

## 5 CFR 2635.702

This document is current through the March 4, 2019 issue of the Federal Register. Title 3 is current through March 1, 2019.

**Code of Federal Regulations > TITLE 5 -- ADMINISTRATIVE PERSONNEL > CHAPTER XVI -- OFFICE OF GOVERNMENT ETHICS > SUBCHAPTER B -- GOVERNMENT ETHICS > PART 2635 - STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH > SUBPART G -- MISUSE OF POSITION**

### § 2635.702 Use of public office for private gain.

An employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations. The specific prohibitions set forth in paragraphs (a) through (d) of this section apply this general standard, but are not intended to be exclusive or to limit the application of this section.

(a) Inducement or coercion of benefits. An employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit, financial or otherwise, to himself or to friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.

Example 1: Offering to pursue a relative's consumer complaint over a household appliance, an employee of the Securities and Exchange Commission called the general counsel of the manufacturer and, in the course of discussing the problem, stated that he worked at the SEC and was responsible for reviewing the company's filings. The employee violated the prohibition against use of public office for private gain by invoking his official authority in an attempt to influence action to benefit his relative.

Example 2: An employee of the Department of Commerce was asked by a friend to determine why his firm's export license had not yet been granted by another office within the Department of Commerce. At a department-level staff meeting, the employee raised as a matter for official inquiry the delay in approval of the particular license and asked that the particular license be expedited. The official used her public office in an attempt to benefit her friend and, in acting as her friend's agent for the purpose of pursuing the export license with the Department of Commerce, may also have violated 18 U.S.C. 205.

(b) Appearance of governmental sanction. Except as otherwise provided in this part, an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another. When teaching, speaking, or writing in a personal capacity, he may refer to his official title or position only as permitted by § 2635.807(b). He may sign a letter of recommendation using his official title only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual with whom he has dealt in the course of Federal employment or whom he is recommending for Federal employment.

Example 1: An employee of the Department of the Treasury who is asked to provide a letter of recommendation for a former subordinate on his staff may provide the recommendation using official stationery and may sign the letter using his official title. If, however, the request is for the recommendation of a personal friend with whom he has not dealt in the Government, the employee should not use official stationery or sign the letter of recommendation using his official title, unless the

recommendation is for Federal employment. In writing the letter of recommendation for his personal friend, it may be appropriate for the employee to refer to his official position in the body of the letter.

**(c)**Endorsements. An employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service or enterprise except:

**(1)**In furtherance of statutory authority to promote products, services or enterprises; or

**(2)**As a result of documentation of compliance with agency requirements or standards or as the result of recognition for achievement given under an agency program of recognition for accomplishment in support of the agency's mission.

Example 1: A Commissioner of the Consumer Product Safety Commission may not appear in a television commercial in which she endorses an electrical appliance produced by her former employer, stating that it has been found by the CPSC to be safe for residential use.

Example 2: A Foreign Commercial Service officer from the Department of Commerce is asked by a United States telecommunications company to meet with representatives of the Government of Spain, which is in the process of procuring telecommunications services and equipment. The company is bidding against five European companies and the statutory mission of the Department of Commerce includes assisting the export activities of U.S. companies. As part of his official duties, the Foreign Commercial Service officer may meet with Spanish officials and explain the advantages of procurement from the United States company.

Example 3: The Administrator of the Environmental Protection Agency may sign a letter to an oil company indicating that its refining operations are in compliance with Federal air quality standards even though he knows that the company has routinely displayed letters of this type in television commercials portraying it as a "trustee of the environment for future generations."

Example 4: An Assistant Attorney General may not use his official title or refer to his Government position in a book jacket endorsement of a novel about organized crime written by an author whose work he admires. Nor may he do so in a book review published in a newspaper.

**(d)**Performance of official duties affecting a private interest. To ensure that the performance of his official duties does not give rise to an appearance of use of public office for private gain or of giving preferential treatment, an employee whose duties would affect the financial interests of a friend, relative or person with whom he is affiliated in a nongovernmental capacity shall comply with any applicable requirements of § 2635.502.

**(e)**Use of terms of address and ranks. Nothing in this section prohibits an employee who is ordinarily addressed using a general term of address, such as "The Honorable", or a rank, such as a military or ambassadorial rank, from using that term of address or rank in connection with a personal activity.

## Statutory Authority

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### AUTHORITY NOTE APPLICABLE TO ENTIRE PART:

[5 U.S.C. 7301](#), 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, [54 FR 15159](#), 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, [55 FR 42547](#), 3 CFR, 1990 Comp., p. 306.

## History

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[\[57 FR 35042](#), Aug. 7, 1992]

Annotations

## Case Notes

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### LexisNexis® Notes

Criminal Law & Procedure : Criminal Offenses : Miscellaneous Offenses : Abuse of Public Office : Conflicts of Interest :

Governments : Federal Government : Employees & Officials

### **Criminal Law & Procedure : Criminal Offenses : Miscellaneous Offenses : Abuse of Public Office : Conflicts of Interest :**

[\*Defenders of Wildlife v. United States Doi\*, 314 F. Supp. 2d 1, 2004 U.S. Dist. LEXIS 6774](#) (DDC Apr. 13, 2004).

**Overview:** *Agencies properly invoked Exemption 4 of the FOIA with respect to draft severance agreements between the Deputy Secretary of the Interior and his former energy lobbying firms. The documents were submitted voluntarily and were not customarily public.*

- In general, federal law prohibits government officers or employees from using a public office for personal gain, [5 C.F.R. § 2635.702](#), or substantially participating in an official capacity through decision, approval, or otherwise, in matters in which they have a personal financial interest. 18 U.S.C.S. § 208(a); [5 C.F.R. § 2635.402\(a\)](#), (c), and (e). [Go To Headnote](#)

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## Research References & Practice Aids

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### NOTES APPLICABLE TO ENTIRE TITLE:

Title 5 of the United States Code was revised and enacted into positive law by Public Law 89-554, Sept. 6, 1966. New citations for obsolete references to sections of 5 U.S.C. appearing in this title may be found in a redesignation table under title 5, Government Organization and Employees, United States Code.

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