is in the interests of the United States.

(4) Special knowledge. The restrictions contained in Subsections (c), (d), and (e) shall not prevent an individual from making or providing a statement, which is based on the individual's own special knowledge in the particular area that is the subject of the statement, if no compensation is thereby received.

(5) Exception for scientific or technological information. The restrictions contained in Subsections (a), (c), and (d) shall not apply with respect to the making of communications solely for the purpose of furnishing scientific or technological information, if such communications are made under procedures acceptable to the department or agency concerned or if the head of the department or agency concerned with the particular matter, in consultation with the Director of the Office of Government Ethics, makes a certification, published in the Federal Register, that the former officer or employee has outstanding qualifications in a scientific, technological, or other technical discipline, and is acting with respect to a particular matter which requires such qualifications, and that the national interest would be served by the participation of the former officer or employee. For purposes of this paragraph, the term "officer or employee" includes the Vice President.

(6) Exception for testimony. Nothing in this section shall prevent an individual from giving testimony under oath, or from making statements required to be made under penalty of perjury. Notwithstanding the preceding sentence:

(A) A former officer or employee of the executive branch of the United States (including any independent agency) who is subject to the restrictions contained in Subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the United States) in that matter; and

(B) A former officer or employee of the District of Columbia who is subject to the restrictions contained in Subsection (a)(1) with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person (except the District of Columbia) in that matter.

(7) Political parties and campaign committees.

(A) Except as provided in subparagraph (B), the restrictions contained in Subsections (c), (d), and (e) shall not apply to a communication or appearance made solely on behalf of a candidate in his or her capacity as a candidate, an authorized committee, a national committee, a national federal campaign committee, a state committee, or a political party.

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(B) Subparagraph (A) shall not apply to:

- (i) Any communication to, or appearance before, the Federal Election Commission by a former officer or employee of the Federal Election Commission; or
- (ii) A communication or appearance made by a person who is subject to the restrictions contained in Subsections (c), (d), or (e) if, at the time of the communication or appearance, the person is employed by a person or entity other than:
 - (I) A candidate, an authorized committee, a national committee, a national federal campaign committee, a state committee, or a political party; or
 - (II) A person or entity who represents, aids, or advises only persons or entities described in subclause (I).

(C) For purposes of this paragraph:

- (i) The term "candidate" means any person who seeks nomination for election, or election, to federal or state office or who has authorized others to explore on his or her behalf the possibility of seeking nomination for election, or election, to federal or state office;
- (ii) The term "authorized committee" means any political committee designated in writing by a candidate as authorized to receive contributions or make expenditures to promote the nomination for election, or the election, of such candidate, or to explore the possibility of seeking nomination for election, or the election, of such candidate, except that a political committee that receives contributions or makes expenditures to promote more than 1 candidate may not be designated as an authorized committee for purposes of subparagraph (A);
- (iii) The term "national committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level;
- (iv) The term "national federal campaign committee" means an organization that, by virtue of the bylaws of a political party, is established primarily for the purpose of providing assistance, at the national level, to candidates nominated by that party for election to the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress;
- (v) The term "state committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the state level;
- (vi) The term "political party" means an association, committee, or organization that nominates a candidate for election to any federal or state elected office whose name appears on the election ballot as the candidate of such association, committee, or organization; and
- (vii) The term "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(k)(1)

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(A) The President may grant a waiver of a restriction imposed by this section to any officer or employee described in paragraph (2) if the President determines and certifies in writing that it is in the public interest to grant the waiver and that the services of the officer or employee are critically needed for the benefit of the federal government. Not more than 25 officers and employees currently employed by the federal government at any one time may have been granted waivers under this paragraph.

(Note: Other provisions of this regulation unrelated to Post-Government Service Employment are omitted in this section of this Guide.)

6.6.1.3. 18 U.S.C. §208 Acts Affecting a Personal Financial Interest

(a) Except as permitted by Subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, a Federal Reserve bank director, officer, or employee, or an officer or employee of the District of Columbia, including a special government employee, participates personally and substantially as a government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest shall be subject to the penalties set forth in Section 216 of this title.

(Note: The remainder of this provision can be found in Section 4.5. of this Guide.)

6.6.1.4. 41 U.S.C. §423 Restrictions on Disclosing and Obtaining Contractor Bid or Proposal Information or Source Selection Information

(Note: This statute section is not completely quoted, only information pertinent to the topics included in this Guide.)

(c) Actions required of procurement officers when contacted by offerors regarding non-federal employment

(Note: This statute section is not completely quoted, only information pertinent to the topics included in this Guide.)

(3) An official who knowingly fails to comply with the requirements of this subsection shall be subject to the penalties and administrative actions set forth in Subsection (e) of this section.

(Note: This statute section is not completely quoted, only information pertinent to the topics included in this Guide.)

(d) Prohibition on former official's acceptance of compensation from contractor

(1) A former official of a federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of one year after such former official:

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(A) Served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of the source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000;

(B) Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor; or

(C) Personally made for the federal agency:

(i) A decision to award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor;

(ii) A decision to establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000;

(iii) A decision to approve issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or

(iv) A decision to pay or settle a claim in excess of \$10,000,000 with that contractor.

(Note: This statute section is not completely quoted, only information pertinent to the topics included in this Guide.)

(3) A former official who knowingly accepts compensation in violation of this subsection shall be subject to penalties and administrative actions as set forth in Subsection (e) of this section.

(Note: This statute section is not completely quoted, only information pertinent to the topics included in this Guide.)

(e) Penalties and Administrative Actions

(Note: This statute section is not completely quoted, only information pertinent to the topics included in this Guide.)

(2) Civil Penalties

The Attorney General may bring a civil action in an appropriate United States district court against any person who engages in conduct constituting a violation of Subsection (a), (b), (c), or (d) of this section. Upon proof of such conduct by a preponderance of the evidence, the person is subject to a civil penalty. An individual who engages in such conduct is subject to a civil penalty of not more than \$50,000 for each violation plus twice the amount of compensation which the individual received or offered for the prohibited conduct. An organization that engages in such conduct is subject to a civil penalty of not more than \$500,000 for each violation plus twice the amount of compensation which the organization received or offered for the prohibited conduct.

(3) Administrative Actions

(A) If a federal agency receives information that a contractor or a person has engaged in conduct constituting a violation of Subsection (a), (b), (c), or (d) of this section, the federal agency shall consider taking one or more of the following actions, as appropriate:

(i) Cancellation of the federal agency procurement, if a contract has not yet been awarded.

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(ii) Rescission of a contract with respect to which:

(I) The contractor or someone acting for the contractor has been convicted for an offense punishable under paragraph (1), or

(II) The head of the agency that awarded the contract has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense.

(iii) Initiation of suspension or debarment proceedings for the protection of the government in accordance with procedures in the Federal Acquisition Regulation.

(iv) Initiation of adverse personnel action, pursuant to the procedures in Section 75 of Title 5 or other applicable law or regulation.

(Note: This statute section is not completely quoted, only information pertinent to the topics included in this Guide.)

**6.6.1.5 50 U.S.C. § 3073a Reporting of Certain Employment Activities by
Former Intelligence Officers and Employees**

(a) In general the head of each element of the intelligence community shall issue regulations requiring each employee of such element occupying a covered position to sign a written agreement requiring the regular reporting of covered employment to the head of such element.

(b) Agreement elements-- The regulations required under subsection (a) shall provide that an agreement contain provisions requiring each employee occupying a covered position to, during the two-year period beginning on the date on which such employee ceases to occupy such covered position--

(1) report covered employment to the head of the element of the intelligence community that employed such employee in such covered position upon accepting such covered employment; and

(2) annually (or more frequently if the head of such element considers it appropriate) report covered employment to the head of such element.

[Note: Former FBI employees covered by this law must report annually. Reports can be made to the Assistant Director, FBI Office of Integrity & Compliance, 935 Pennsylvania Ave. N.W., Washington D.C. 20535]

(c) Definitions

In this section:

(1) Covered employment

The term "covered employment" means direct employment by, representation of, or the provision of advice relating to national security to the government of a foreign country or any person whose activities are directly or indirectly supervised, directed, controlled, financed, or subsidized, in whole or in major part, by any government of a foreign country.

(2) Covered position

The term "covered position" means a position within an element of the intelligence community that, based on the level of access of a person occupying such position to information regarding

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sensitive intelligence sources or methods or other exceptionally sensitive matters, the head of such element determines should be subject to the requirements of this section.

[Note: All FBI positions are "covered positions."]

(3) Government of a foreign country

The term "government of a foreign country" has the meaning given the term in section 611(e) of title 22.

6.6.2. Code of Federal Regulations Provisions

6.6.2.1. 48 C.F.R. §3.104 Improper Business Practices and Personal Conflicts of Interest

6.6.2.2. 48 C.F.R. §3.104-1 Definitions

As used in this section:

Contractor bid or proposal information means any of the following information submitted to a federal agency as part of or in connection with a bid or proposal to enter into a federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

- (1) Cost or pricing data (as defined by 10 U.S.C. §2306a[h]) with respect to procurements subject to that section, and Section 304A(h) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. §254b[h]), with respect to procurements subject to that section.
- (2) Indirect costs and direct labor rates.
- (3) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.
- (4) Information marked by the contractor as "contractor bid or proposal information" in accordance with applicable law or regulation.
- (5) Information marked in accordance with 52.215-1(e).

Participating personally and substantially in a federal agency procurement means:

- (1) Active and significant involvement of an official in any of the following activities directly related to that procurement:
 - (i) Drafting, reviewing, or approving the specification or statement of work for the procurement.
 - (ii) Preparing or developing the solicitation.
 - (iii) Evaluating bids or proposals, or selecting a source.
 - (iv) Negotiating price or terms and conditions of the contract.
 - (v) Reviewing and approving the award of the contract.
- (2) Participating personally means participating directly, and includes the direct and active supervision of a subordinate's participation in the matter.

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(3) Participating substantially means that the official's involvement is of significance to the matter. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome of a particular matter. A finding of substantiality should be based not only on the effort devoted to a matter, but 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. However, the review of procurement documents solely to determine compliance with regulatory, administrative, or budgetary procedures, does not constitute substantial participation in a procurement.

(4) Generally, an official will not be considered to have participated personally and substantially in a procurement solely by participating in the following activities:

- (i) Agency-level boards, panels, or other advisory committees that review program milestones or evaluate and make recommendations regarding alternative technologies or approaches for satisfying broad agency-level missions or objectives.
- (ii) The performance of general, technical, engineering, or scientific effort having broad application not directly associated with a particular procurement, notwithstanding that such general, technical, engineering, or scientific effort subsequently may be incorporated into a particular procurement.
- (iii) Clerical functions supporting the conduct of a particular procurement.
- (iv) For procurements to be conducted under the procedures of OMB Circular A-76, participation in management studies, preparation of in-house cost estimates, preparation of "most efficient organization" analyses, and furnishing of data or technical support to be used by others in the development of performance standards, statements of work, or specifications.

Source selection evaluation board means any board, team, council, or other group that evaluates bids or proposals.

6.6.2.3. 48 C.F.R. §3.104-2 General. Procurement Integrity Act

(a) This section implements Section 27 of the Office of Federal Procurement Policy Act (the Procurement Integrity Act) (41 U.S.C. §423) referred to as "the Act"). Agency supplementation of §3.104, including specific definitions to identify individuals who occupy positions specified in §3.104-3(d)(1)(ii), and any clauses required by 3.104 must be approved by the senior procurement executive of the agency, unless a law establishes a higher level of approval for that agency.

(b) Agency officials are reminded that there are other statutes and regulations that deal with the same or related prohibited conduct, for example:

- (1) The offer or acceptance of a bribe or gratuity is prohibited by 18 U.S.C. §201 and 10 U.S.C. §2207. The acceptance of a gift, under certain circumstances, is prohibited by 5 U.S.C. §7353 and 5 C.F.R. part 2635;
- (2) Contacts with an offeror during the conduct of an acquisition may constitute "seeking employment," (see subpart F of 5 C.F.R. part 2636 and 3.104-3(c)(2)). Government officers and employees (employees) are prohibited by 18 U.S.C. §208 and 5 C.F.R. part 2635 from

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participating personally and substantially in any particular matter that would affect the financial interests of any person with whom the employee is seeking employment. An employee who engages in negotiations or is otherwise seeking employment with an offeror or who has an arrangement concerning future employment with an offeror must comply with the applicable disqualification requirements of 5 C.F.R. 2635.604 and 2635.606. The statutory prohibition in 18 U.S.C. §208 also may require an employee's disqualification from participation in the acquisition even if the employee's duties may not be considered "participating personally and substantially," as this term is defined in 3.104-1;

(3) Post-employment restrictions are covered by 18 U.S.C. §207 and 5 C.F.R. parts 2637 and 2641, that prohibit certain activities by former government employees, including representation of a contractor before the government in relation to any contract or other particular matter involving specific parties on which the former employee participated personally and substantially while employed by the government. Additional restrictions apply to certain senior government employees and for particular matters under an employee's official responsibility;

(4) Parts 14 and 15 place restrictions on the release of information related to procurements and other contractor information that must be protected under 18 U.S.C. §1905;

(5) Release of information both before and after award (see 3.104-4) may be prohibited by the Privacy Act (5 U.S.C. §552a), the Trade Secrets Act (18 U.S.C. §1905), and other laws; and

(6) Using nonpublic information to further an employee's private interest or that of another and engaging in a financial transaction using nonpublic information are prohibited by 5 C.F.R. §2635.703.

