

From: [Jason Green](#)
To: [2635 Modernization](#)
Subject: Proposed Amendments to Standards of Conduct
Date: Monday, April 24, 2023 5:11:12 PM

Below are my comments to the Office of Government Ethics proposed rule, RIN 3209-AA43.

Gifts From Outside Sources (Subpart B)

While you do not propose substantive changes, some clarifications are advisable to ensure consistent application of the gift rules.

The gift definition exclusion at § 2635.203(b)(4) for opportunities and benefits available to the public to a class consisting of all government employees or uniformed military, and the gift exception at § 2635.204(c)(2) for opportunities and benefits in other scenarios have separate statements of what is included in the concept of an opportunity and benefit. The two listings of examples of opportunities and benefits should be reconciled for consistency or any distinction in the concept for the two contexts in which the same terms are used should be clarified. In paragraph (b)(4) opportunities and benefits includes “favorable rates and commercial discounts,” and in paragraph (c)(2), opportunities and benefits includes “favorable rates, commercial discounts, and free attendance or participation.” This creates confusion when an employee is invited to an event by a prohibited source or because of the employee’s official position, and the event is offered free to the public or any government employee may register to attend free of costs. Some have opined that free attendance is not included in paragraph (b)(4) because it is listed in paragraph (c)(2) but not paragraph (b)(4), while others see the same terms being as meaning the examples in the “including” lists are interchangeable between the provisions.

Please clarify any limitations on executive branch employees accepting gifts from an entity of the Federal government, such as the Kennedy Center per DO-09-030, that involve the entity hosting a non-widely attended gathering with a corporate donor and executive branch officials who regulate the corporate donor. For example, does a standard of conduct apply if large donors are provided with a dinner and performance for the donor and guests, and the entity plans the dinner for some of the donor’s senior executives and the regulating agency’s senior most leadership officials?

Impartiality in Performing Official Duties (Subpart E)

Comment re Note 1 to § 2635.501: While the preamble states the Note is not a new authority and the text appears to address individual situations, the Note could be read to recognize broader agency discretion to establish supplemental ethics standards by sub-regulatory agency policy related to work assignments, as opposed to by supplemental agency regulation via § 2635.105. Please clarify in the Note or add an example to 2635.105 to clarify that if an agency wishes to impose a broader ethical standard that applies to all or a subset of employees, such as employees cannot be assigned to any specific party matter in which the employee has a covered relationship with a party or party representative because of appearance concerns and regardless of the individual circumstances, that must be promulgated as a supplemental agency regulation in accordance with § 2635.105. If that is not the case, please explain what is acceptable for agencies to impose on all or subsets of employees by sub-regulatory policy, and what triggers the requirement to promulgate an agency supplemental regulation.

Thank you,
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