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# The Receipt of Gifts by Federal Employees in the Executive Branch

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## Summary

This report provides information on the federal statutes, regulations, and guidelines concerning the restrictions on the acceptance of gifts and things of value by officers or employees in the executive branch of the United States government.

The laws and regulations on the receipt of “gifts” by executive branch personnel provide, generally, that an employee may not solicit or accept a gift:

- (1) if the gift is from a “prohibited source” or
- (2) if the gift is given because of the employee’s official position.

A “prohibited source” under the regulations is one who seeks official action from the employee’s agency; one who does business or seeks to do business with the agency; one whose activities are regulated by the employee’s agency; one whose interests may be substantially affected by the performance or nonperformance of the employee’s official duties; or an organization a majority of whose members fit any of the above categories.

A gift is given “because of” the employee’s official position if it would not have been offered “had the employee not held the status, authority or duties associated with his Federal position.” Gifts that are “motivated by a family relationship or personal friendship” may therefore be accepted without limitation.

There are several exceptions to the gifts restrictions for the receipt of certain gifts, including a general *de minimis* exception for the receipt of gifts of under \$20 in value; modest items of food and drink that are not offered as part of a meal; greeting cards and items with little intrinsic value, such as plaques or trophies; certain bona fide awards; certain expenses for some conferences and symposiums when approved by the agency; and items related to an *outside* business or employment activity of the employee.

In addition to the regulations on “gifts,” there are additional criminal statutory provisions that may apply to the receipt of things of value by a federal officer or employee when that receipt is connected in some way to, or influences, an official act or the official duties of the officer or employee. These include criminal statutory prohibitions on the receipt of “bribes” and “illegal gratuities,” prohibitions on official extortion, and the “honest services” fraud component of the mail and wire fraud statutes.

Gifts from foreign governments or foreign officials to all federal officers or employees are prohibited by a constitutional provision, unless such gifts are permitted by Congress (Article I, Section 9, clause 8). Congress has consented to the receipt of gifts in certain circumstances from official foreign sources in the Foreign Gifts and Decorations Act.

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Federal employees in the executive branch of government are regulated in their acceptance of “gifts” and things of value from outside, private sources under provisions of federal law as well as under detailed standards of conduct regulations promulgated for the entire executive branch of the federal government by the Office of Government Ethics (OGE). The regulations on gifts may be relevant to the receipt of anything of value from an outside, private source, regardless of whether there is any connection to or bearing upon one’s official duties or responsibilities.

Federal laws have long prohibited *corrupt* payments to or corrupt receipt of things of value by federal officials, such as “bribes” from favor-seekers in the private sector.<sup>1</sup> Government-wide regulations and limitations on mere “gifts” to federal officials from private domestic sources—where there is not necessarily any bargain (reciprocity), compensation, or favor explicitly sought, understood, or agreed to, or particular official act contemplated—are, however, of a more recent vintage.<sup>2</sup>

## Federal Statute on Gifts from Outside Sources

The current statutory restriction in federal law on the receipt or solicitation of “gifts” by federal officials was enacted as part of the Ethics Reform Act of 1989.<sup>3</sup> This statute, which underlies the gift regulations in the executive branch, in many respects merely codified similar gifts standards that had been promulgated by executive order and applicable to executive branch employees since at least 1965.<sup>4</sup> The current law, codified at 5 U.S.C. Section 7353(a), prohibits any federal officer or employee from soliciting or receiving a gift of any amount from a prohibited source, that is, from someone who is seeking action from, is doing business with, or is regulated by one’s agency, or whose interests may be substantially affected by the performance or nonperformance of one’s official duties. The statute, at 5 U.S.C. Section 7353(b), then expressly authorizes the designated supervisory ethics offices in the government to make exceptions to this general restriction, and to issue regulations setting out circumstances under which gifts may be accepted.