6.6.2.4. 48 C.F.R. §3.104-3 Statutory and Related Prohibitions, Restrictions, and Requirements

(a) Prohibition on disclosing procurement information (Subsection 27(a) of the Act).

(1) A person described in paragraph (a)(2) of this subsection must not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a federal agency procurement contract to which the information relates. (See 3.104- 4(a).)

(2) Paragraph (a)(1) of this subsection applies to any person who:

(i) Is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a federal agency procurement; and

(ii) By virtue of that office, employment, or relationship, has or had access to contractor bid or proposal information or source selection information.

(b) Prohibition on obtaining procurement information (Subsection 27(b) of the Act). A person must not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a federal agency procurement contract to which the information relates.

(c) Actions required when an agency official contacts or is contacted by an offeror regarding non-federal employment (Subsection 27(c) of the Act)

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- (1) If an agency official, participating personally and substantially in a federal agency procurement for a contract in excess of the simplified acquisition threshold, contacts or is contacted by a person who is an offeror in that federal agency procurement regarding possible non-federal employment for that official, the official must:
- (i) Promptly report the contact in writing to the official's supervisor and to the agency ethics official; and
 - (ii) Either reject the possibility of non-federal employment or disqualify himself or herself from further personal and substantial participation in that federal agency procurement (see 3.104-5) until such time as the agency authorizes the official to resume participation in that procurement, in accordance with the requirements of 18 U.S.C. §208 and applicable agency regulations, because:
 - (A) The person is no longer an offeror in that federal agency procurement; or
 - (B) All discussions with the offeror regarding possible non-federal employment have terminated without an agreement or arrangement for employment.
- (2) A contact is any of the actions included as "seeking employment" in 5 C.F.R. 2635.603(b). In addition, unsolicited communications from offerors regarding possible employment are considered contacts.
- (3) Agencies must retain reports of employment contacts for 2 years from the date the report was submitted.
- (4) Conduct that complies with Subsection 27(c) of the Act may be prohibited by other criminal statutes and the Standards of Ethical Conduct for Employees of the Executive Branch. 3.104-2(b)(2).
- (d) Prohibition on former official's acceptance of compensation from a contractor (Subsection 27(d) of the Act).
- (1) A former official of a federal agency may not accept compensation from a contractor that has been awarded a competitive or sole source contract, as an employee, officer, director, or consultant of the contractor within a period of 1 year after such former official:
- (i) Served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000;
 - (ii) Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor; or
 - (iii) Personally made for the federal agency a decision to:
 - (A) Award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor;
 - (B) Establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000;

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(C) Approve issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or

(D) Pay or settle a claim in excess of \$10,000,000 with that contractor.

(2) The 1-year prohibition begins on the date:

(i) Of contract award for positions described in paragraph (d)(1)(i) of this subsection, or the date of contractor selection if the official was not serving in the position on the date of award;

(ii) The official last served in one of the positions described in paragraph (d)(1)(ii) of this subsection; or

(iii) The official made one of the decisions described in paragraph (d)(1)(iii) of this subsection.

(3) Nothing in paragraph (d)(1) of this subsection may be construed to prohibit a former official of a federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in paragraph (d)(1) of this subsection.

6.6.2.5. 48 C.F.R. §3.104-4 Disclosure, Protection, and Marking of Contractor Bid or Proposal Information and Source Selection Information

(a) Except as specifically provided for in this subsection, no person or other entity may disclose contractor bid or proposal information or source selection information to any person other than a person authorized, in accordance with applicable agency regulations or procedures, by the agency head or the contracting officer to receive such information.

(b) Contractor bid or proposal information and source selection information must be protected from unauthorized disclosure in accordance with 14.401, 15.207, applicable law, and agency regulations.

(c) Individuals unsure if particular information is source selection information, as defined in 2.101, should consult with agency officials as necessary. Individuals responsible for preparing material that may be source selection information as described at paragraph (10) of the "source selection information" definition in 2.101 must mark the cover page and each page that the individual believes contains source selection information with the legend "Source Selection Information—See FAR 2.101 and 3.104." Although the information in paragraphs (1) through (9) of the definition in 2.101 is considered to be source selection information whether or not marked, all reasonable efforts must be made to mark such material with the same legend.

(Note: Other provisions of this regulation unrelated to Post-Government Service Employment are omitted in this section of this Guide.)

6.6.2.6. 5 C.F.R. §2635.101 Basic Obligation of Public Service

(Note: This provision can be found in Section 4.1. of this Guide.)

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6.6.2.7. 5 C.F.R. §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 an employee's acceptance of a gift in accordance with one of those paragraphs will be deemed not to violate the principles set forth in §2635.101(b), including appearances. Even though acceptance of a gift may be permitted by one of the exceptions contained in paragraphs (a) through (l) of this section, it is never inappropriate and frequently prudent for an employee to decline a gift offered by a prohibited source or because of his official position.

(Note: Other provisions of this regulation unrelated to Post-Government Service Employment are omitted in this section of this Guide. See subsections 4.2. and 4.4. of this Guide)

2635.204(e). An employee may accept meals, lodging, transportation, and other benefits:

- (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.

Example 2: An FBI employee who has properly accepted a job with a cruise ship company may take part in a "Maiden Cruise" of a new ship launched by the company as such events are normally attended by employees as part of their duties. This is true even if the trip takes place while the employee is finishing FBI service.

- (4) For purposes of paragraphs (e)(1) through (3) of this section, employment shall have the meaning set forth in §2635.603(a). (See Section 6.6.2.10 for more definitions.)

6.6.2.8. 5 C.F.R. §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

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(c) of this section or obtain a waiver or determine that an exemption applies, as described in paragraph (d) of this section.

(Note: The remainder of this provision can be found in Section 4.5. of this Guide.)

6.6.2.9. 5 C.F.R. §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.

(Note: Other provisions of this regulation unrelated to Post-Government Service Employment are omitted and can be found in Section 4.5. of this Guide.)

6.6.2.10. 5 C.F.R. §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.

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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.

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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.

Example 7: An FBI Supervisory Special Agent is in charge of investigating fraud involving several area banks. As part of the FBI investigation, one Vice President tells the FBI employee that they have an opening for a bank Anti-Fraud Executive position. If the FBI employee does not immediately reject the bank initiated discussion of employment, then the employee will have begun seeking employment with the bank. Whether the discussions are rejected or not, as the bank is being investigated by the employee's Unit, the contact must be reported to the relevant Division Head.

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

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

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

(d) Direct and predictable effect, particular matter, and personal and substantial have the respective meanings set forth in §2635.402(b)(1), (3), and (4). (See Section 6.6.2.10 of this section for more definitions.)

6.6.2.11. 5 C.F.R. §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 personally and substantially in a particular matter that, to his knowledge, has a direct and predictable effect on the financial interests of a prospective employer with whom 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 section (5 C.F.R.) 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

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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.

Example 5: A 25-year FBI employee IT Professional staff Supervisor is currently in charge of an FBI-DOJ panel that is evaluating several software products related to document storage and retention. If one of the companies and the employee discuss employment, the employee must immediately notify her supervisor and recuse herself from further participation on the panel.

(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

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agency may allow the employee to take annual leave or leave without pay while seeking employment, or may take other appropriate administrative action.

6.6.2.12. 5 C.F.R. §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 personally and substantially in a particular matter that has a direct and predictable effect on the financial interests of a prospective employer only after receiving a written waiver issued under the authority of 18 U.S.C. §208(b)(1) or (b)(3). These waivers are described in §2635.402(d). See also subpart C of part 2640 of this section. For certain employees, a regulatory exemption under the authority of 18 U.S.C. §208(b)(2) may also apply (see subpart B of part 2640 of this section).

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.

(The remainder of this regulation is inapplicable to this topic and is not included in this section. Waivers under 18 U.S.C. §208 and 5 C.F.R. §603[b][1][i] are rarely, if ever, granted.)

6.6.2.13. 5 C.F.R. §2637.201 Restrictions on Any Former Government Employee's Acting as Representative as to a Particular Matter in which the Employee Personally and Substantially Participated

(a) Basic prohibition of 18 U.S.C. §207(a). No former government employee, after terminating government employment, shall knowingly act as agent or attorney for, or otherwise represent any other person in any formal or informal appearance before, or with the intent to influence, make any oral or written communication on behalf of any other person (1) to the United States, (2) in connection with any particular government matter involving a specific party, (3) in which matter such employee participated personally and substantially as a government employee.

(b) Representation: Acting as agent or attorney, or other representative in an appearance, or communicating with intent to influence:

(1) Attorneys and agents. The target of this provision is the former employee who participates in a particular matter while employed by the government and later "switches sides" by representing another person on the same matter.

(NOTE: The examples in these regulations do not incorporate the special statutory restrictions on Senior Employees, except where the terms "Senior Employee" or "Senior" are expressly used.)

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Example 1: A lawyer in the Department of Justice personally works on an antitrust case involving Q Company. After leaving the Department, he is asked by Q Company to represent it in that case. He may not do so.

Example 2: An FBI Special Agent who serves on a team that investigates a private individual may not leave government employment and serve as an expert witness for that individual's defense team in the prosecution of that matter.

(2) Others. The statutory prohibition covers any other former employee, including managerial and technical personnel, who represents another person in an appearance or, by other communication, attempts to influence the government concerning a particular matter in which he or she was involved. For example, a former technical employee may not act as a manufacturer's promotional or contract representative to the government on a particular matter in which he or she participated. Nor could such employee appear as an expert witness against the government in connection with such a matter. (See §2637.208 for specific rules relating to expert witnesses.)

(3) Appearances; communications made with intent to influence. An appearance occurs when an individual is physically present before the United States in either a formal or informal setting or conveys material to the United States in connection with a formal proceeding or application. A communication is broader than an appearance and includes for example, correspondence, or telephone calls.

Example 1: An appearance occurs when a former employee meets with an agency employee personally to discuss a matter; or when he submits a brief in an agency administrative proceeding in his own name.

Example 2: A former employee makes a telephone call to a present employee to discuss a particular matter that is not the subject of a formal proceeding. She has made a communication.

(4) Government visits to others premises. Neither a prohibited appearance nor communication occurs when a former government employee communicates with a government employee who, at the instance of the United States, visits or is assigned to premises leased to, or owned or occupied by, a person other than the United States which are or may be used for performance under an actual or proposed contract or grant, when such communication concerns work performed or to be performed and occurs in the ordinary course of evaluation, administration, or performance of the actual or proposed contract or grant.

(5) Elements of "influence" and potential controversy required. Communications which do not include an "intent to influence" are not prohibited. Moreover, acting as agent or attorney in connection with a routine request not involving a potential controversy is not prohibited. For example, the following are not prohibited: a question by an attorney as to the status of a particular matter; a request for publicly available documents; or a communication by a former employee, not in connection with an adversary proceeding, imparting purely factual information. (See also §2637.204(d) of this part.)

Example 1: A government employee, who participated in writing the specifications of a contract awarded to Q Company for the design of certain education testing programs, joins Q Company and does work under the contract. She is asked to accompany a company vice-president to a meeting to state the results of a series of trial tests, and does so. No violation occurs when she provides the information to her former agency. During the meeting a dispute arises as to some

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terms of the contract, and she is called upon to support Q Company's position. She may not do so. If she had reason to believe that the contractual dispute would be a subject of the meeting, she should not have attended.

(6) Assistance. A former employee is not prohibited from providing in-house assistance in connection with the representation of another person.

Example 1: A government employee administered a particular contract for agricultural research with Q Company. Upon termination of her government employment, she is hired by Q Company. She works on the matter covered by the contract, but has no direct contact with the government. At the request of a company vice-president, she prepares a paper describing the persons at her former agency who should be contacted and what should be said to them in an effort to increase the scope of funding of the contract and to resolve favorably a dispute over a contract clause. She may do so.

Example 2: An FBI Lab employee who approved a minor contract for ABC Company to provide forensic services for the FBI may perform post-government service employment for ABC Company (and may even perform "behind the scenes" work on that specific contract for ABC). The former FBI employee may not, however, represent ABC Company's interests before the FBI on a compliance issue related to that contract.

(7) Project responses not included. In a context not involving a potential controversy involving the United States no finding of a "intent to influence" shall be based upon whatever influential effect inheres in an attempt to formulate a meritorious proposal or program.

Example 1: The employee of Q Company in the previous example is asked to design an educational testing program, which she does and transmits it to the government. This is not prohibited despite the fact that her well-designed program may be inherently influential on a question of additional funding under the contract. She may not argue for its acceptance.

(c) "Particular matter involving a specific party or parties"

(1) Specific matters vs. policy matters. The prohibitions of Subsections (a) and (b) of 18 U.S.C. §207, are based on the former government employee's prior participation in or responsibility for a "judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties" in which the United States is a party or has a direct and substantial interest. Such a matter typically involves a specific proceeding affecting the legal rights of the parties or an isolatable transaction or related set of transactions between identifiable parties. Rulemaking, legislation, the formulation of general policy, standards or objectives, or other action of general application is not such a matter. Therefore, a former government employee may represent another person in connection with a particular matter involving a specific party even if rules or policies which he or she had a role in establishing are involved in the proceeding.

