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**Subject:** Proposed Amendments to Subpart B  
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I have reviewed the proposed amendments to 2635 Subpart B and I have the following comments:

- 1) 2635.203(b)(8) – Your proposed definition states that free attendance to an event is not considered a gift when the employee is assigned by the agency to present information and the employee’s presence on the day of event is deemed essential by the agency. However, what about when an employee is speaking at a conference on her personal time (and not as an assignment by the Agency), but the conference is sponsored by a prohibited source. Would the employee’s acceptance of free attendance on the day she is speaking constitute a “gift.”?

Example) A Department of Interior employee is invited by the Ornithological Society to speak about bird species at a conference they are sponsoring. The Ornithological Society has previously filed a petition for rulemaking with the Department of Interior regarding protection of bird-species and that petition is pending at the Agency. The employee was invited to speak because of her previous career as a private practice veterinarian who specialized in avian species. The employee’s work at the Department of Interior has nothing (and has had nothing) to do with birds, her information won’t draw upon Agency materials, and it won’t involve any policy, program or operation of the Agency. The Ornithological Society offers the employee free attendance on the day she is speaking. Is this a gift?

Your definition in the proposed regulation does not address free-attendance to an event on the day the employee is speaking if the employee is not assigned to do so by the agency. Under 5 CFR 2635.807 – teaching, speaking and writing, an employee who is speaking *related to official duties*, may accept a waiver of attendance fees (as that is excluded from the definition of compensation for speaking). It stands to reason that an employee who is speaking when it is *not* related to her official duties, should also be able to accept free attendance as well (because she could accept any compensation in that case). However, it is unclear whether free-attendance in my example would then be characterized as a “gift” or as “compensation.”

If it is a “gift,” then there is no applicable exception unless it falls into the exception at 2634.204(e) (2) (which begs the question whether a one-time speaking engagement at an event with no compensation other than free attendance on the day of the speech constitutes “outside business or employment activities”)? The better answer would be that this would not be a gift because the employee is receiving the free-attendance in consideration of her speech (“compensation”). I bring this in to demonstrate that in all three possible instances where an employee is speaking at an event and receiving free-attendance in consideration of that speech, acceptance of free attendance is acceptable under the standards.

- 1) On official time, assigned by official duties (explicitly in 2635.204(g))
- 2) On personal time, related to official duties (explicitly in 2635.807(a)(2)(iii))
- 3) On personal time, not related to official duties (implied)

So why not just modify this exclusionary clause to include all three possible instances of free-attendance at an event in exchange for speaking on that day? Why limit it to the one circumstance when employees are assigned to speak by the agency on official duty? I understand that this new exclusion was meant to move 2635.204(g)(1) to the exclusion sections, but I believe it would be more useful if it expanded beyond official duty assignments to encompass all circumstances of employees speaking at events and being offered free attendance (including on their personal time).

- 2) 2635.204(m) – This proposed exception allows employees to personally accept gifts of informational materials where the value is below \$100, or, if it exceeds \$100, with the written determination by the agency designee.

Why should an employee be able to personally accept informational materials related to his job? To extent that the information is being sent to the employee because it is related to official duties, position, or subject matter affecting the Agency, or a topic of interest the Agency or Mission, then the gift ought to be a gift to the Agency. In your example 1, it seems inappropriate for a federal employee to personally receive a subscription a research journal (with a value of \$75). The gift should belong to the Agency with the employee able to use it. When the employee leaves government service, the journal should continue to belong to the Agency (and be available to the employee's successor or other federal employees who may have an interest in it). Allowing the gift to be given to the employee personally when it is job-related, seems to be a way-around anti-augmentation principals. In the example, if the employee could better do his job with the journal, then either the Agency should accept under a gift acceptance statute, or the Agency should pay for it using it's appropriated budget. If the Agency has no gift-acceptance statute and no budget for the materials, then Agency should request an increased budget from congress or request that Congress enact a gift-acceptance statute for the Agency.

I also believe that this exception will have strong potential for misuse. These "gifts" of informational materials have real value on the open market. An employee could potentially read the informational material (like a book on the topic) and then sell it online (as there is no restriction in the rule regarding disposition of these gifts), resulting in a profit for the employee (an employee who receives even just 10 journals a year worth \$75 could potentially make \$750 in profits). If this is going to be an exception to the gift acceptance statute, then there should at least be limitations in how the employee disposes of these potentially valuable gifts.

- 3) 2635.206 – The proposed rule would require employees who cannot return a tangible item that is worth less than \$100 (and does not want to pay market value for that item) to destroy the item. Your example has an employee discarding a T-shirt worth \$25 by placing it in the trash. This seems wasteful and unnecessary. Why not give an option for the Agency to designate a charity to which these types of items may be donated to, such as a local shelter. Because the Agency would make the designation of the charity(ies) and not the employee, this would not violate 2635.203(f)(2).
- 4) Examples: Although the proposed rule increases the use of gender-neutral examples, there is a heteronormative bent when it comes to spousal and dating relationships. In all of the examples

utilizing the terms “wife” or “husband,” the accompanying pronoun indicates that the spouse is of the opposite gender. There are no examples where an employee is explicitly in a same-sex relationship.

- a. The following examples do not indicate the gender roles in a spousal/dating relationship
  - i. Example 1 to paragraph 2635.204(a)
  - ii. Example 1 to paragraph 2635.204(b)
- b. The following examples demonstrate a heteronormative relationship
  - i. Example 3 to paragraph 2635.204(d)(1) (“his wife”)
  - ii. Example 1 to paragraph 2635.204(e)(1) (“her husband”)
  - iii. Example 2 to paragraph 2635.204(e)(1) (“his wife”)
  - iv. Example 5 to paragraph 2635.204(g) (“her husband”)

Thank you,

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<http://inside.fda.gov:9003/EmployeeResources/Ethics/FDAEthicsProgram/default.htm>