

Office of Government Ethics

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Letter to the Editor of a Newsletter dated December 10, 1992

You have asked me to clarify a statement in my letter to you dated November 3, 1992, concerning [the] acceptance of complimentary subscriptions to [your newsletter by employees of an agency within a department]. In that letter I stated that [the agency] employees could accept complimentary subscriptions to the newsletter if free subscriptions were offered to all Federal employees on the same basis.

It has been a long-standing policy of this Office that Federal employees may accept certain benefits such as commercial discounts that are offered to all Federal employees on the same terms. This policy has been codified in a new standards of conduct rule published by this Office, to take effect February 3, 1993. The relevant provision excludes, from the definition of "gift," all "[o]pportunities 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" See 57 Fed. Reg. 35045 (1992) (to be codified at 5 C.F.R. § 2635.203(b)(4)). Thus, if complimentary subscriptions to [your newsletter] were made available to all Federal employees, any employee, including [employees of the agency], could accept the free subscription offer.

This opinion does not, as you have suggested, reverse the decision of [an official of the agency] prohibiting [agency] employees from accepting free subscriptions to your newsletter. That decision was predicated on the fact that free subscriptions have been offered by you only to [agency] field inspectors. If you decide to offer free subscriptions to all Federal employees, I recommend that you consult in advance with the Designated Agency Ethics Official (DAEO) at the Department to insure that the offer is consistent with the requirements of section 2635.203(b)(4) described above. At that time, the DAEO can advise the [agency's official] regarding the modified terms of your offer.

You also suggested that if you broaden your offer of complimentary subscriptions to all Federal employees, you should not be considered a "prohibited source" for purposes of acceptance

of gifts if the offer contains no request for information from, or ongoing working relationship with, Federal employees. Under the circumstances, I do not believe that question needs to be resolved. As a general matter, a Federal employee may not accept a gift offered because of his official position regardless of whether the donor is a prohibited source as described in the regulations. See 57 Fed. Reg. 35044 (1992) (to be codified at 5 C.F.R. § 2635.202(a)(2)). However, since a commercial discount offered to all employees is not considered a "gift" when offered either by a prohibited source or because of official position, it would be unnecessary to determine whether you would be a prohibited source as described in the regulations.

Sincerely,

Stephen D. Potts
Director