Example 1: A government employee formulated the policy objectives of an energy conservation program. He is not restricted from later representing a university which seeks a grant or contract for work emerging from such a program.

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Example 2: A government employee reviews and approves a specific city's application for federal assistance for a renewal project. After leaving government service, she may not represent the city in relation to that project.

Example 3: An employee is regularly involved in the formulation of policy, procedures and regulations governing departmental procurement and acquisition functions. Participation in such activities does not restrict the employee after leaving the government as to particular cases involving the application of such policies, procedures, or regulations.

Example 4: An employee of the Office of Management and Budget participates substantially on the merits of a decision to reduce the funding level of a program, which has the effect of reducing the amount of money which certain cities receive to conduct youth work programs. After leaving the government she may represent any of the cities in securing funds for its youth program, since her participation was in connection with a program, not a particular matter involving specific parties.

Example 5: An agency attorney participates in drafting a standard form contract and certain "standard terms and clauses" for use in future contracts. He is not thereafter barred from representing a person in a dispute involving the application of such a "standard term or clause" in a particular contract in which he did not participate as a government employee.

Example 6: An FBI Counter-Intelligence Supervisory Special Agent develops FBI policy on processing FISA warrants. The employee leaves the FBI and properly accepts employment by a law firm that specializes in investigating and providing advice to individuals who are the subject of these warrants. So long as there is no representation regarding a specific case the SSA was involved in while an FBI Special Agent, the FBI employee's policy development work would not restrict his employment with the firm regarding their client's challenges of FISA warrants.

(2) Technical matters. In connection with technical work, participation in projects generally involving one or more scientific or engineering concepts, in feasibility studies, or in proposed programs prior to the formulation of a contract will not restrict former government employees with respect to a contract or specific programs entered into at a later date.

Example 1: A government employee participates significantly in formulating the "mission need" of a project pursuant to OMB Circular No. A-109, and the award of a contract to Z Company, the purpose of which is to propose alternative technical approaches. He is not barred, after leaving government service, from representing Q Company which later seeks a contract to manufacture one of the systems suggested by the Z Company.

Example 2: A government employee, who has worked for years on the design of a new satellite communications system, joins C Company. Later, the government issues a "request for proposals" ("RFP") to construct the new system, which is circulated generally to industry. The employee proposes to act as C Company's representative in connection with its anticipated proposals for the contract. He may do so. The satellite contract became a particular matter when the RFP was being formulated; it would ordinarily not become one involving a specific party or parties until initial proposals or indications of interest therein by contractors were first received. Moreover, if the employee's work for C Company were limited to the formulation and communication of a proposal in response to the RFP, it would not be prohibited to the extent it involved a communication for the purpose of furnishing scientific or technological information to

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the government, exempt under 18 U.S.C. §207(f). See §2637.206 below. (See paragraph (3) below as to a case where the employee's own participation may cause a different result.)

(3) Relationship of personal participation to specificity. In certain cases, whether a matter should be treated as a "particular matter involving specific parties" may depend on the employee's own participation in events which give particularity and specificity to the matter in question. For example, if a government employee (i) personally participated in that stage of the formulation of a proposed contract where significant requirements were discussed and one or more persons was identified to perform services thereunder and (ii) actively urged that such a contract be awarded, but the contract was actually awarded only after the employee left, the contract may nevertheless be a particular matter involving a specific party as to such former government employee.

Example 1: A government employee advises her agency that it needs certain work done and meets with private firm X to discuss and develop requirements and operating procedures. Thereafter, the employee meets with agency officials and persuades them of the need for a project along the lines discussed with X. She leaves the government and the project is awarded by other employees to firm X. The employee is asked by X to represent it on the contract. She may not do so.

(4) The same particular matter must be involved. The requirement of a "particular matter involving a specific party" applies both at the time that the government employee acts in an official capacity and at the time in question after government service. The same particular matter may continue in another form or in part. In determining whether two particular matters are the same, the agency should consider the extent to which the matters involve the same basic facts, related issues, the same or related parties, time elapsed, the same confidential information, and the continuing existence of an important federal interest.

Example 1: A government employee was substantially involved in the award of a long-term contract to Z Company for the development of alternative energy sources. Six years after he terminates government employment, the contract is still in effect, but much of the technology has changed as have many of the personnel. The government proposes to award a "follow on" contract, involving the same objective, after competitive bidding. The employee may represent Q Company in its proposals for the follow-on contract, since Q Company's proposed contract is a different matter from the contract with Z Company. He may also represent Z Company in its efforts to continue as contractor, if the agency determines on the basis of facts referred to above, that the new contract is significantly different in its particulars from the old. The former employee should first consult his agency and request a written determination before undertaking any representation in the matter.

Example 2: A government employee reviewed and approved certain wiretap applications. The prosecution of a person overheard during the wiretap, although not originally targeted, must be regarded as part of the same particular matter as the initial wiretap application. The reason is that the validity of the wiretap may be put in issue and many of the facts giving rise to the wiretap application would be involved. Other examples: See §2637.201(b)(1), Example 1, and (c), Example 2.

(5) United States must be a party or have an interest. The particular matter must be one in which the United States is a party, such as in a judicial or administrative proceeding or a

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contract, or in which it has a direct and substantial interest. The importance of the federal interest in a matter can play a role in determining whether two matters are the same particular matter.

Example 1: An attorney participated in preparing the government's antitrust action against Z Company. After leaving the government, she may not represent Z Company in a private antitrust action brought against it by X Company on the same facts involved in the government action. Nor may she represent X Company in that matter. The interest of the United States in preventing both inconsistent results and the appearance of impropriety in the same factual matter involving the same party, Z Company, is direct and substantial. However, if the government's antitrust investigation or case is closed, the United States no longer has a direct and substantial interest in the case.

Example 2: A member of a government team providing technical assistance to a foreign country leaves and seeks to represent a private contractor in making arrangements with the government to perform the same service. The proposed new contract may or may not be considered a separate matter, depending upon whether the United States has a national interest in maintaining the original contract. The agency involved must be consulted by the former employee before the representation can be undertaken.

(d) "Participate personally and substantially"

(1) Basic requirements. The restrictions of Section 207(a) apply only to those matters in which a former government employee had "personal and substantial participation," exercised "through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise." To participate "personally" means directly, and includes the participation of a subordinate when actually directed by the former government employee in the matter. "Substantially," means that the employee's involvement must be of significance to the matter, or form a basis for a reasonable appearance of such significance. 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 on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participation in a critical step may be substantial. It is essential that the participation be related to a "particular matter involving a specific party." (See paragraph (c) of this section.) (See also §2637.203(f) of this part.)

Example 1: If an officer personally approves the departmental budget, he does not participate substantially in the approval of all items contained in the budget. His participation is substantial only in those cases where a budget item is actually put in issue. Even then, the former government employee is not disqualified with respect to an item if it is a general program rather than a particular matter involving a specific party. The former government employee may, however, have official responsibility for such matters. (See §2637.202(b).)

Example 2: A government lawyer is not in charge of, nor has official responsibility for a particular case, but is frequently consulted as to filings, discovery, and strategy. Such an individual has personally and substantially participated in the matter.

(2) Participation on ancillary matters. An employee's participation on subjects not directly involving the substantive merits of a matter may not be "substantial," even if it is time-

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consuming. An employee whose responsibility is the review of a matter solely for compliance with administrative control or budgetary considerations and who reviews a particular matter for such a purpose should not be regarded as having participated substantially in the matter, except when such considerations also are the subject of the employee's proposed representation. (See §2637.202(b)(3) of this part.) Such an employee could theoretically cause a halt in a program for noncompliance with standards under his or her jurisdiction, but lacks authority to initiate a program or to disapprove it on the basis of its substance.

(3) Role of official responsibility in determining substantial participation. "Official responsibility" is defined in §2637.202(b)(1). "Personal and substantial participation" is different from "official responsibility." One's responsibility may, however, play a role in determining the "substantiality" of an employee's participation. For example, ordinarily an employee's forbearance on a matter is not substantial participation. If, however, an employee is charged with responsibility for review of a matter and action cannot be undertaken over his or her objection, the result may be different. If the employee reviews a matter and passes it on, his or her participation may be regarded as "substantial" even if he or she claims merely to have engaged in inaction.

(e) Agency responsibility in complex cases. In certain complex factual cases, the agency with which the former government employee was associated is likely to be in the best position to make a determination as to certain issues, for example, the identity or existence of a particular matter. Designated agency ethics officials should provide advice promptly to former government employees who make inquiry on any matter arising under these regulations.

6.6.2.14. 5 C.F.R. §2637.203 Two-year Restriction on a Former Senior Employee's Assisting in Representing as to a Matter in which the Employee Participated Personally and Substantially

(a) Basic prohibition of 18 U.S.C. §207(b)(ii). No former Senior Employee (see §2637.102(a)(6)), within two years after terminating employment by the United States, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person by personal presence at any formal or informal appearance, (1) before the United States, (2) in connection with any particular government matter involving a specific party, (3) in which matter he or she participated personally and substantially.

(b) Limitation to "representational" assistance by "personal presence" at an appearance. Section 207(b)(ii) is limited to assistance "in representing" another person by "personal presence" at an "appearance" before the United States. Different in scope from Sections 207(a) and 207(b)(i), it does not apply to assistance in connection with an oral or written communication made with an intent to influence which does not involve an appearance. Nor does it bar assistance in preparation for either a formal or informal personal appearance or an appearance by written submission in a formal proceeding where the former employee is not personally present before the government or a government employee. The provision is designed to prevent the former Senior Employee from playing any auxiliary role during a negotiation proceeding or similar transaction with the government so that he or she does not appear to be lending personal influence to the resolution of a matter and cannot do so in fact.

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Example 1: A former Senior Employee makes suggestions as to the content of a letter to be sent to the government on a matter in which he had participated. No violation occurs.

(c) Managerial and other off-scene assistance. The statute does not prohibit a former Senior Employee's advice and assistance to his or her organization's representatives which does not involve his or her personal presence at an appearance before the government. The former Senior Employee's preparation of documents to be presented in any formal or informal proceeding does not constitute personal presence at an appearance, even where submission of such a document might technically constitute an appearance.

Example 1: A former Senior Employee attends a hearing on a matter in which she had participated personally and substantially while in the government. She speaks with the representative of a private party during the hearing. A violation occurs if the former Senior Employee lends assistance to the representative in that conversation.

Example 2: A Senior Justice Department lawyer personally works on an antitrust case against Z Company. After leaving the Department, she is asked to discuss legal strategy with lawyers representing Z Company on that same antitrust case, to write portions of a brief and to direct the research of the staff working on the case. Any such aid would not be prohibited by the statute, but would likely be prohibited by professional disciplinary rules.

(d) Representational assistance. The statute seeks to prevent a former Senior Employee from making unfair use of his or her prior governmental position by prohibiting all forms of assistance in the representation of another when personally present at an appearance, including giving advice as to how the representation in an appearance should be conducted, supplying information, participating in drafting materials, or dealing with forensic or argumentative matters (such as testimony, methods of persuasion, or strategy of presentation).

(e) Measurement of restriction period. The statutory two-year period is measured from the date of termination of employment in the Senior Employee position held by the former employee when he or she participated personally and substantially in the matter involved. (cf. §2637.202(e)).

(f) Other Essential Requirements. All conditions of the statutory prohibition must be met. Specifically, the former employee, (1) must have been a "Senior Employee," (2) who "participated personally and substantially" (See §2637.201(d) of this part) in (3) a "particular matter involving a specific party." (See subpart §2637.201(c) of this part.)

(g) General Examples:

Example 1: A senior Federal Trade Commission employee, an economist by profession, participates in an investigation involving X Company, and a proceeding is commenced against X Company based on the investigation. After leaving the Commission, he offers to serve as a consultant to the lawyers for X Company on certain economic matters involved in the proceeding. He attends the proceeding and at the close of each day, meets in the lawyers' office to advise them. Such conduct violates the statute. (In the same vein, an FBI Special Agent who investigates a particular suspect may not accept post-government service employment that would involve his attending the court prosecution of the subject and advising defense lawyers.)

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Example 2: A Senior Employee of the Department of the Treasury participates in a number of projects with universities and financial research institutions funded by government grants. After leaving the government, she becomes dean of a graduate school of business which performs work under a number of such grants. She may, in the discharge of her duties, supervise research and advise as to how funds under such a contract should be allocated, whether or not these matters are, as is likely, communicated to her former Department by the graduate school's representatives. (See §2637.204.)

Example 3: A Senior Defense Department official participated personally and substantially in a contract award to F Company for fighter planes. After leaving the Department, the former official goes to work for F Company. Subsequently, F Company desires to renegotiate prices and a pension provision on the fighter plane contract, matters in which dispute is anticipated. The former official could not attend a meeting with government employees at which such matters will be discussed and give assistance to those representing F Company in the negotiations. He could generally render advice as long as he remained absent from the negotiations.

