

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



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LEGAL ADVISORY

TO: Designated Agency Ethics Officials

FROM: David J. Apol
General Counsel

SUBJECT: Treatment of Gift Cards under the \$20 *De Minimis* Gift Exception

The U.S. Office of Government Ethics (OGE) has received several requests for guidance concerning the treatment of prepaid gift cards¹ under the provisions of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct) relating to gifts from outside sources. Specifically, 5 C.F.R. § 2635.204(a), which establishes a \$20 *de minimis* exception for otherwise prohibited gifts, disallows gifts of cash altogether, even at amounts that fall below the *de minimis* threshold. This Legal Advisory identifies the type of prepaid gift card that is considered to be a cash equivalent, and is therefore categorically prohibited under the *de minimis* exception, and the type of prepaid gift card that is not treated as a cash equivalent.²

The Standards of Conduct generally prohibit executive branch employees from soliciting or accepting a gift from a prohibited source or given because of the employee's official position. 5 C.F.R. § 2635.202(a). OGE carves out exceptions for certain gifts that would otherwise be impermissible under the general subpart B prohibition. These exceptions, which apply in situations with an inherently low potential for appearance problems, are narrowly tailored to further mitigate possible appearance concerns. *See* 57 Fed. Reg. 35006, 35012 (1992).

Under the *de minimis* exception for gifts of \$20 or less, employees are permitted to accept gifts valued at up to \$20, provided that the combined value of gifts received from any one source does not exceed \$50 in a calendar year. OGE specifies, however, that this *de minimis* exception “does not apply to gifts of cash or of investment interests such as stock, bonds, or certificates of deposit.” 5 C.F.R. § 2635.204(a). Prepaid gift cards, which transfer purchasing power to the recipient, raise the issue of whether they should be treated as cash equivalents. In analyzing various types of prepaid gift cards, OGE has determined that some cards function similarly to cash while other cards that are more restricted in their use do not.

¹ For the purposes of this Legal Advisory, the term “prepaid gift card” applies not only to physical gift cards and paper gift certificates, but also to any redemption code, application, or other technology of similar function.

² Although this Legal Advisory specifically addresses the *de minimis* exception at § 2635.204(a), the analysis of whether a gift card should be considered a cash equivalent can be applied to any of the provisions in subpart B (Gifts From Outside Sources) and subpart C (Gifts Between Employees).

What follows are common types of prepaid gift cards, with an analysis as to whether they may be accepted under the \$20 *de minimis* exception. As a preliminary matter, however, even if acceptance of a prepaid gift card might be permitted under this exception, OGE reminds executive branch employees that “it is never inappropriate and frequently prudent for an employee to decline a gift offered by a prohibited source or because of his official position.” 5 C.F.R. § 2635.204.

General-use prepaid cards may not be accepted under the \$20 de minimis exception, regardless of their value. One type of gift card is the general-use prepaid card. For purposes of this analysis, the most critical feature of these cards is that they can be redeemed at multiple, unaffiliated merchants or service providers. These cards generally bear the logo of a payment network, such as Visa, MasterCard, or American Express, and are accepted by any merchant that accepts those credit or debit cards as payment. They tend to function similarly to bank-issued debit cards, and in some cases, they can be used at automated teller machines (ATMs) to withdraw cash. General-use prepaid gift cards are treated as cash equivalents for purposes of the Standards of Conduct gift rules because they can be redeemed at multiple, unaffiliated merchants for virtually any good or service, rendering them functionally similar to cash. Therefore, although well below the \$20 threshold, a \$5 gift card branded with a payment network’s logo could not be accepted pursuant to the *de minimis* exception because it could be used wherever cards of that brand are accepted to purchase virtually any good or service.

Store gift cards may be accepted under the \$20 de minimis exception. The other type of gift card is the store gift card. These prepaid cards can be redeemed at one merchant or an affiliated group of merchants for goods or services. They do not allow the holder to withdraw cash from an ATM. Because their scope is fundamentally limited, store gift cards are not treated as cash equivalents. Therefore, a \$15 gift card for a national coffee chain could be accepted pursuant to the *de minimis* exception, as could a \$15 gift card that is redeemable at an affiliated group of restaurants or stores, provided that the employee does not accept gifts aggregating more than \$50 from the same source in a calendar year.

A mall gift card or a gift card for an online marketplace is considered to be a store gift card and may be accepted pursuant to the *de minimis* exception. OGE recognizes that many malls and online marketplaces stock tens of thousands of items, ranging from personal care products to apparel to electronics to groceries. However, in both of these cases, the universe of possible purchases is nevertheless limited to the products offered at that mall or online marketplace. Therefore, a \$10 gift card that can be used exclusively at a mall or online marketplace is not considered to be a cash equivalent and therefore could be accepted pursuant to the *de minimis* exception.

Gift cards that are cobranded with the logo of a payment network and the logo of a merchant or affiliated group of merchants are general-use prepaid cards, not store gift cards. Merchants may issue “cobranded” gift cards that bear not only their own logo, but also the logo of a payment network, such as Visa, MasterCard, or American Express, allowing the card to be used at any location that accepts cards of that brand. These cards often closely resemble store gift cards because they prominently identify the issuing merchant or group of merchants. However, because these cards can be used wherever credit or debit cards of the payment network’s brand are accepted, cobranded cards are general-use prepaid cards that are treated as cash equivalents.

OGE hopes that the above guidance is useful in helping to determine what types of prepaid gift cards are considered cash equivalents and therefore cannot be accepted under the *de minimis* exception. Agency ethics officials with questions about this advisory should contact their OGE Desk Officers.