

OFFICE OF GOVERNMENT ETHICS

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**Letter to the General Counsel of a
Federal Agency dated January 14, 1998**

This is in response to your memorandum dated December 23, 1997, in which you requested that the U.S. Office of Government Ethics (OGE) determine your public financial disclosure reporting obligations with respect to gifts given to you by your wife's employer. You also requested that this Office confirm your analysis of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct) as they relate to these gifts.

As we understand the relevant facts, you are the General Counsel of the [agency] and your wife is the Chief Executive Officer (CEO) of two subsidiaries of [a company]. In her capacity as CEO, she is frequently invited to parties, dinners, sporting events, and conferences, many of which involve travel. [The company] either pays your wife's expenses directly or reimburses her for her incurred costs. You indicate that spouses are often invited to these events and, in such instances, [the company] also pays for your attendance fees, tickets, and other travel-related expenses. Your memorandum provides examples of some of these events: a Christmas party at [a] Resort hosted by the Chairman of [the company] for senior executives; professional sports events in [the company's] suites in [a] Center and [a] Stadium; and the annual meeting of [a national] Association.

PROHIBITION ON THE RECEIPT OF GIFTS

With the assistance of the Ethics Officer at [the agency], you have determined that the Standards of Conduct prohibit neither your attendance at events such as those described above nor your acceptance of reimbursement by [the company] for expenses incurred in attending such events. We agree.

The Standards of Conduct prohibit an employee from soliciting or accepting any gift from a prohibited source or given because of the employee's official position. See 5 C.F.R. § 2635.201. A prohibited source is someone who: (1) seeks official action by the employee's agency; (2) does business with or seeks to do business with the employee's agency; (3) conducts activities regulated by the employee's agency; (4) has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or (5) is an organization a majority of whose members are described in (1) - (4), above. See 5 C.F.R. § 2635.203(d). Your agency has concluded that [the company] is not

a prohibited source as to [the agency]. OGE defers to the agency's determination with regard to this factual decision.

A gift is given because of an employee's official position if the donor would not have given the gift if the employee had not held a position with the Federal Government. See 5 C.F.R. § 2635.203(e). According to your memorandum, executives generally bring their spouses to the events to which you are invited. It seems reasonable for you to conclude that, since you and your wife receive these gifts solely because of her position with [the company], they are clearly not given because of your official position and, thus, do not constitute prohibited gifts under the Standards of Conduct.

Although it has been determined that [the company] is not a prohibited source for [the agency], at least one of the events you describe is sponsored by a nonprofit association. A separate conflict analysis will need to be performed by [the agency's] ethics office to ensure that this organization, and any other from which you receive a gift, is not a prohibited source.

We note that, even if the gifts described above are covered by the Standards of Conduct, based on the facts as you have described them, you would be able to accept them pursuant to an exception to the gift rules. An employee may accept meals, lodgings, transportation, and other benefits resulting from the business activities of the employee's spouse when it is clear that such benefits have not been offered or enhanced because of the employee's official position. See 5 C.F.R. § 2635.204(e)(1).

FINANCIAL DISCLOSURE REPORTING REQUIREMENTS

As the General Counsel and Designated Agency Ethics Official of [the agency], you are required to file a public financial disclosure report (SF 278). See 5 C.F.R. § 2634.202(c) and (g). Your memorandum asks how you should report the gifts that you and your wife receive from [the company] on your SF 278.¹ All gifts to an employee, received from any source other than a relative, aggregating \$250 or more must be reported on that individual's SF 278. See 5 U.S.C. app., § 102(a)(2)(A); 5 C.F.R. § 2634.304(a).² The filer is required to identify the source of

¹ The discussion that follows governs the reporting obligations for travel-related reimbursements as well as in-kind gifts. See 5 U.S.C. app., § 102(a)(2)(A) and (B); 5 C.F.R. § 2634.304(a) and (b).

² There are exceptions to this reporting requirement which, from the facts as you have stated them, do not apply here. Those exceptions include: food and beverages which are not consumed in
(continued...)

the gift, the value of the gift, and a brief description of the gift (including the travel itinerary, dates of travel, and nature of expenses provided). See 5 U.S.C. app., § 102(a)(2)(A); 5 C.F.R. § 2634.304(a). Gifts to the filer's spouse or dependent children must also be reported unless they are received totally independent of the relationship of the spouse or dependent child to the reporting individual. See 5 U.S.C. app., § 102(e)(1)(C); 5 C.F.R. § 2634.309(a)(2).

Thus, any gifts of travel, tickets, attendance fees, etc., with an aggregate value of \$250 or more given to you by [the company] must be disclosed on your SF 278. However, when aggregating such gifts, you may disregard those with an individual value of \$100 or less. See 5 U.S.C. app. § 102(a)(2)(A); 5 C.F.R. § 2634.304(a) and (d). For example, if you receive two gifts from [the company] and the fair market value of each is \$125, you must report both gifts because they are individually valued at more than \$100 and their aggregate value is \$250 or more. On the other hand, you need not report three individual gifts from the same source each valued at \$85.

If the exact value of a gift is neither known by you nor easily obtainable by you without undue hardship or expense, you need only make a good faith estimate of the gift's fair market value. See 5 U.S.C. app., § 109(19); 5 C.F.R. §§ 2634.105(t); 2634.304(e). You indicated that it is difficult for you to value your portion of the travel expenses because [the company] does not retain a separate accounting of your costs and your wife's costs. The regulations do not require that you obtain the exact price paid by the donor. For items readily available in the market (e.g., airline tickets), the value of the gift is its retail value. See 5 C.F.R. § 2634.304(e)(1). You may contact a retailer who sells a similar product to determine a gift's fair market value. See id.

From the facts you have provided us, meals, tickets, travel expenses, and similar gifts given to your wife by [the company] are given only because of your wife's relationship with [the company] and not because of her relationship to you. Since these gifts are received by your wife in her capacity as CEO of [the company], you could reasonably determine that they are received totally independent of her relationship to you. See 5 U.S.C. app., § 102(e)(1)(C); 5 C.F.R. § 2634.309(a)(2). Accordingly, your conclusion that you need not report such gifts to your wife from

²(...continued)
connection with a gift of overnight lodging; subscriptions to newspapers and periodicals by the employee's office; and food, lodging, or entertainment received as personal hospitality extended by an individual for a nonbusiness purpose. See 5 U.S.C. app., §§ 102(a)(2)(A) and 109(5)(D) and (E) and (14); 5 C.F.R. §§ 2634.105(h)(4) and (5); 2634.304(c); 2634.105(k).

[the company] seems reasonable based on the facts as you have stated them.

We hope that this information is helpful to you.

Sincerely,

Stephen D. Potts
Director