Example 4: A Senior Justice Department lawyer participated in an antitrust case against Q Company, which is represented by Y law firm. Immediately after leaving, the Department, she goes to work with Y law firm, and assists at a trial representing Q Company in a different antitrust case, not involving the allegations in the government case. Such assistance would not be barred because it does not occur in connection with the same particular matter.

Example 5: A Senior Employee of the Department of Health and Human Services leaves to take a university position. The former official's new duties include various HHS contracts which the university holds. Some of the contracts were awarded by a division within HHS which was under her official responsibility. She is not barred from assistance in negotiations with respect to such contracts, because the restriction applies only to those matters in which she had participated personally and substantially, not to those matters for which she had official responsibility. Note, however, that any participation by her as a representative would be barred by 18 U.S.C. §207(b)(1) as described in §2637.202 of this part. (But see §2637.204.)

Example 6: A Senior scientist with the Food and Drug Administration was personally and substantially involved in a licensing proceeding concerning a specific drug. After leaving the FDA, he is employed by the manufacturer of the drug. There he engages in research, indicating that the drug is safe and effective, which his employer later presents to FDA in connection with the proceeding. He assists during this presentation. Such assistance would normally be restricted but may be allowed to the extent that the former official is furnishing scientific information to the government. (See 18 U.S.C. §207(f) and §2637.206 of this part.)

Example 7: A former Senior Employee of the Federal Communications Commission leaves the agency to join a graduate school faculty. In one of his courses, which from time to time includes government employees, he discusses, unfavorably to the Commission, a specific licensing case in which he was personally and substantially involved. The restriction does not apply because the conduct does not occur in connection with any representational activities.

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6.6.2.15. 5 C.F.R. §2637.206 Exemption for Scientific and Technological Information

(a) Exemption. The making of communications solely for the purpose of furnishing scientific or technological information pursuant to agency procedures is exempt from all prohibitions and restrictions set forth in §§2637.201-2637.204 of these regulations (Subsections (a), (b), and (c) of 18 U.S.C. §207). This exemption allows the free exchange of such information regardless of a former government employee's prior participation in or responsibility for the matter. The former Senior Employee should not argue for the acceptance of a proposal. The exemption is not limited to communications constituting the furnishing of information, but includes those "for the purpose of" doing so. No violation occurs when, for example, a former government employee working on a project makes contact to determine the kind and form of information required, or the adequacy of information already supplied, so long as agency procedures are satisfied.

Example 1: A project manager, regardless of prior involvement in a particular matter, may contact the government to determine deficiencies in system design or performance, furnish scientific or technological information relating to a solution or approach to a problem, seek related information from the government; advise and supervise others who are involved as to such matters; and meet with government technical experts for such purpose; provided in each case that there is compliance with such agency regulations as have been issued.

(b) Necessary information. Scientific and technological information includes feasibility, risk, cost, and speed of implementation, when necessary to appreciate fairly the practical significance of the information. The government may and should be fully informed of the significance of scientific and technological alternatives.

(c) Intent to influence. The furnishing of meritorious or convincing scientific or technological proposals does not constitute an intent to influence. (See §2637.201(b)(7) of this part.)

(d) Expert testimony. This exemption does not include testimony as an "expert" in adversary proceedings in a matter in which the United States is involved or has an interest. Such testimony is governed by regulations set forth in §2637.208. As to assistance as an expert or consultant, see §2637.203(g), Example 7.

(e) Agency responsibility for procedures. The primary responsibility for developing procedures to guide activity under this exemption lies with each agency, so that such procedures comport with the particular characteristics of agency programs and needs. Such procedures will be reviewed periodically by the Director. In promulgating procedures, an agency may take into consideration: Limiting communications to certain formats which are least conducive to the use of personal influence; segregating, to the extent possible, meetings and presentations involving matters of technical substance from those involving other aspects of the relationship; requiring that the designated agency ethics official be informed of instances where the exemption is used; or employing more restrictive practices in circumstances involving either immediate competition for contracts or applications for grants than in those involving an ongoing project.

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6.6.2.16. 5 C.F.R. §2640.103 Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. §208 (Acts Affecting a Personal Financial Interest); Prohibition

(a) Statutory prohibition. Unless permitted by 18 U.S.C. §208(b)(1)-(4), an employee is prohibited by 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 other person specified in the statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest. The restrictions of 18 U.S.C. §208 are described more fully in 5 C.F.R. §2635.401 and 2635.402. (See subsections 4.5.2.2.(b)3 and 4 for definitions.)

(b) Disqualifying financial interests. For purposes of 18 U.S.C. 208(a) and this part, the term financial interest means the potential for gain or loss to the employee, or other person specified in Section 208, as a result of governmental action on the particular matter. The disqualifying financial interest might arise from ownership of certain financial instruments or investments such as stock, bonds, mutual funds, or real estate. Additionally, a disqualifying financial interest might derive from a salary, indebtedness, job offer, or any similar interest that may be affected by the matter.

6.6.2.17. 5 C.F.R. §2640.201 Exemptions for Interests in Mutual Funds, Unit Investment Trusts, and Employee Benefit Plans

(a) Diversified mutual funds and unit investment trusts. An employee may participate in any particular matter affecting one or more holdings of a diversified mutual fund or a diversified unit investment trust where the disqualifying financial interest in the matter arises because of the ownership of an interest in the fund or trust.

Example 1: An employee owns shares worth \$100,000 in several mutual funds whose portfolios contain stock in a small computer company. Each mutual fund prospectus describes the fund as a "management company," but does not characterize the fund as having a policy of concentrating its investments in any particular industry, business, single country (other than the U.S.) or bonds of a single state. The employee may participate in agency matters affecting the computer company.

Example 2: A nonsupervisory employee of the Department of Energy owns shares valued at \$75,000 in a mutual fund that expressly concentrates its holdings in the stock of utility companies. The employee may not rely on the exemption in paragraph (a) of this Section to act in matters affecting a utility company whose stock is a part of the mutual fund's portfolio because the fund is not a diversified fund as defined in §2640.102(a). The employee may, however, seek an individual waiver under 18 U.S.C. §208(b)(1) permitting him to act.

(b) Sector mutual funds.

(1) An employee may participate in any particular matter affecting one or more holdings of a sector mutual fund where the affected holding is not invested in the sector in which the fund concentrates, and where the disqualifying financial interest in the matter arises because of ownership of an interest in the fund.

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(2)(i) An employee may participate in a particular matter affecting one or more holdings of a sector mutual fund where the disqualifying financial interest in the matter arises because of ownership of an interest in the fund and the aggregate market value of interests in any sector fund or funds does not exceed \$50,000.

(ii) For purposes of calculating the \$50,000 de minimis amount in paragraph (b)(2)(i) of this Section, an employee must aggregate the market value of all sector mutual funds in which he has a disqualifying financial interest and that concentrate in the same sector and have one or more holdings that may be affected by the particular matter.

Example 1: An employee of the Federal Reserve owns shares in the mutual fund described in the preceding example. In addition to holdings in utility companies, the mutual fund contains stock in certain regional banks and bank holding companies whose financial interests would be affected by an investigation in which the Federal Reserve employee would participate. The employee is not disqualified from participating in the investigation because the banks that would be affected are not part of the sector in which the fund concentrates.

Example 2: A health scientist administrator employed in the Public Health Service at the Department of Health and Human Services is assigned to serve on a Department-wide task force that will recommend changes in how Medicare reimbursements will be made to health care providers. The employee owns \$35,000 worth of shares in the XYZ Health Sciences Fund, a sector mutual fund invested primarily in health-related companies such as pharmaceuticals, developers of medical instruments and devices, managed care health organizations, and acute care hospitals. The health scientist administrator may participate in the recommendations.

Example 3: The spouse of the employee in the previous Example owns \$40,000 worth of shares in ABC Specialized Portfolios: Healthcare, a sector mutual fund that also concentrates its investments in health-related companies. The two funds focus on the same sector and both contain holdings that may be affected by the particular matter. Because the aggregated value of the two funds exceeds \$50,000, the employee may not rely on the exemption.

(c) Employee benefit plans. An employee may participate in:

(1) Any particular matter affecting one or more holdings of an employee benefit plan, where the disqualifying financial interest in the matter arises from membership in:

(i) The Thrift Savings Plan for federal employees described in 5 U.S.C. §8437;

(ii) A pension plan established or maintained by a state government or any political subdivision of a state government for its employees; or

(iii) A diversified employee benefit plan, provided:

(A) The investments of the plan are administered by an independent trustee, and the employee, or other person specified in Section 208(a) does not participate in the selection of the plan's investments or designate specific plan investments (except for directing that contributions be divided among several different categories of investments, such as stocks, bonds or mutual funds, which are available to plan participants); and

(B) The plan is not a profit-sharing or stock bonus plan.

Note to paragraph (c)(1): Employee benefit plans that are tax deferred under 26 U.S.C. §401(k) are not considered profit-sharing plans for purposes of this Section. However, for

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the exemption to apply, 401(k) plans must meet the requirements of paragraph (c)(1)(iii)(A) of this Section.

(2) Particular matters of general applicability, such as rulemaking, affecting the state or local government sponsor of a state or local government pension plan described in paragraph (c)(1)(ii) of this Section where the disqualifying financial interest in the matter arises because of participation in the plan.

Example 1: An attorney terminates his position with a law firm to take a position with the Department of Justice. As a result of his employment with the firm, the employee has interests in a 401(k) plan, the assets of which are invested primarily in stocks chosen by an independent financial management firm. He also participates in a defined contribution pension plan maintained by the firm, the assets of which are stocks, bonds, and financial instruments. The plan is managed by an independent trustee. Assuming that the manager of the pension plan has a written policy of diversifying plan investments, the employee may act in matters affecting the plan's holdings. The employee may also participate in matters affecting the holdings of his 401(k) plan if the individual financial management firm that selects the plan's investments has a written policy of diversifying the plan's assets. Employee benefit plans that are tax deferred under 26 U.S.C. 401(k) are not considered profit-sharing or stock bonus plans for purposes of this part.

Example 2: An employee of the Department of Agriculture who is a former New York State employee has a vested interest in a pension plan established by the State of New York for its employees. She may participate in an agency matter that would affect a company whose stock is in the pension plan's portfolio. She also may participate in a matter of general applicability affecting all states, including the State of New York, such as the drafting and promulgation of a rule requiring states to expend additional resources implementing the Food Stamp program. Unless she obtains an individual waiver under 18 U.S.C. 208(b)(1), she may not participate in a matter involving the State of New York as a party, such as an application by the state for additional federal funding for administrative support services, if that matter would affect the state's ability or willingness to honor its obligation to pay her pension benefits.

(d) Matters affecting mutual funds and unit investment trusts. In addition to participation in the particular matters affecting the holdings of mutual funds and unit investment trusts as permitted under paragraphs (a) and (b) of this Section, an employee may participate in any particular matter of general applicability affecting a mutual fund or unit investment trust where the disqualifying financial interest arises because of the ownership of an interest in the mutual fund or unit investment trust.

6.6.2.18. 5 C.F.R. §2641, Appendix B Agency Components for Purposes of 18 U.S.C. §207(c)

(Note: Other provisions of this regulation unrelated to Post-Government Service Employment are omitted in this section of this Guide. In this case, only Department of Justice designated components are included in this Section.)

Parent: Department of Justice

Components:

- Antitrust Division.

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- Bureau of Alcohol, Tobacco, Firearms and Explosives (effective Nov 23, 2004).
- Bureau of Prisons (including Federal Prison Industries, Inc.).
- Civil Division.
- Civil Rights Division.
- Community Relations Service.
- Criminal Division.
- Drug Enforcement Administration.
- Environment and Natural Resources Division.
- Executive Office for United States Attorneys (effective January 28, 1992).

The Executive Office for United States Attorneys shall not be considered separate from any Office of the United States Attorney for a judicial district, but only from other designated components of the Department of Justice.

- Executive Office for United States Trustees (effective January 28, 1992).

The Executive Office for United States Trustees shall not be considered separate from any Office of the United States Trustee for a region, but only from other designated components of the Department of Justice.

- Federal Bureau of Investigation.
- Foreign Claims Settlement Commission.
- Independent Counsel appointed by the Attorney General.
- Office of Justice Programs.
- Office of the Pardon Attorney (effective January 28, 1992).
- Offices of the United States Attorney (94).

Each Office of the United States Attorney for a judicial district shall be considered a separate component from each other such office.

- Offices of the United States Trustee.

Each office of the United States Trustee for a region shall be considered a separate component from each other such office.

- Office of Violence Against Women (effective March 8, 2007).

The Office of Violence Against Women shall not be considered separate from the Office of Justice Programs, but only from other designated components of the Department of Justice.

- Tax Division.
- United States Marshals Service (effective May 16, 1997).
- United States Parole Commission.

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6.6.2.19. 5 C.F.R. §2641.201 One-year Restriction on a Former Senior Employee's Representations to Employees of Former Agency Concerning Matter, Regardless of Prior Involvement

(a) Basic Prohibition of 18 U.S.C. §207(c). For one year after service in a "senior" position terminates, no former "senior" employee may knowingly make, with the intent to influence, any communication to or appearance before an employee of a department or agency in which he served in any capacity during the one-year period prior to termination from "senior" service, if that communication or appearance is made on behalf of any other person (except the United States) in connection with any matter on which he seeks official action by any employee.

