

Office of Government Ethics

92 x 27 -- 12/10/92

Letter to an Individual dated December 10, 1992

This is in response to your letter dated November 11, 1992, in which you requested a copy of the final rule on "Standards of Ethical Conduct for Employees of the Executive Branch." I have enclosed a copy of the final rule, which appears in the August 7, 1992, edition of the Federal Register. These rules are effective beginning February 3, 1993.

You also requested an opinion from this Office on the following question:

Is there any authority, statute, rule, or regulation that makes the solicitation and acceptance of a substantial loan of money by a senior manager from a subordinate employee, either unlawful or unethical or both?

Under Subpart C of the standards of ethical conduct regulations, section 2635.302(a)(1) prohibits an employee from directly or indirectly giving a gift to a superior. As provided under section 2635.303(a), the definition of gift has the meaning set forth in section 2635.203(b). That definition includes loans. However, section 2635.203(b)(9) excludes from the definition of gift "anything for which market value is paid by the employee." Thus, if the senior manager agrees to pay interest on the loan at a rate generally available to the public (market value), the loan would not be a gift prohibited under the regulations.

On the other hand, where there is indication that the senior manager and subordinate did not engage in an arm's length transaction, the loan would fall within the definition of a gift. These situations might occur when, for example, the senior manager is not creditworthy, does not give security to back the loan, or he/she pays little or no interest on the loan. Under the analysis presented above, the transaction would then be in violation of section 2635.302(a)(1).

There should also be concern that this transaction might raise violations under Subpart G, which addresses misuse of position. Section 2635.702(a) of that subpart specifically prohibits an

employee from using "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" Thus, the senior manager should be aware that he must not use his position in a manner that is intended to coerce the subordinate into granting the loan.

As a practical matter, loans between superiors and their subordinates are to be discouraged. Even though a loan may have properly been extended by a subordinate to a superior, for so long as it remains unpaid, that loan may preclude the superior from fully exercising supervisory authority over the subordinate. Because of the debtor-creditor relationship, the subordinate would be a person with whom the superior has a "covered relationship" within the meaning of section 2635.502(b)(1). Under section 2635.502(a), the superior should not participate, for example, in promoting or even evaluating the performance of that subordinate unless he or she has first concluded, as perhaps in the case of a loan of insignificant amount, that the debtor creditor relationship would not cause a reasonable person with knowledge of the facts to question his or her impartiality in the matter or has informed the agency designee of the circumstances and received specific authorization to exercise the supervisory function.

I hope this information has been helpful in answering your question. If I can be of further assistance, please let me know.

Sincerely,

Stephen D. Potts
Director