## Regulations on Receipt of Gifts

The regulations the OGE, the supervisory ethics agency for the executive branch, set out the detailed guidelines and standards for officials in the executive branch of government. In addition to the OGE regulations, it is possible that each agency, in consultation with and on the approval

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<sup>1</sup> The Constitution expressly notes “bribery” as one of the offenses constituting grounds for impeachment of the President, Vice President, and all civil officers of the United States. U.S. CONST. art. II, §4. The first federal statutes on bribery began with the 1<sup>st</sup> Congress in 1789 and 1790, 1 Stat. 46, July 31, 1789 (custom officials); 1 Stat. 117, April 30, 1790 (federal judges). See discussion generally in Noonan, BRIBES, 427 - 435 (MacMillan 1984).

<sup>2</sup> Prior to 1965, specific regulations on gifts to federal employees were sporadic and *ad hoc* within the regulations of the individual agencies and departments of the government. See, The Association of the Bar of the City of New York, CONFLICT OF INTEREST AND FEDERAL SERVICE, 72 - 83 (Harvard University Press 1960). Other than the exhortations in the “Code of Ethics for Government Service” (72 Stat. Part 2, B12 (1958), H.Con.Res. 175, 85<sup>th</sup> Cong.), adopted by Congress as a concurrent resolution in 1958, the first branch-wide regulation on gifts was in Executive Order No. 11222, issued by President Lyndon Johnson in 1965.

<sup>3</sup> P.L. 101-194, 103 Stat. 1746-1747 (November 30, 1989). See now 5 U.S.C. §7353.

<sup>4</sup> See Executive Order No. 11222, Section 201, May 8, 1965 (now superseded by E.O. 12674).

of the OGE, may promulgate additional and individualized ethics provisions needed for their own agency.<sup>5</sup>

The term “gift” is defined broadly in the regulations to cover most items, benefits, services, or favors that have a monetary value. The definition expressly includes “any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.”<sup>6</sup> Although the definition includes “services as well as gifts of training, transportation, local travel, lodgings and meals,” the regulations list a number of items that are not included in the definition of a “gift” (and which are discussed later in this report under “exemptions”). As a general matter, a “gift” is usually distinguished from something of value that is received as “compensation”; that is, compensation would be a payment of a fee, salary, or wage for some service rendered,<sup>7</sup> while a gift is given without any such consideration in return.

Although the gift regulations apply only to federal employees themselves, there are circumstances in which gifts to others may be imputed to the federal employee. Such an “indirect” gift to a federal employee covered by the prohibitions may occur when a gift is 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 when given to another person or organization on the basis of a designation or recommendation of the federal employee.<sup>8</sup>

Although specific rules and prohibitions exist for executive branch employees, the President and Vice President are generally exempt under the OGE regulations from the statutory gift restrictions and the regulations on domestic gifts.<sup>9</sup> Under these regulations, the President and Vice President may accept gifts from the public, as long as such gifts are not solicited or coerced,<sup>10</sup> nor accepted in return for an official act.<sup>11</sup> The exception in the OGE regulations states:

Because of the considerations relating to the conduct of their offices, including those of protocol or etiquette, the President and the Vice President may accept any gift on his own behalf or on behalf of any family member, provided that such acceptance does not violate §2635.202(c)(1) or (2), 18 U.S.C. §201(b) or 201(c)(3), or the Constitution of the United States.<sup>12</sup>

In promulgating its rules and exceptions, the OGE had noted, “The ceremonial and other public duties of the President and Vice President make it impractical to subject them to standards that require an analysis of every gift offered.”<sup>13</sup>

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<sup>5</sup> 5 C.F.R. §2635.105.

<sup>6</sup> 5 C.F.R. §2635.203(b).

<sup>7</sup> The receipt of outside compensation, income, wages, and fees by federal employees is governed under the conduct regulations in the provisions on “outside activities.” 5 C.F.R. §2635, Subpart H (5 C.F.R. §§2635.801-2635.809).

<sup>8</sup> 5 C.F.R. §2635.203(f). Note that the restriction on gifts include those solicited or received “directly or indirectly” by an employee, at 5 C.F.R. §2635.202(a).

<sup>9</sup> 5 C.F.R. §2635.204(j); *note* 57 F.R. 35049, August 7, 1992.

<sup>10</sup> 5 C.F.R. §2635.202(c)(2).

<sup>11</sup> 5 C.F.R. §2635.202(c)(1), *see also* 18 U.S.C. §201.