(b) Applicability. 18 U.S.C. §207(c) applies to all former "senior employees" as defined in §2641.101 of this part. Certain individuals who served in "very senior" positions are subject to the one-year bar set forth in Section 207(d) in lieu of that set forth in Section 207(c). See definition of "very senior employee" in §2641.101.

(1) Special government Employees. 18 U.S.C. §207(c) does not apply to an individual as a result of service as a special government employee unless the individual:

- (i) Served in a senior employee position while serving as a special government employee; and
- (ii) Served 60 or more days as a special government employee during the one-year period before terminating service as a senior employee.

(2) Exemption from 18 U.S.C. §207(c). 18 U.S.C. §207(c) does not apply to an individual as a result of service in a senior position if that position has been exempted from Section 207(c) pursuant to the waiver procedures set forth in §2641.201(d) of this part.

(c) Measurement of Restriction. 18 U.S.C. §207(c) is a one-year restriction. The one-year period is measured from the date when the employee ceases to be a senior employee, not from the termination of government service, unless the two occur simultaneously.

(d) Waiver of 18 U.S.C. §207(c). Certain positions or categories of positions can be exempted from 18 U.S.C. §207(c) through the grant of a waiver by the Director of the Office of Government Ethics. 18 U.S.C. §207(c)(2)(C).

(1) Effect of Exemption. When an eligible position is exempted from 18 U.S.C. §207(c) by the Director of the Office of Government Ethics, the one-year restriction of Section 207(c) will not be triggered upon any employee's termination from the position.

(2) Eligible Senior Employee Positions. Any senior employee position is eligible for exemption except the following:

- (i) Positions for which the rate of pay is specified in or fixed according to 5 U.S.C. §§5311-5318 (the Executive Schedule);
- (ii) Positions whose occupants are appointed by the President pursuant to 3 U.S.C. §105(a)(2)(B); or
- (iii) Positions whose occupants are appointed by the Vice President pursuant to 3 U.S.C. §106(a)(1)(B).

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(Procedures for granting exemptions are not included in this section as these exemptions are rarely, if ever, granted.)

(e) Separate Departmental or Agency Components. For purposes of 18 U.S.C. §207(c) only, the Director of the Office of Government Ethics is authorized by 18 U.S.C. §207(h) to designate departmental and agency "components" that are distinct and separate from the "parent" department or agency and from each other. Absent such designation, the representational bar of Section 207(c) extends to the whole of the department or agency in which the former senior employee served.

(1) Effect of Designation. An eligible former senior employee who served in a "parent" department or agency is not barred by 18 U.S.C. §207(c) from making communications to or appearances before any employee of any designated component of that parent, but is barred as to employees of that parent or of other components that have not been designated. An eligible former senior employee who served in an designated component of a parent department or agency is barred from communicating to or making an appearance before any employee of that component, but is not barred as to any employee of the parent or of any other component.

(2) Eligible Senior Employees. All former senior employees are eligible to benefit from this procedure except those who were senior employees by virtue of having been:

- (i) Employed in a position for which the rate of pay is specified in or fixed according to 5 U.S.C. §§5311-5318 (the Executive Schedule);
- (ii) Appointed by the President to a position under 3 U.S.C. §105(a)(2)(B); or
- (iii) Appointed by the Vice President to a position under 3 U.S.C. §106(a)(1)(B).

(Procedures for designating components outlined in the regulation are not included.)

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7. Political Activities

Legend

Black font: Statutory, Office of Government Ethics and other Agency Policy and Procedures

Blue font: DOJ Policy and Procedures

Red font: FBI Policy and Procedures

7.1. FBI Employee's and Partisan Political Activity

Generally speaking, the rules, statutes and regulations governing participation by FBI employees in the political process attempt to balance our rights to personally partake in that process with our duty to carry out our official FBI mission in an objective and unbiased manner. In order to properly accomplish the FBI mission, impartiality in the performance of our investigatory and law enforcement functions is of critical importance. The fact that we are more strictly limited in what we can or cannot do in political activities is premised on the need for the FBI to maintain this objectivity. FBI employees must be aware that we are all subject to the most stringent Hatch Act restrictions regarding involvement in partisan political activities. Simply stated, the Hatch Act prevents us from taking an active part in political management or political campaigns. Further, FBI employees must never use their FBI title or position in any way to advance any particular partisan activity. Also, FBI personnel should be aware that the definition of "political activity" is broadly defined in statute and regulations noted in this Section to include "activity directed toward the success or failure of a political party, candidate for partisan political office or a partisan political group."

7.2. 5 U.S.C. §§ 7321-26 Political participation (Hatch Act)

(Only Provisions of the Hatch Act applicable to FBI employees are included)

7.2.1. 5 U.S.C. 7321.

It is the policy of the Congress that employees should be encouraged to exercise fully, freely, and without fear of penalty or reprisal, and to the extent not expressly prohibited by law, their right to participate or to refrain from participating in the political processes of the Nation.

7.2.2. 5 U.S.C. §7322. Definitions

For the purpose of this subchapter--

(1) "employee" means any individual, other than the President and the Vice President, employed or holding office in--

(A) an Executive agency other than the Government Accountability Office;

(B) a position within the competitive service which is not in an Executive agency; or

(C) the government of the District of Columbia, other than the Mayor or a member of the City Council or the Recorder of Deeds;

but does not include a member of the uniformed services;

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(2) "partisan political office" means any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but shall exclude any office or position within a political party or affiliated organization; and

(3) "political contribution"--

(A) means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose;

(B) includes any contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose;

(C) includes any payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and

(D) includes the provision of personal services for any political purpose.

7.2.3. 5 U.S.C. §7323. Political activity authorized; prohibitions

(a) [First sentence omitted--not applicable to FBI employees] an [FBI] employee may not--

(1) use his official authority or influence for the purpose of interfering with or affecting the result of an election;

(2) knowingly solicit, accept, or receive a political contribution from any person,

[section omitted--not applicable to FBI employees]

(3) run for the nomination or as a candidate for election to a partisan political office; or

Example: An FBI employee who is widely known for fighting public corruption is asked by a reporter if the employee will run for state senator in the local area when she retires in a few months. The employee tells the reporter that she has been contacted by local civic leaders and is considering such an option. This response could be considered "running" for political office. Not only will the FBI and the Office of Special Counsel investigate such activities, but the employee will likely be disqualified from working public corruption cases because the employee's objectivity is now compromised.

(4) knowingly solicit or discourage the participation in any political activity of any person who--

(A) has an application for any compensation, grant, contract, ruling, license, permit, or certificate pending before the employing office of such employee; or

(B) is the subject of or a participant in an ongoing audit, investigation, or enforcement action being carried out by the employing office of such employee.

[section omitted--not applicable to FBI employees]

(2)

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(A) No employee described under subparagraph (B) (except one appointed by the President, by and with the advice and consent of the Senate), may take an active part in political management or political campaigns.

(B) The provisions of subparagraph (A) shall apply to--

(i) an employee of--

(I) the Federal Election Commission or the Election Assistance Commission;

(II) **the Federal Bureau of Investigation;**

(III) the Secret Service;

(IV) the Central Intelligence Agency;

(V) the National Security Council;

(VI) the National Security Agency;

(VII) the Defense Intelligence Agency;

(VIII) the Merit Systems Protection Board;

(IX) the Office of Special Counsel;

(X) the Office of Criminal Investigation of the Internal Revenue Service;

(XI) the Office of Investigative Programs of the United States Customs Service;

(XII) the Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms;

(XIII) the National Geospatial-Intelligence Agency; or [FNI So in original. The word "or" probably should not appear.

(XIV) the Office of the Director of National Intelligence; or

(ii) a person employed in a position described under section 3132(a)(4), 5372, 5372a, or 5372b of title 5, United States Code.

[section omitted--not applicable to FBI employees]

(4) For purposes of this subsection, the term "active part in political management or in a political campaign" means those acts of political management or political campaigning which were prohibited for employees of the competitive service before July 19, 1940, by determinations of the Civil Service Commission under the rules prescribed by the President.

(c) An employee retains the right to vote as he chooses and to express his opinion on political subjects and candidates.

7.2.4. 5 U.S.C. §7324. Political activities on duty; prohibition

(a) An employee may not engage in political activity--

(1) while the employee is on duty;

(2) in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof;

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(3) while wearing a uniform or official insignia identifying the office or position of the employee; or

(4) using any vehicle owned or leased by the Government of the United States or any agency or instrumentality thereof.

Example 1: An FBI employee who wears a political button while at work is violating this section of the Hatch Act.

Example 2: An FBI employee driving a BuCar engages in a minor deviation to pick up campaign materials for distribution by his spouse. Even though minor deviations to conduct personal activity may be permitted, this is partisan political activity that violates the Hatch Act. Additionally, any deviation, no matter how minor, that violates the law or regulation is not permissible.

[section omitted--not applicable to FBI employees]

7.2.5. 5 U.S.C. §7326. Penalties

An employee or individual who violates section 7323 or 7324 of this title shall be removed from his position, and funds appropriated for the position from which removed thereafter may not be used to pay the employee or individual. However, if the Merit System Protection Board finds by unanimous vote that the violation does not warrant removal, a penalty of not less than 30 days' suspension without pay shall be imposed by direction of the Board.

7.3. 5 C.F.R. Part 734. Political Activities of Federal Employees

(Only Provisions of this Part of the Regulations related to Political Activities applicable to FBI employees are included)

7.3.1. 5 C.F.R. §734.101 Definitions.

For the purposes of this part:

Accept means to come into possession of something from a person officially on behalf of a candidate, a campaign, a political party, or a partisan political group, but does not include ministerial activities which precede or follow this official act.

Candidate means an individual who seeks nomination or election to any elective office whether or not the person is elected. An individual is deemed to be a candidate if the individual has received political contributions or made expenditures or has consented to another person receiving contributions or making expenditures with a view to bringing about the individual's nomination or election.

Campaign means all acts done by a candidate and his or her adherents to obtain a majority or plurality of the votes to be cast toward a nomination or in an election.

Election includes a primary, special, runoff, or general election.

Employee means any individual (other than the President, Vice President, or a member of the uniformed services) employed or holding office in--

- (1) An Executive agency other than the General Accounting Office;
- (2) A position within the competitive service which is not in an Executive agency;

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(3) The Government of the District of Columbia, other than the Mayor or a member of the City Council or the Recorder of Deeds; or

(4) The United States Postal Service or the Postal Rate Commission.

Employing office shall have the meaning given by the head of each agency or instrumentality of the United States Government or District of Columbia Government covered by this part. Each agency or instrumentality shall provide notice identifying the appropriate employing offices within it through internal agency notice procedures.

Federal employee organization means any lawful nonprofit organization, association, society, or club composed of Federal employees.

Federal labor organization means an organization defined in 5 U.S.C. 7103(a)(4).

Multicandidate political committee means an organization defined in 2 U.S.C. 441a(a)(4).

Nonpartisan election means--

(1) An election in which none of the candidates is to be nominated or elected as representing a political party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected; or

(2) An election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any question or issue of a similar character.

Occasional means occurring infrequently, at irregular intervals, and according to no fixed or certain scheme; acting or serving for the occasion or only on particular occasions.

Office means the U.S. Office of Personnel Management.

On Duty means the time period when an employee is:

(1) In a pay status other than paid leave, compensatory time off, credit hours, time off as an incentive award, or excused or authorized absence (including leave without pay); or

(2) Representing any agency or instrumentality of the United States Government or any agency or instrumentality of the District of Columbia Government in an official capacity.

Partisan when used as an adjective means related to a political party.

Partisan political group means any committee, club, or other organization which is affiliated with a political party or candidate for public office in a partisan election, or organized for a partisan purpose, or which engages in partisan political activity.

Partisan political office means any office for which any candidate is nominated or elected as representing a party any of whose candidates for Presidential elector received votes in the last preceding election at which Presidential electors were selected, but does not include any office or position within a political party or affiliated organization.

Person means an individual; a State, local, or foreign government; or a 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.

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Political Action Committee means any committee, association, or organization (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the nomination or election of one or more individuals to Federal, State, or local elective public office.

Political activity means an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.

Political contribution means any gift, subscription, loan, advance, or deposit of money or anything of value, made for any political purpose.

(a) A political contribution includes:

- (1) Any contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for any political purpose;
- (2) Any payment by any person, other than a candidate or a political party or affiliated organization, of compensation for the personal services of another person which are rendered to any candidate or political party or affiliated organization without charge for any political purpose; and
- (3) The provision of personal services, paid or unpaid, for any political purpose.

(b) A political contribution does not include the value of services provided without compensation by any individual who volunteers on behalf of any candidate, campaign, political party, or partisan political group.

Political management means the direction or supervision of a partisan political group or campaign for partisan political office.

Political party means a national political party, a State political party, or an affiliated organization.

Political purpose means an objective of promoting or opposing a political party, candidate for partisan political office, or partisan political group.

Receive means to come into possession of something from a person officially on behalf of a candidate, a campaign, a political party, or a partisan political group, but does not include ministerial activities which precede or follow this official act.

