**U.S. Department of Energy**

**Summary of 5 CFR Part 2635, the Standards of Ethical Conduct for**

**Employees of the Executive Branch**

In 1989, the President’s Commission on Federal Ethics Law Reform recommended that individual agency standards of conduct be replaced with a single regulation applicable to all employees of the executive branch. Acting upon that recommendation, President Bush signed Executive Order 12674 on April 12, 1989. That Executive Order (as modified by Executive Order 12731) set out fourteen basic principles of ethical conduct for executive branch personnel and directed the Office of Government Ethics (OGE) to establish a single, comprehensive, and clear set of executive branch standards of ethical conduct. OGE published the Standards of Ethical Conduct for Employees of the Executive Branch on August 7, 1992. The regulation because effective on February 3, 1993 and was codified in 5 CFR Part 2635. Part 2635 has been amended several times. You can access the full text of Part 2635, as amended, at [https://www.oge.gov/Web/oge.nsf/Resources/Standards+of+Ethical+Conduct+for+Employees+of+the+Executive+Branch](https://www.oge.gov/Web/oge.nsf/Resources/Standards%2Bof%2BEthical%2BConduct%2Bfor%2BEmployees%2Bof%2Bthe%2BExecutive%2BBranch).

**Brief Summary of Employee Standards of Conduct**

**Subpart A – General Provisions**

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

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

**Subpart B - Gifts from Outside Sources**

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

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

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

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

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

**Subpart C - Gifts Between Employees**

Subpart C prohibits employees from:

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

The following are among the exceptions to these prohibitions:

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

**Subpart D - Conflicting Financial Interests**

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

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

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

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

**Subpart E - Impartiality in Performing Official Duties**

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

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

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

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

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

**Subpart F - Seeking Other Employment**

Subpart F prohibits employees from participating in their official capacities in particular matters that have a direct and predictable effect on the financial interests of persons with whom they are "seeking employment" or with whom they have an arrangement concerning future employment. Employees who are public financial disclosure report filers are subject to additional notification and recusal requirements when they negotiate for or have an agreement of future employment or compensation with a non-Federal entity.

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

An employee generally continues to be "seeking employment" until the employee or the prospective employer rejects the possibility of employment and all discussions end. A response on the part of an employee that defers discussions until the foreseeable future does not constitute rejection. An employee is no longer "seeking employment" with the recipient of an unsolicited resume after two months have passed with no response.

**Subpart G - Misuse of Position**

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

* A prohibition against employees using public office for their own private gain for the private gain of friends, relatives, or persons with whom they are affiliated in a non-Government capacity, or for the endorsement or any product, service, or enterprise;
* A prohibition against engaging in financial transactions using nonpublic information, or allowing the improper use of nonpublic information to further private interests;
* An affirmative duty to protect and conserve Government property and to use Government property only for authorized purposes; and
* A prohibition against using official time other than in an honest effort to perform official duties and a prohibition against encouraging or requesting a subordinate to use official time to perform unauthorized activities.

**Subpart H - Outside Activities**

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

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

**Subpart I - Related Statutory Authorities**

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

**Department of Energy Supplemental Regulations**

The Department of Energy’s supplemental ethics regulations require Department employees to document notices of disqualification and withdrawals of such notices in writing. It also requires that Department employees obtain the written approval of their immediate supervisor and the Department's designated agency ethics official or such official's designee prior to engaging in certain outside employment. Department employees must obtain the approval of both their supervisor and ethics counsel prior to engaging in any outside activity for which an employee is compensated or in which the employee will be providing a professional service, regardless of compensation. You can access the full text of this rule in 5 C.F.R. Part 3301 at <https://energy.gov/gc/services/energy-policy/office-assistant-general-counsel-general-law>.

**For Further Guidance**

Please contact ethics counsel with any questions regarding the Federal government ethics laws and regulations. If you have any questions, Headquarters employees should contact the Office of the Assistant General Counsel for General Law at 202-586-1522 or standardsofconduct@hq.doe.gov. NNSA employees who are duty-stationed at Headquarters should contact NNSA’s Office of General Counsel at 202-586-8514. Employees who are duty-stationed in the field should contact their local site counsel.