<sup>12</sup> 5 C.F.R. §2635.204(j). The constitutional restriction on gifts from foreign governments still applies to the President. *See* Art. I, Sec. 9, cl. 8, and 5 U.S.C. §7342.

<sup>13</sup> 56 F.R. 33783, July 23, 1991.

## General Prohibitions

The executive branch gift regulations, at 5 C.F.R. Section 2635.202, prohibit the acceptance of gifts directly or indirectly by executive branch employees generally in two circumstances:

- (1) if the gift is from a “prohibited source” or
- (2) if the gift is given because of the employee’s official position.

A “prohibited source” under the regulations is one who:

- seeks official action from the employee’s agency;
- does business or seeks to do business with the agency;
- conducts activities regulated by the employee’s agency;
- has interests that may be substantially affected by the performance or nonperformance of the employee’s official duties; or
- is an organization with a majority of its members in one of the above categories.<sup>14</sup>

A gift is solicited or accepted “because of the employee’s official position” when the gift “would not have been solicited, offered, or given had the employee not held the status, authority or duties associated with his Federal position.”<sup>15</sup> This second class of prohibited gifts is substantially what has been called by the federal courts a “status gift,” that is, a gift given merely because of the status of an individual as a federal officer or employee, regardless of any particular or identified act done, to be performed or not to be performed, by the public officer.<sup>16</sup>

## Exceptions

### Personal or Family Relationships

Although an executive branch employee may not accept gifts given by a “prohibited source,” or given because of his or her official position, the regulations expressly note within the listed “exceptions” that an executive branch official may accept a gift without limitation (even from an otherwise “prohibited source”) when it is “clear” that the gift “is motivated by a family relationship or personal friendship rather than the position of the employee.”<sup>17</sup> Relevant factors in determining a personal relationship *vis-a-vis* the donor of a gift would include “the history of the relationship and whether the family member or friend personally pays for the gift.”<sup>18</sup>

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<sup>14</sup> 5 C.F.R. §2635.203(d)(1)-(5).

<sup>15</sup> 5 C.F.R. §2635.203(e).

<sup>16</sup> See discussion of gifts given because of one’s “official position” (as opposed to those given because of an “official act”) in *United States v. Sun-Diamond Growers of California*, 526 U.S. 398, 405-412 (1999).

<sup>17</sup> 5 C.F.R. §2635.204(b). See OGE, *Do It Right, An Ethics Handbook for Executive Branch Employees* (1995), at pp. 10-13; and OGE pamphlet, “Gifts From Outside Sources” (1998).

<sup>18</sup> 5 C.F.R. §2635.204(b): “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 (continued...)”

In examining a gift to a federal official in another context, the Office of Government Ethics, the office within the executive branch with overall responsibility for interpretation of the federal ethics provisions, discussed the exception for gifts based on a personal friendship:

The Standards of Conduct provide that the determination of whether a gift from a prohibited source is clearly motivated by a family relationship or private friendship includes a consideration of relevant factors such as the history of the relationship and whether the friend personally paid for the gift. 5 C.F.R. §2634.204(b). Where a personal relationship develops from an on-going work relationship, it can be very difficult to clearly establish that the gift is not being given because of the employee's official position. A gift given out of appreciation for some action the employee took, particularly one that relates to an employee's official responsibilities, is not clearly motivated by a personal relationship. Therefore, an employee bears a considerable burden in establishing that a gift is based on a personal relationship rather than the employee's Government position. ...

One must look to the circumstances surrounding the gift when a personal relationship is at issue. Factors indicating a personal relationship include the length of time of the relationship, the intimacy of the relationship including any family interaction, the nature of personal activities outside the work context, and the frequency of outside contacts.<sup>19</sup>

### **Exceptions for *De Minimis* Gifts**

The gift prohibition in the executive branch will not apply to gifts of less than \$20 given to a federal employee from any person, as long as the total number of all gifts from that donor do not exceed \$50 in a calendar year.<sup>20</sup> Additionally excluded from the definition of a "gift" in the executive branch are modest items of food and drink, which are not offered as part of a meal, greeting cards, and items with little intrinsic value such as plaques or trophies.<sup>21</sup>

### **Social Events**

Executive branch officers and employees may accept invitations, food, refreshments, and entertainment for a social event attended "by several persons" from one who is not a prohibited source (when no fee is charged for others), even if the social invitation is offered because of one's position as a federal official.<sup>22</sup>

### **Conferences and Similar Widely Attended Events**

As to the expenses of conferences and events, an executive branch employee may accept free attendance at a "widely attended" gathering or event in which the employee is to speak or participate in an official capacity, or when it is in the interest of the agency or the government for

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(...continued)

making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift."