Recurrent means occurring frequently, or periodically on a regular basis.

Room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency thereof includes, but is not limited to:

- (1) Any Federally owned space (including, but not limited to, "public buildings" as defined in 40 U.S.C. 612(1)) or Federally leased space in which Federal employees perform official duties on a regular basis;
- (2) Public areas as defined in 40 U.S.C. 490(a)(17) and 41 CFR 101-20.003 of buildings under the custody and control of the General Services Administration.
- (3) A room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency thereof does not

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include rooms in the White House, or in the residence of the Vice President, which are part of the Residence area or which are not regularly used solely in the discharge of official duties.

Solicit means to request expressly of another person that he or she contribute something to a candidate, a campaign, a political party, or partisan political group.

Subordinate refers to the relationship between two employees when one employee is under the supervisory authority, control or administrative direction of the other employee.

Uniformed services means uniformed services as defined in 5 U.S.C. 2101(3).

7.3.2. 5 C.F.R. §734.102 Jurisdiction.

(a) The United States Office of Special Counsel has exclusive authority to investigate allegations of political activity prohibited by the Hatch Act Reform Amendments of 1993, as implemented by 5 CFR part 734, prosecute alleged violations before the United States Merit Systems Protection Board, and render advisory opinions concerning the applicability of 5 CFR part 734 to the political activity of Federal employees and employees of the District of Columbia government. (5 U.S.C. 1212 and 1216. Advice concerning the Hatch Act Reform Amendments may be requested from the Office of Special Counsel:

(1) By letter addressed to the Office of Special Counsel at 1730 M Street NW., Suite 300, Washington, DC 20036, or

(2) By telephone on (202) 653-7188, or (1-800) 854-2824.

(b) The Merit Systems Protection Board has exclusive authority to determine whether a violation of the Hatch Act Reform Amendments of 1993, as implemented by 5 CFR part 734, has occurred and to impose a minimum penalty of suspension for 30 days and a maximum penalty of removal for violation of the political activity restrictions regulated by this part. (5 U.S.C. 1204 and 7326).

(c) The Office of Personnel Management is authorized to issue regulations describing the political activities which are permitted and prohibited under the Hatch Act Reform Amendments of 1993. (5 U.S.C. 1103, 1104, 7325; Reorganization Plan No. 2 of 1978, 92 Stat. 3783, 3 CFR 1978 Comp. p. 323; and E.O. 12107, 3 CFR 1978 Comp. p. 264.)

7.4. 5 C.F.R. Part 734 SubPart D: Employees in Certain Agencies (Including All FBI Employees) and Positions

7.4.1. 5 C.F.R. §734.401 Coverage.

(a) This subpart applies to employees in the following agencies and positions:

- (1) The Federal Election Commission;
- (2) **The Federal Bureau of Investigation;**
- (3) The Secret Service;
- (4) The Central Intelligence Agency;
- (5) The National Security Council;
- (6) The National Security Agency;
- (7) The Defense Intelligence Agency;

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- (8) The Merit Systems Protection Board;
 - (9) The Office of Special Counsel;
 - (10) The Office of Criminal Investigation of the Internal Revenue Service.
 - (11) The Office of Investigative Programs of the United States Customs Service;
 - (12) The Office of Law Enforcement of the Bureau of Alcohol, Tobacco, and Firearms;
 - (13) The Criminal Division of the Department of Justice;
 - (14) The Central Imagery Office;
 - (15) Career Senior Executive Service positions described in 5 U.S.C. 3132(a)(4);
 - (16) Administrative Law Judge positions described in 5 U.S.C. 5372;
 - (17) Contract Appeals Board Member positions described in 5 U.S.C. 5372a.
- (b) Employees appointed by the President by and with the advice and consent of the Senate in the agencies and positions described in paragraph (a) of this section are excluded from coverage under this subpart.
- (c) All employees covered under this subpart are free to engage in political activity to the widest extent consistent with the restrictions imposed by law and this subpart.

7.4.2. 5 C.F.R. §734.402 Expression of an employee's individual opinion.

Each [FBI employee] retains the right to participate in any of the following political activities, as long as such activity is not performed in concert with a political party, partisan political group, or a candidate for partisan political office:

- (a) Express his or her opinion as an individual privately and publicly on political subjects and candidates;
- (b) Display a political picture, sign, sticker, badge, or button, as long as these items are displayed in accordance with the provisions of 5 C.F.R. §734.406;
- (c) Sign a political petition as an individual;
- (d) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance, or any other question or issue of a similar character; and
- (e) Otherwise participate fully in public affairs, except as prohibited by other Federal law, in a manner which does not compromise his or her efficiency or integrity as an employee or the neutrality, efficiency, or integrity of the agency or instrumentality of the United States Government in which he or she is employed.

Example 1: An employee may purchase air time on a radio or television station to endorse a partisan political candidate. However, he or she may not endorse such a candidate in a commercial or program which is sponsored by the candidate's campaign committee, a political party, or a partisan political group.

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Example 2: An employee may address a political convention or rally but not on behalf, or at the request of, a political party, partisan political group, or an individual who is running for the nomination or as a candidate for election to partisan political office.

Example 3: An employee may print at her own expense one thousand fliers which state her personal opinion that a partisan political candidate is the best suited for the job. She may distribute the fliers at a shopping mall on the weekend. However, she may not distribute fliers printed by the candidate's campaign committee, a political party, or a partisan political group.

Example 4: An employee may place in his or her yard a sign supporting a candidate for partisan political office.

Example 5: An employee may stand outside of a political party convention with a homemade sign which states his or her individual opinion that one of the candidates for nomination is the best qualified candidate.

Example 6: An employee, including a career SES employee, may wear a button with a partisan political theme when the employee is not on duty or at his or her place of work.

7.4.3. 5 C.F.R. §734.403 Participation in elections.

Each [FBI employee] retains the right to:

- (a) Register and vote in any election;
- (b) Take an active part, as a candidate or in support of a candidate, in a nonpartisan election; and
- (c) Serve as an election judge or clerk, or in a similar position, to perform nonpartisan duties as prescribed by State or local law.

7.4.4. 5 C.F.R. §734.404 Participation in political organizations.

(a) Each [FBI employee] retains the right to:

- (1) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization;
- (2) Be a member of a political party or other partisan political group and participate in its activities to the extent consistent with other Federal law;
- (3) Attend a political convention, rally, fund-raising function, or other political gathering; and
- (4) Make a financial contribution to a political party, partisan political group, or to the campaign committee of a candidate for partisan political office.

(b) Subject to the provisions in 5 C.F.R. §734.406, an [FBI employee] may make a financial contribution to a political action committee through a voluntary allotment made under § 550.311(b) of this chapter if the head of the employee's agency permits agency employees to make such allotments to political action committees.

(c) An employee who is covered under this subpart and is a payroll official in an agency where employees are permitted to make allotments to political action committees may process the completed direct deposit forms for voluntary allotments which have been made to such committees under § 550.311(b) of this chapter.

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Example 1: An employee, or a noncareer SES employee who is subject to subpart D of part 734, may attend a political convention or rally solely as a spectator. However, the employee and noncareer SES employee may not participate in demonstrations or parades which are sponsored by a political party, a partisan political group, or an individual who is running for nomination to be a candidate for partisan political office.

Example 2: An employee may attend a political party's annual barbecue, but he or she may not organize, distribute invitations to, or sell tickets to the barbecue.

Example 3: An employee who desires to contribute to a political action committee through an allotment personally may obtain blank direct deposit forms from his or her payroll office. The employee may not complete the direct deposit form while he or she is on duty, on Federal property, or in a Federally owned or leased vehicle. The employee also may not personally deliver his or her completed direct deposit form, or the completed direct deposit form of another employee, to his or her payroll office. However, the employee may mail the completed form to his or her agency payroll office.

7.4.5. 5 C.F.R. §734.405 Campaigning for a spouse or family member.

An [FBI employee] who is the spouse or family member of either a candidate for partisan political office, or a candidate for political party office, may appear in photographs of the candidate's family which might appear in a political advertisement, a broadcast, campaign literature, or similar material. A spouse or a family member who is covered by the Hatch Act Reform Amendments also may attend political functions with the candidate. However, the spouse or family member may not distribute campaign literature or solicit, accept, or receive political contributions.

Example 1: An employee who is the spouse of a candidate for partisan political office may stand in the receiving line and sit at the head table during a political dinner honoring the spouse.

Example 2: An employee who is the daughter of a candidate for partisan political office may appear in a family photograph which is printed in a campaign flier, but she may not distribute the flier at a campaign rally.

7.4.6. 5 C.F.R. §734.406 Participation in political activities while on duty, in uniform, in any room or building occupied in the discharge of official duties, or using a Federal vehicle; prohibition.

(a) An [FBI employee] may not participate in political activities:

- (1) While he or she is on duty;
- (2) While he or she is wearing a uniform, badge, or insignia that identifies the employing agency or instrumentality or the position of the employee;
- (3) While he or she is in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; or
- (4) While using a Government-owned or leased vehicle or while using a privately owned vehicle in the discharge of official duties.

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Example 1: An employee who uses his or her privately owned vehicle on a recurrent basis for official business may place a bumper sticker on the vehicle, as long as he or she covers the bumper sticker while the vehicle is being used for official duties.

Example 2: An employee who uses his or her privately owned vehicle on official business, must cover any partisan political bumper sticker while the vehicle is being used for official duties, if the vehicle is clearly identified as being on official business.

Example 3: An employee or career SES employee who uses his or her privately owned vehicle only on an occasional basis to drive to another Federal agency for a meeting, or to take a training course, is not required to cover a partisan political bumper sticker on his or her vehicle.

Example 4: An employee may not place a partisan political bumper sticker on any Government owned or Government leased vehicle.

Example 5: An employee may place a bumper sticker on his or her privately owned vehicle and park the vehicle in a parking lot of an agency or instrumentality of the United States Government or in a non-Federal facility for which the employee receives a subsidy from his or her employing agency or instrumentality.

Example 6: An employee, or noncareer SES employee who is subject to subpart D of this part 734, may not wear partisan political buttons or display partisan political pictures, signs, stickers, or badges while he or she is on duty or at his or her place of work.

Example 7: An employee who contributes financially to a political action committee through a voluntary allotment made under § 550.311(b) of this title may not complete the direct deposit forms while he or she is on duty, in a "room or building" defined in 5 C.F.R. § 734.101, or in a Federally owned or leased vehicle.

Example 8: An employee who contributes financially to a political action committee may not personally deliver his or her completed direct deposit form, or the completed direct deposit form of another employee, to the payroll employees who would process or administer such forms. However, the employee may mail his or her direct deposit form to his or her agency payroll office.

(b) [Reserved]

7.4.7. 5 C.F.R. §734.407 Use of official authority; prohibition.

An [FBI employee] may not use his or her official authority or influence for the purpose of interfering with or affecting the result of an election.

7.4.8. 5 C.F.R. §734.408 Participation in political management and political campaigning; prohibitions.

An [FBI employee] may not take an active part in political management or in a political campaign, except as permitted by subpart D of this part.

7.4.9. 5 C.F.R. §734.409 Participation in political organizations; prohibitions.

An [FBI employee] may not:

(a) Serve as an officer of a political party, a member of a national, State, or local committee of a political party, an officer or member of a committee of a partisan political group, or be a candidate for any of these positions;

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- (b) Organize or reorganize a political party organization or partisan political group;
- (c) Serve as a delegate, alternate, or proxy to a political party convention; and
- (d) Address a convention, caucus, rally, or similar gathering of a political party or partisan political group in support of or in opposition to a candidate for partisan political office or political party office, if such address is done in concert with such a candidate, political party, or partisan political group.

7.4.10. 5 C.F.R. §734.410 Participation in political fundraising; prohibitions.

An [FBI employee] may not:

- (a) Solicit, accept, or receive political contributions; or
- (b) Organize, sell tickets to, promote, or actively participate in a fundraising activity of a candidate for partisan political office or of a political party, or partisan political group.

7.4.11. 5 C.F.R. §734.411 Participation in political campaigning; prohibitions.

An [FBI employee] may not:

- (a) Take an active part in managing the political campaign of a candidate for partisan political office or a candidate for political party office;
- (b) Campaign for partisan political office;
- (c) Canvass for votes in support of or in opposition to a candidate for partisan political office or a candidate for political party office, if such canvassing is done in concert with such a candidate, or of a political party, or partisan political group;
- (d) Endorse or oppose a candidate for partisan political office or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material if such endorsement or opposition is done in concert with such a candidate, political party, or partisan political group;
- (e) Initiate or circulate a partisan nominating petition.

7.4.12. 5 C.F.R. §734.412 Participation in elections; prohibitions.

An [FBI employee] may not:

- (a) Be a candidate for partisan political office;
- (b) Act as recorder, watcher, challenger, or similar officer at polling places in concert with a political party, partisan political group, or a candidate for partisan political office;
- (c) Drive voters to polling places in concert with a political party, partisan political group, or a candidate for partisan political office.

7.4.13. Subpart G. Related Statutes and Executive Orders

7.4.13.1. 5 C.F.R. §734.701 General.