<sup>19</sup> Office of Government Ethics, Advisory Opinion 06 x 03, March 21, 2006.

<sup>20</sup> 5 C.F.R. §2635.204(a). The \$20 *de minimis* exception does not apply to gifts of cash, which are still prohibited.

<sup>21</sup> 5 C.F.R. §2635.203(b)(1) and (2).

<sup>22</sup> 5 C.F.R. §2635.204(h).

the employee to accept such an invitation.<sup>23</sup> The agency may determine that an employee's attendance at an event such as a "widely attended gathering" will "further agency programs or operations" and that, therefore, an employee may accept a sponsor's unsolicited gift of free attendance at such event (and in some circumstances from a person other than the sponsor if the market value of the attendance is under \$375).<sup>24</sup> Such acceptance may include the provision of food, refreshments, entertainment, instruction, and materials that are provided to all attendees as an integral part of the event—but does not include travel or lodging collateral to the event.<sup>25</sup> Employees who attend such events may be authorized to bring a spouse when other attendees will generally be so accompanied.<sup>26</sup> The employee will generally be attending such a conference or event in his or her personal capacity and will therefore be on "annual leave," although the employee may also be granted an excused absence for certain conferences, seminars, or programs "if authorized by the employee's agency."<sup>27</sup>

If the sponsor of the event is one whose interests may be substantially affected by the official duties of the employee, then the agency must balance the interests of the agency in allowing the employee's acceptance of such a gift of attendance with the sensitivity of the matter under agency consideration and the employee's role in that matter, and make a determination in writing that "the employee's participation in the event outweighs concern that acceptance of the gift of free attendance may or may appear to improperly influence the employee in the performance of his official duties."<sup>28</sup> Under such a circumstance free attendance at the event may be accepted, but *not* travel, transportation, lodging, or subsistence expenses, unless there is a separate statutory authorization to accept such travel expenses.<sup>29</sup>

## Outside Business and Other Outside Activities

The gift regulations expressly note that executive branch employees may accept meals, lodging, and transportation when such items are related to an outside business or employment activity of the employee, rather than related to the employee's official position and duties.<sup>30</sup> If an employee in the executive branch is to participate, for example, in what would be considered an "honoraria" event, that is, the employee is to perform writing or lecturing services in a private, non-official capacity outside of his or her government job, based on the employee's expertise and knowledge on a subject (and not because of his or her official position), then the receipt of honoraria, transportation, food, and lodging incident to the event would fall within the rules and regulations on honoraria and outside employment, rather than the "gift" rules.<sup>31</sup>

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<sup>23</sup> 5 C.F.R. §2635.204(g).

<sup>24</sup> 5 C.F.R. §2635.204(g)(2). This exception may apply if the value is under the threshold amount and if the "widely attended" event is to be attended by more than 100 persons.

<sup>25</sup> 5 C.F.R. §2365.204(g)(4).

<sup>26</sup> 5 C.F.R. §2365.204(g)(6).

<sup>27</sup> 5 C.F.R. §2635.204(g)(2).

<sup>28</sup> 5 C.F.R. §2635.204(g)(3)(i).

<sup>29</sup> See 5 C.F.R. §2635.204(g)(4). For the acceptance of travel expenses by the *agency* on behalf of the employee for official participation in such events, see 31 U.S.C. §1353, note 41 C.F.R. part 304-1. There is also separate statutory authority for an employee to accept certain travel expenses and materials for training from certain non-profit organizations at 5 U.S.C. §4111.

<sup>30</sup> 5 C.F.R. §2635.204(e).

<sup>31</sup> Note 5 C.F.R. §§2635.801 *et seq.*, and 2636.101 *et seq.* The general statutory prohibition against federal employees receiving "honoraria" was found unconstitutional in *United States v. National Treasury Employees Union*, 513 U.S. (continued...)



## Bona Fide Awards

Employees in the executive branch may accept *bona fide* awards, other than cash, if valued at \$200 or less (and more than \$200 under certain approved circumstances) for meritorious public service or achievement; and may accept honorary degrees when no conflict of interest is apparent.<sup>32</sup> Certain long-standing awards that are given pursuant to established written criteria, even if they have a substantial cash component over \$200, may be accepted under some circumstances (with written approval from ethics personnel) from a source that is independent from the agency and the official, that is, if the awards are from entities who do not have “interests that may be substantially affected by the performance or nonperformance of the employee’s official duties.”<sup>33</sup> Examples in the regulations note the permissibility of receiving, for example, the Nobel Prize in Physiology or Medicine by a federal official.

## Other Exceptions

The OGE regulations list other specific exemptions from the gift rule prohibition that would allow the receipt of certain benefits or things of value by federal employees such as loans from financial institutions at prevailing rates; favorable rates or benefits that are available generally to a class of persons (including all government employees or uniform military personnel, even if limited geographically); rewards and prizes from contests and events that are generally open to the public; pension benefits; and anything accepted by the government or the employee under statutory authority.<sup>34</sup>

## Foreign Gifts and Decorations

The United States Constitution prohibits the acceptance by any officer or employee of the United States (anyone “holding any Office of Profit or Trust”) of “any present, Emolument, Office or Title, of any kind whatever, from any King, Prince, or foreign state” without the “Consent of the Congress.”<sup>35</sup>

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454 (1995), and the receipt of such honoraria as outside compensation are now governed by “conflict of interest” rules and principles.

<sup>32</sup> 5 C.F.R. §2635.204(d)(1) and (2).

<sup>33</sup> 5 C.F.R. §2635.204(d)(1). The first three categories of “prohibited sources”—those seeking official action from, doing or seeking to do business with, or regulated by one’s agency—are agency-wide categories and apply to *all* employees of the agency whatever their official duties, while this fourth category—one whose interests are affected by the performance or non-performance of the employee’s official duties—is narrower and is personal and specific to a particular officer or employee. Note discussion in OGE Opinion 94 x 5, February 7, 1994.

<sup>34</sup> 5 C.F.R. §2635.203(b).

<sup>35</sup> U.S. CONST., art. I, § 9, cl. 8. “No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, 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.” The intent of the original prohibition, stated during the Federal Convention in August of 1787, was the recognized necessity of “preserving foreign ministers, and other officers of the United States, independent of external influence.” ELLIOT’S DEBATES, Volume V, p. 467 (Mr. Pinckney of South Carolina). As noted by Justice Story in his historic work on the Constitution, this prohibition “is founded in a just jealousy of foreign influence of every sort.” Story, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES, Vol. III, pp. 215-216.

Congressional consent for the acceptance of a foreign gift or decoration had often in the past taken the form of a private bill, or even a public law, which specifically authorized such acceptance for an individual or a group of individuals.<sup>36</sup> In 1966, however, Congress granted in the “Foreign Gifts and Decorations Act” a general statutory consent to the acceptance of certain gifts of minimal value, the conditional acceptance of certain other tangible gifts on behalf of the United States, and decorations from foreign governments in certain circumstances.<sup>37</sup> Amendments to the Foreign Gifts and Decorations Act provisions were enacted in 1977 in the Foreign Relations Authorization Act, Fiscal Year 1978,<sup>38</sup> which clarified certain exceptions to the prohibition and added others.<sup>39</sup>

Expressly included within the statutory prohibition (and the statutory consent of Congress) regarding the acceptance of gifts from foreign governments by a federal employee, is the “spouse” and the “dependent children” of a federal employee.<sup>40</sup> The statute directs each employing agency to promulgate rules regarding the limitations and restrictions on the receipt of foreign gifts.