In addition to the provisions regulating political activity set forth in subparts A through G of this part, there are a number of statutes and Executive orders that establish standards to which the political activity of an employee, a Federal labor organization, a Federal employee organization, and a multicandidate political committee must conform. The list set forth in 5 C.F.R. §734.702

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references some of the more significant of those statutes. It is not comprehensive and includes only references to statutes of general applicability.

7.4.13.2. 5 C.F.R. §734.702 Related statutes and Executive orders.

- (a) The prohibition against offering anything of value in consideration of the use or promise of use of influence to procure appointive office (18 U.S.C. 210).
- (b) The prohibition against solicitation or acceptance of anything of value to obtain public office for another (18 U.S.C. 211).
- (c) The prohibition against intimidating, threatening, or coercing voters in Federal elections (18 U.S.C. 594).
- (d) The prohibition against use of official authority to interfere with a Federal election by a person employed in any administrative position by the United States in connection with any activity financed in whole or in part by Federal funds (18 U.S.C. 595).
- (e) The prohibition against the promise of employment, compensation, or benefits from Federal funds in exchange for political activity (18 U.S.C. 600).
- (f) The prohibition against the deprivation of or threat of deprivation of employment in exchange for political contributions (18 U.S.C. 601).
- (g) The prohibition against soliciting political contributions (18 U.S.C. 602).
- (h) The prohibition against making certain political contributions (18 U.S.C. 603).
- (i) The prohibition against soliciting or receiving assessments, subscriptions, or contributions for political purposes from persons on Federal relief or work relief (18 U.S.C. 604).
- (j) The prohibition against disclosing and receiving lists or names of persons on relief for political purposes (18 U.S.C. 605).
- (k) The prohibition against intimidating employees to give or withhold a political contribution (18 U.S.C. 606).
- (l) The prohibition against soliciting political contributions in navy yards, forts, or arsenals (18 U.S.C. 607).
- (m) The prohibition against coercing employees of the Federal Government to engage in, or not to engage in, any political activity (18 U.S.C. 610).
- (n) The prohibition against certain personnel practices (5 U.S.C. 2302).
- (o) The prohibition against making, requesting, considering, or accepting political recommendations (5 U.S.C. 3303).
- (p) The prohibitions against misuse of a Government vehicle (31 U.S.C. 1344).
- (q) The requirements and prohibitions stated in the Federal Election Campaign Act (2 U.S.C. 431-455).
- (r) The prohibitions against soliciting for gifts to superiors, giving donations for such gifts, and accepting gifts from employees who receive a lower rate of pay (5 U.S.C. 7351).

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(s) The prohibitions against soliciting or accepting things of value from specified persons (5 U.S.C. 7353).

(t) The prohibitions and requirements stated in the Ethics in Government Act of 1978 (5 U.S.C. App.) and Executive Order 12674 (54 FR 15159-15162; 3 CFR 1989 Comp. 215-218) as modified by Executive Order 12731 (55 FR 42547-42550; 3 CFR 1990 Comp. 306-311).

7.5. FBI Employee Involvement in Partisan Political Activities

See Ethics Guide Reference Library for "The Do's and Don't's Concerning FBI Employees and Political Activity," which provides a list of political activities that FBI employees may and may not be involved in.

7.5.1. Social Media and the Hatch Act

The U.S. Office of Special Counsel has provided guidance to federal employees (FBI) concerning involvement in partisan political activities through the use of social media (e.g., Facebook, Twitter, MySpace, LinkedIn, and all other social media sites.) (See Ethics Guide Reference Library for Frequently Asked Questions Concerning Social Media and the Hatch Act.)

7.6. Other Considerations for FBI Employees

a. The Hatch Act applies to all FBI employees at all times. Even if an employee is on annual leave or leave without pay, the employee is still subject to the restrictions of the Hatch Act.

b. FBI employees may never wear FBI indicia (hat, jacket, badge...etc), refer to their FBI employment or otherwise use the authority of their office or official position in any manner that would tend to indicate endorsement of a campaign or candidate by the FBI. In short, you cannot use your official FBI position or any influence arising from your Federal position to affect the result of any election or in concert with any campaign.

c. An FBI employee who is the spouse/child of an individual campaigning for a partisan political office has specific limitations on his or her participation and must carefully review "The Do's and Don't's Concerning FBI Employees and Political Activity," referenced above, and consult his or her Ethics Counselor or OIC Ethics attorneys if he or she has any doubt or question about the propriety of a given action.

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8. Fundraising

Legend

Black font: Statutory, Office of Government Ethics and other Agency Policy and Procedures

Blue font: DOJ Policy and Procedures

Red font: FBI Policy and Procedures

8.1. Purpose

There are hundreds, if not thousands, of worthy causes deserving of donations and support. Most such causes are funded in part, or in total, by appeals to the charitable instincts of individuals or the philanthropy of corporations. The thousands of employees in the Federal Government can be an inviting target for such appeals. If uncontrolled, the sheer number of such appeals would cause serious disruptions in the workplace. To avoid this situation, the Federal Government has banned all charitable fundraising within the workplace except for those occurring under the auspices of the Combined Federal Campaign (CFC), unless the activity falls within three limited exceptions. The purpose of this section is to explain this policy, set forth these exceptions, and illustrate the application of both.

8.2. Regulations Impacting Fundraising

8.2.1. 5 C.F.R. §2635.808 Fundraising Activities

An employee may engage in fundraising only in accordance with the restrictions in part section 950 [5 C.F.R. 950, et. seq.] 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.

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

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

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

Example 3: An FBI ASAC has been asked to speak about terrorist funding schemes to a group of banking industry executives during a dinner to raise funds for families of the victims of the 9/11 attacks. Prior to approving such a request, the ASAC's SAC must determine that the appearance of endorsement created by the FBI's participation in the event is outweighed by the FBI's official interest in delivering this particular message to this particular audience. If the SAC makes such a determination, then the ASAC may give the speech. Delivery of the speech would not constitute "participation" within the meaning of the rule since it would be an official speech. The ASAC, however, may not participate in or encourage the fundraising or otherwise endorse the cause for

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which the dinner is being held.

- (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 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 section 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 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 for such purposes. *See also* Section 4.7.1 of this Guide; 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

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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.

8.2.2. 5 C.F.R. §950 Solicitation of Federal Civilian and Uniformed Service Personnel for Contributions to Private Voluntary Organizations

(Portions of the regulations that relate to the Standards of Conduct are reproduced below.)

8.2.2.1. 5 C.F.R. §950.102 Scope of the Combined Federal Campaign

(a) The CFC is the only authorized solicitation of employees in the Federal workplace on behalf of charitable organizations. A campaign may be conducted during a period, as determined by the LFCC, from September 1 through December 15 at every Federal agency in the campaign community in accordance with these regulations. Except as provided in this section, no other solicitation on behalf of charitable organizations may be conducted in the Federal workplace. Upon written request, the Director [of the Office of Personnel Management; not the Director of the Federal Bureau of Investigation] may grant permission for solicitations of Federal employees, outside the CFC, in support of victims in cases of emergencies and disasters. Emergencies and disasters are defined as any hurricane, tornado storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the world. No such permissions will be granted for such solicitations during the period September 1 through December 15, except at the discretion of the Director upon a showing of extraordinary circumstances.

Example: An FBI employee has a daughter involved in her school band. The Band has organized a candy bar sales fundraiser to pay for their trips to football games. The employee brings a box of the candy bars into the office and puts it on her desk with a sheet describing the fundraiser and asking employees to take a candy bar for a dollar. This activity constitutes fundraising and is generally prohibited in the FBI workspace.

(b) These regulations do not apply to the collection of gifts-in-kind, such as food, clothing and toys, or to the solicitation of Federal employees outside of the Federal workplace as defined by the applicable Agency Head consistent with General Services Administration regulations and any other applicable laws or regulations.

...

The "gifts-in-kind" fundraising exception (5 C.F.R. §950.102 (b)) does not allow for the collection of cash. The only exception to the "no cash" rule is when a properly authorized "gifts-in-kind" collection event solicits funds reasonably designed to cover the expenses of shipment or transportation of "in-kind" donations.

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(d) Heads of departments or agencies may establish policies and procedures applicable to solicitations conducted by organizations composed of civilian employees or members of the uniformed services among their own members for organizational support or for the benefit of welfare funds for their members. Such solicitations are not subject to these regulations, and therefore do not require permission of the Director.

FBIRA Operation and Authority

FBIRA activities have been officially recognized by the FBI for many years. While FBIRAs are organizationally independent from the FBI, they may be authorized by SAC's and Division Heads to fundraise within the federal workplace under the "amongst our own, for our own" exception.

FBI employees permitted to conduct fundraising within the federal workplace under the auspices of the FBIRA must not violate the Standards of Conduct or other federal regulations.

Example 1: An authorized FBIRA "store" (a small vestibule area where food items and memorabilia is sold) in a Field Office is selling candy to support a local High School band (one of the RA employees has a child in the Band). The FBIRA is not authorized to engage in fundraising for an outside organization.

Example 2: An FBI employee requests permission to approach local businesses to request donations of items for the FBIRA to sell as a fundraiser. FBI employees are prohibited from soliciting gifts using their FBI status (see section 4.2 of this Guide for more information on gift solicitation), so this activity may not be approved.

FBI Policy on Approving Fundraising Activities in the FBI Workplace

Approval authority for "gifts-in-kind" and "amongst our own, for our own" fundraising activities can be found in 5 C.F.R. Part 950. In the FBI, the head of the division or field office in which the proposed fundraising (either "in-kind" or "amongst our own for our own") is to occur may approve the activity. If, however, the proposal is to collect funds from more than a single office or division, then the AD, HRD must review and approve the proposal before it may proceed. Among others, the following factors should be considered:

- Proposed geographic and temporal scope of collection activity;
- Extent to which it will interfere with the conduct of FBI business or divert employees away from their official duties;
- Whether the funds will be used for humanitarian purposes; and
- Whether there are alternatives to collection in the FBI workspace.

If approved, such fundraising activities should only use a reasonable amount of Government time and resources. See 4.7.5.3 of this Guide (regarding "de minimis" use of Government time and resources).

Fundraising Limitations. Employee engaging in "gifts-in-kind" and "amongst our own, for our own" solicitations must:

- (1) Not personally solicit funds or other support from subordinates or non-Federal personnel;
- (2) Ensure that the fundraising is conducted using methods that permit true voluntary giving; and

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(3) Reserve to the individual the option of disclosing any gift or keeping it confidential. *See also* section 8.2.2.5 of this Guide.

Example 1: Employees in an FBI Field Office wish to start a "flower fund" where an employee will collect funds, at intervals determined by the use of the funds, to be used to get flowers for employees who are hospitalized or have children or whose family members pass away. The employees request and receive appropriate authorization to conduct the activity. Such an "ad hoc" group is an "organization composed of federal employees" under the rule and the fundraising effort falls under the "amongst our own, for our own" exception.

Example 2: Employees in an FBIRA ask for and receive authorization to hold a bake sale to offset costs of a planned office holiday party. Such an "ad hoc" group is likewise an "organization composed of federal employees" under the rule and the fundraising effort falls under the "amongst our own, for our own" exception.

Example 3: A group of employees within a Division who wish to raise money for several FBI employees affected by a hurricane would also be able, with proper authorization, to collect funds under this exception. Contrast this to a scenario where the same group of employees wishes to collect funds to give to hurricane victims who are not FBI employees. In this latter scenario, the exception would not apply and the fundraising may not be authorized.

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8.2.2.2. 5 C.F.R. §950.103 Establishing a Local Campaign

...

(g) Current Federal civilian and active duty military employees may be solicited for contributions using payroll deduction, checks, money orders, or cash, or by electronic means, including credit cards, as approved by the Director. Contractor personnel, credit union employees and other persons present on Federal premises, as well as retired Federal employees, may make single contributions to the CFC through checks, money orders, or cash, or by electronic means, including credit cards, as approved by the Director. These non-Federal personnel may not be solicited, but donations offered by such persons must be accepted by the local campaigns.

...

8.2.2.3. 5 C.F.R. §950.109 Avoidance of Conflict of Interest

Any Federal employee who serves on the LFCC, on the eligibility committee, or as a Federal agency fundraising program coordinator, must not serve in any official capacity in any organization that serves as the PCFO of the local CFC, or participate in any decisions where, because of membership on the board or other affiliation with a charitable organization, there could be or appear to be a conflict of interest under any statute, regulation, Executive order, or applicable agency standards of conduct. Under no circumstances may an LFCC member affiliated with an organization applying for inclusion on the local list, participate in the eligibility determinations.

8.2.2.4. 5 C.F.R. §950.110 Prohibited Discrimination

Discrimination for or against any individual or group on account of race, color, religion, sex, national origin, age, handicap, or political affiliation is prohibited in all aspects of the

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management and the execution of the CFC. Nothing herein denies eligibility to any organization, which is otherwise eligible under this part to participate in the CFC, merely because such organization is organized by, on behalf of, or to serve persons of a particular race, color, religion, sex, national origin, age, or handicap.

...

8.2.2.5. 5 C.F.R. §950.602 Solicitation Methods

(a) Employee solicitations shall be conducted during duty hours using methods that permit true voluntary giving and shall reserve to the individual the option of disclosing any gift or keeping it confidential. Campaign kick-offs, victory events, awards, and other non-solicitation events to build support for the CFC are encouraged.