The current statutory provision on foreign gifts and decorations generally:

1. Prohibits an employee from *requesting* or *encouraging the tender* of a gift from a foreign government. 5 U.S.C. Section 7342(b)(1).
2. Prohibits the *receipt* of a gift from a foreign government or an official foreign source *except when authorized* by the law. 5 U.S.C. Section 7342(b)(2).
3. Authorizes the receipt of a foreign gift by a federal employee when
  - the gift is of “minimal value” tendered as a “souvenir or mark of courtesy” (“minimal value” is an amount adjusted every three years and, as of May 2014, is \$375 or less (41 C.F.R. §102- 42.10)). 5 U.S.C. Section 7342(c)(1)(A).
  - the gift is of more than minimal value when it is in the nature of an educational scholarship or medical treatment. 5 U.S.C. Section 7342(c)(1)(B).
  - the gift is of more than minimal value, when the refusal of the gift would cause offense or embarrassment or would otherwise adversely affect the foreign relations of the United States, provided that if the gift is a tangible gift it is turned over to and becomes the property of the United States. 5 U.S.C. Section 7342(c)(1)(B)(i).

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<sup>36</sup> See CANNON’S PRECEDENTS OF THE HOUSE OF REPRESENTATIVES, Vol. VII, §1889; S. Rpt. No. 89-1160, 89<sup>th</sup> Cong., 2d Sess. 1-2 (1966), to accompany S. 2463, the “Foreign Gifts and Decorations Act”; CONSTITUTION - JEFFERSON’S MANUAL AND RULES OF THE HOUSE OF REPRESENTATIVES, §145; H.Rept. 89-2052, 89<sup>th</sup> Cong., 2d Sess. 1-2 (1966).

<sup>37</sup> P.L. 89-673, 80 Stat. 952, October 15, 1966.

<sup>38</sup> P.L. 95-105, 91 Stat. 862, August 17, 1977 (H.R. 6689, 95<sup>th</sup> Cong.). See now 5 U.S.C. §7342.

<sup>39</sup> These amendments added the exception for the acceptance of gifts of travel or expenses for travel taking place entirely outside of the United States under certain circumstances, and provided for reporting requirements for gifts accepted, as well as procedures for disposal and distribution of foreign gifts received on behalf of the United States. Note, generally, 41 C.F.R. §102-42.

<sup>40</sup> 5 U.S.C. §7342(a)(1)(G).

- the gift involves travel or expenses for travel (such as transportation, food, and lodging) “taking place entirely outside of the United States” if such acceptance is appropriate, consistent with the interests of the United States, and permitted by the employing agency. 5 U.S.C. Section 7342(c)(1)(B)(ii).
- the gift involves expenses for programs expressly authorized by Congress, such as under the Mutual Education and Cultural Exchange Act. 5 U.S.C. Section 7342(k).

## **Other Restrictions on the Receipt of Things of Value by Federal Officials**

The restrictions and regulations discussed above are upon the receipt of things of value given as “gifts,” that is, generally, when things of value are given from a private source to a federal official with the requisite “donative intent,” or colloquially, without “strings attached.” When, however, things of value are given, offered, or transferred to a federal official, and the transaction is *connected* in some way to an official act of the government officer or employee, then such offer and/or acceptance of a thing of value may implicate potential violations of federal criminal law.

In addition to the statutory “gifts” provision and regulations, federal officers and employees continue to be subject to the restrictions of the federal bribery law at 18 U.S.C. §201(b), which prohibits the receipt of anything of value “in return for” being influenced in the performance of an official duty. Within this federal bribery statute is the so-called “illegal gratuities” clause, at 18 U.S.C. §201(c), prohibiting the receipt of anything of value “for or because of” an official act. The bribery provision has been interpreted to require a so-called *quid pro quo*, that is, a corrupt agreement or “bargain” to do some official act (or refrain from doing some official act) *in return for* the thing of value; the “illegal gratuity” provision, however, merely requires that the thing of value be given for or “because of” an official act and could have been given merely as a “thank you,” even for an act already completed that would have been done by the public official without the thing of value being offered.<sup>41</sup> Additionally, federal employees may not use their official positions (“under color of official right”) to “extort” something of value for themselves,<sup>42</sup> and may not receive things of value in circumstances that implicate “honest services” fraud within the prohibitions of the wire fraud and mail fraud laws.<sup>43</sup>