(b) Special CFC fundraising events, such as raffles (*See* subsection 8.2.3.), lotteries, auctions, bake sales, carnivals, athletic events, or other activities not specifically provided for in these regulations are permitted during the campaign period if approved by the appropriate agency head or government official, consistent with agency ethics regulations. CFC special fundraising events should be undertaken in the spirit of generating interest in the CFC and be open to all individuals without regard to whether an individual participates in the CFC. Chances to win must be disassociated from amount of contributions, if any. Raffle prizes should be modest in nature and value. Examples of appropriate raffle prizes may include opportunities for lunch with Agency Officials, agency parking spaces for a specific time period, and gifts of minimal financial value. Any special CFC fundraising event and prize or gift should be approved in advance by the Agency's ethics official.

FBI Pre-approval of Certain Special CFC Fundraising Events

The FBI's Deputy Designated Agency Ethics Official (DDAEO) hereby approves silent auctions; baked goods/food/book sales, carnivals, and athletic events held in support of the CFC, *provided* that the designated approval authority (as found in the Ethics Guide Reference Library under Delegation of FBI Authority to Approve Fundraising) finds these activities meet each of the following five criteria:

- (1) Management approval is granted for the proposed event;
- (2) Solicitation of outside sources (for prizes or other incentives) has not occurred;
- (3) Event prizes do not exceed an aggregate market value of \$350.00;
- (4) The event/activity does not involve nor otherwise constitute gambling. (*See* subsection 8.2.3.) ; and
- (5) The event complies with all applicable state and local laws.

Special CFC fundraising events that fail to meet the specified criteria are prohibited absent specific advance approval from the FBI's DDAEO.

(c) In all approved special fundraising events the donor must have the option of designating to a specific participating organization or federation or be advised that the donation will be counted as an undesignated contribution and distributed according to these regulations.

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8.2.3. 5 C.F.R. §735.201 What are the Restrictions on Gambling?

(a) While on Government-owned or leased property or on duty for the Government, an employee shall not conduct or participate in any gambling activity, including operating a gambling device, conducting a lottery or pool, participating in a game for money or property, or selling or purchasing a numbers slip or ticket.

In planning "games" of chance (e.g., raffles, lotteries, or door-prizes), gambling must be avoided. The following three elements constitute gambling that is prohibited under the regulation:

- The participant is wagering something of value (usually money);
- In order to participate in an event involving chance; and
- It results in an award or prize

Examples of Permissible Activity:

- Everyone attending a hot dog lunch who purchases a hot dog gets a chance to win a Starbucks gift card (or some nominal item).
- Everyone who turns in a pledge card (whether containing a pledge or not) by XXX date is eligible to win movie passes.
- Everyone who walks in the door where an event is being held gets an opportunity to win a nominal door prize.

Example of Impermissible Activity:

- XYZ Unit has planned a raffle and employees are encouraged to purchase a ticket for a nominal fee for a chance to win a prize.

(b) This section does not preclude activities:

- (1) Necessitated by an employee's official duties; or
- (2) Occurring under section 7 of Executive Order 12353 and similar agency-approved activities.

8.2.4. 41 C.F.R. §102-74.410 What is the Policy Concerning Soliciting, Vending And Debt Collection?

All persons entering in or on Federal property are prohibited from soliciting alms (including money and non-monetary items) or commercial or political donations, vending merchandise of all kinds, displaying or distributing commercial advertising, or collecting private debts, except for--

(a) National or local drives for funds for welfare, health or other purposes as authorized by 5 C.F.R. part section 950, entitled "Solicitation Of Federal Civilian And Uniformed Service Personnel For Contributions To Private Voluntary Organizations," and sponsored or approved by the occupant agencies;

(b) Concessions or personal notices posted by employees on authorized bulletin boards;

(c) Solicitation of labor organization membership or dues authorized by occupant agencies under the Civil Service Reform Act of 1978 (Pub.L. 95- 454);

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(d) Lessee, or its agents and employees, with respect to space leased for commercial, cultural, educational, or recreational use under 40 U.S.C. 581(h). Public areas of GSA-controlled property may be used for other activities in accordance with subpart D of this part;

(e) Collection of non-monetary items that are sponsored or approved by the occupant agencies; and

(f) Commercial activities sponsored by recognized Federal employee associations and on-site child care centers.

8.2.5. 41 C.F.R. §102-71.20 What Definitions Apply To GSA's Real Property Policies?

The following definitions apply to GSA's real property policies:

Federal agency buildings manager means the buildings manager employed by GSA or a Federal agency that has been delegated real property management and operation authority from GSA.

Nonprofit organization means an organization identified in 26 U.S.C. 501(c).

Public area means any area of a building under the control and custody of GSA that is ordinarily open to members of the public, including lobbies, courtyards, auditoriums, meeting rooms, and other such areas not assigned to a lessee or occupant agency. *See* 41 C.F.R. §102-71.20.

8.3. DOJ Summary of Rules on Fundraising Memo, May 1998

(*See Ethics Guide Reference Library for DOJ Summary of Fundraising Rules.*)

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9. Ethics Training

Legend

Black font: Statutory, Office of Government Ethics and other Agency Policy and Procedures
Blue font: DOJ Policy and Procedures
Red font: FBI Policy and Procedures

9.1. Government Ethics Training Requirements

See 5 C.F.R. §2638 for Federal Regulations regarding Ethics Training requirements..

9.1.1. Initial Ethics/Entry on Duty (EOD) Orientation for all New FBI Employees.

- a. Within 90 days from the time an FBI employee begins work, the Bureau is required by regulation to provide each employee with at least one hour of Ethics training.
- b. This training must, at a minimum, include a discussion and/or a copy of:
 1. The Standards of Conduct and agency supplemental standards (see Section 4.7.5, 4.8.4 and 4.8.5 for these Departmental regulations); or summaries of the Standards of Ethical Conduct for Employees of the Executive Branch, any DOJ supplemental standards, and the 14 General Principles of Ethical Conduct for Federal personnel to keep; and,
 2. Information where this Ethics Guide is available to the employee.
 3. Information regarding the names, titles, office addresses and telephone numbers of the DEAO, FBI's DDEAO, OIC Ethics Attorneys, Ethics Counselors and the CDC. This contact information is always available on the OIC Website at:
- c. All new employees, both agents and professional staff, who complete the Onboarding New Employee (ONE) Program receive the required ethics training and additional guidance referenced above. They do not require additional training when they enter into their respective divisions.
- d. If a new employee does not complete the ONE Program, ethics training must be provided to the employee by:
 1. The CDC, if employee is located in a field office.
 2. The OIC, if employee is located at HQ.
- e. If directed by the FBI DDAEO, new employees may be required to view ethics training tapes or recorded lectures provided by the DDAEO to meet this requirement.

9.1.2. Annual Ethics Training for FBI Financial Disclosure Filers.

9.1.2.1. Training Requirements

- a. Under OGE Regulations, 5 C.F.R. §§2638.704 and 705, FBI Ethics Financial Disclosure filers must receive at least one hour of annual ethics training. This includes any employee required to

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file an Ethics Public Financial Disclosure Report (OGE-278) (e.g., all Senior Executive Service and Senior Level employees) and any individual required to file an Ethics Confidential Financial Disclosure Report (OGE-450) or a "Conflict of Interest Certification" Form. (See Chapter 5 on Financial Disclosure reporting).

b. This training is unrelated to Security-based Financial Reporting disclosures.

c. The annual ethics training must include, at a minimum, a review of:

1. The Principles (also known as the Bedrock Standards of Conduct);
2. The Standards of Conduct;
3. Any agency supplemental standards (*see* Section 4.7.5, 4.8.4 and 4.8.5 for these Department of Justice regulations);
4. The Federal conflict of interest statutes; and
5. Information regarding the names, titles, office addresses and telephone numbers of the DOJ DEAO, FBI's DDEAO, OIC Ethics Attorneys, Ethics Counselors and the CDC. This contact information is always available on the OIC Website.

9.1.2.2. Training Methods and Procedures

a. **Verbal Training Defined.** Verbal training includes lectures and videos presented in person by a qualified ethics instructor (e.g., an instructor approved by the FBI Deputy DAEO in Section 2.2.3 of this Guide). Verbal training also includes live broadcasts of such presentations, provided there is either a:

1. Capability to call in questions to the presenter; or
2. Qualified instructor available to the employee during and immediately after the training to answer questions.

b. **Training Methods by Type of Financial Disclosure Filer**

1. **Public filers (OGE-278 Report filers).** In order for OGE-278 Ethics Filers to meet their annual "verbal" SOC training requirement they must complete at least one hour of one of the following forms of training:

A. Attendance at an Ethics training lecture, Webcast or video teleconference that meets the requirements noted in paragraph a above.

B. Although attending a lecture or viewing a live Webcast or VTC training is preferred, an OGE-278 Ethics Filer may also complete alternative Ethics training. To meet the "verbal" training requirement, however, such alternative training must be pre-approved by a qualified Ethics Instructor and conducted with either that Instructor present or available by phone or other direct electronic means to answer any questions that may arise. Such training may include, but is not limited to, the "Other Training Resources" listed below.

2. **Confidential filers and Conflict of Interest Certification Form Filers (OGE Form 450 and CIC Report filers) must receive annual Ethics training as follows:**

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A. Verbal Training. OGE Form 450 and CIC filers must receive at least one hour of "verbal" training once every three years that meets the same standards in paragraph one above. In the FBI, this "verbal" training requirement occurs in 2006, 2009, 2012 ... etc.

B. Alternative Training. For years in which verbal training is not required, these Filers (as well as all FBI employees) are encouraged to attend "verbal" annual live or real time Webcast/VTC training whenever possible. When this cannot be done, OGE Form 450 and CIC filers may meet their annual training requirements by any of the methods noted for OGE 278 filers above, but these filers are not required to have a qualified Ethics Instructor present or on standby. All employees are encouraged to contact an Ethics Instructor with any questions that may arise during their training.

9.1.2.3. FBI Training Resources.

a. Qualified Ethics Instructors. FBI qualified Ethics Instructors are listed on the Ethics and Integrity Program Website at:

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b. Training Available from FBIHQ. FBIHQ generally presents "live" training meeting all the above requirements in the fall of each calendar year. The training is generally made available to Quantico, CJIS, and Field Offices via VTC and Web simulcast. During this training, in-person attendees will be able to ask the Ethics Instructor questions. Remote viewers will be able to reach a qualified Ethics Instructor by phone during these training sessions so they can fulfill "verbal" training requirements.

c. Certification Form. An ethics training certification form has been created to assist CDC's and division Ethics coordinators to document accomplishment of this training requirement by Ethics Filers. Use of this form is left to the discretion of each division. See Ethics Guide Reference Library for Model Annual Training Completion Form

d. Other Training Resources. Alternative methods of meeting the above training requirements include, but are not limited to:

1. Qualifying computer, virtual or web-based training found on the Office of Government Ethics (OGE) website at: <<http://www.usoge.gov/>> or one of their numerous links to other qualified training that may be found on other Federal Government ethics sites.
2. Reviewing any OGE videocassette tape. (Some are found on the FBI Ethics Intranet site at <http://www.usoge.gov/training/videos_software.aspx>.)
3. Recorded versions of annual training conducted by qualified Ethics Instructors at FBIHQ or FBI Ethics Program produced videos are found on the FBI Intranet.

9.1.3. Responsibility for Implementation of Training Requirements.

a. Within the FBI, the FBI DDAEO has responsibility to ensure these training requirements are met. As the Bureau Ethics Official, the FBI DDAEO is responsible for making required training and training materials available to FBI ethics counselors and employees.

b. The Training Division and the Human Resources Division will ensure that all newly hired Special Agents and professional staff employees receive the required initial ethics orientation.

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- c. Supervisors are required to assist employees by providing time and technical access to required training. Supervisors should also, consistent with operational requirements, encourage all employees (not just those required annual training employees) to attend annual ethics training.
- d. FBI employees are ultimately responsible for obtaining required training.

9.1.4. Responsibilities for Reporting Requirements

- a. The FBI's ethics program is subject to audit by the Inspection Division, Office of Government Ethics and the Department of Justice. Annual ethics training and reporting requirements for financial disclosure form filers will be coordinated by the Office of Integrity and Compliance, assisted by the Chief Division Counsels and Ethics Counselors appointed per Section 2.2.3 of this Guide.
- b. The Office of Integrity and Compliance will notify Division Heads (AD's/ADIC's/SAC's) annually of reporting requirements to ensure that all FBI financial disclosure form filers have met their annual training requirements.
- c. Training Division and Human Resource Division will ensure that all new Special Agents and new professional staff employees entering on duty at FBIHQ receive ethics training meeting the regulatory requirements discussed above and document the training properly for reporting purposes..
- d. Office of Integrity and Compliance Ethics and Integrity Program attorneys shall remind Field Offices and HQ Divisions, via their respective ethics counselors, of all training requirements and reporting requirements concerning Ethics training.

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Ethics Guidance & References

To view additional ethics guidance and reference documents go to the Ethics Guide Reference Library.