Concerning the receipt of things of value, federal officers or employees may not receive something of value as private “compensation” for representational services rendered to persons before federal agencies,<sup>44</sup> and may not receive from a private source any salary supplementation for their *official* duties performed on behalf of the United States government.<sup>45</sup>

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<sup>41</sup> See discussion in *United States v. Sun-Diamond Growers of California*, 526 U.S. 398, 404-405 (1999).

<sup>42</sup> 18 U.S.C. §1951.

<sup>43</sup> 18 U.S.C. §§1341, 1343, 1346. See *Skilling v. United States*, 130 S.Ct. 2896 (2010), where the “honest services” fraud provision was interpreted narrowly to apply only to situations similar to those involving bribes or kickbacks.

<sup>44</sup> 18 U.S.C. §203.

<sup>45</sup> 18 U.S.C. §209.

Federal law also prohibits federal employees from giving gifts to supervisors or superiors in the federal service, and prohibits such superiors in the federal service from accepting gifts from those in the federal service receiving less pay than themselves.<sup>46</sup> This provision of law was amended in 1989 to expressly allow the supervising ethics office to provide exceptions for gifts between federal officials and employees on certain special occasions, such as marriage or retirement.<sup>47</sup>

Procurement officials are under other, but similar, restrictive gift rules concerning gifts and things of value from contractors and competing firms. These provisions are codified at 41 U.S.C. Section 423(b), in what have been called the “procurement integrity” provisions.

## Financial Disclosure

In addition to restrictions and prohibitions on the receipt of gifts, there may be requirements for public financial disclosure for certain high level federal officials regarding, among other items, gifts over particular amounts that have been received by those officials and their immediate family, which must be reported in the annual financial disclosure statements required each May 15 under the provisions of the Ethics in Government Act of 1978.<sup>48</sup> There are also in place requirements for confidential disclosure reports to be filed with an employee’s agency by some lower level federal officers and employees. Generally, the confidential reporting requirements apply to rank and file employees who are compensated below the threshold rate of pay for public disclosures (GS-15 or below, or less than 120% of the basic rate of pay for a GS-15), and who are determined by the employee’s agency to perform duties or exercise responsibilities in regard to government contracting or procurement, government grants, government subsidies or licensing, government auditing, or other governmental duties that may particularly require the employee to avoid financial conflicts of interest.<sup>49</sup> Items to be disclosed in confidential reports also include gifts and reimbursements over certain amounts received from private sources.<sup>50</sup> The current aggregate threshold amount for disclosure of gifts in both public and confidential reports is \$375.<sup>51</sup>

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<sup>46</sup> 5 U.S.C. §7351.

<sup>47</sup> P.L. 101-194, Section 301, as amended by P.L. 101-280; see now 5 U.S.C. §7351(c), and 5 C.F.R. §§2635.301-2635.304.

<sup>48</sup> See now 5 U.S.C. app., §§101(f), 102(a)(2). An officer or employee of the executive branch who “occupies a position classified above GS-15,” or, if not on the General Schedule, is in a position compensated at a “rate of basic pay ... equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15,” and who is compensated at that rate for at least 60 days in a calendar year, is required to file annual public financial disclosure reports.

<sup>49</sup> 5 U.S.C. app. § 107; see also 5 C.F.R. §§ 2634.901(a), 2634.904(a). Confidential filing in the executive branch is done on form OGE-450, optional form 450-A, or with the approval of OGE, in an alternative procedure using an agency-specific form. 5 C.F.R. §2634.905.

<sup>50</sup> 5 C.F.R. §2634.907(g).

<sup>51</sup> The amount is adjusted every three years based on the Consumer Price Index. See 41 C.F.R. §102- 42.10. The current amount was established at 79 Fed. Reg. 18477 (April 2, 2014), and 79 Fed. Reg. 28605-28606 (May 19, 2014). The minimum amount for aggregating a gift is \$150.

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