

NATIONAL GOVERNMENT ETHICS

# SUMMIT

MARCH 8-10 2016

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Proposed Gift Amendments &  
Gift Related Issues for the Transition

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# 2016 Proposed Subpart B Amendments

 74004

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**Proposed Rules**

Federal Register  
Vol. 80, No. 228  
Friday, November 27, 2015

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

**OFFICE OF GOVERNMENT ETHICS**  
5 CFR Part 2635  
RIN 3209-AA04  
**Standards of Ethical Conduct for Employees of the Executive Branch; Amendment to the Standards Governing Solicitation and Acceptance of Gifts From Outside Sources**  
AGENCY: Office of Government Ethics (OGE).

record and subject to public disclosure. Comments may be posted on OGE's Web site, [www.oge.gov](http://www.oge.gov). Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:**  
Christopher J. Swartz, Assistant Counsel, or Vincent J. Salamone, Associate Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917; Telephone: 202-482-9300; TTY: 800-877-8339; FAX: 202-482-9237.  
**SUPPLEMENTARY INFORMATION:**

**I. Background**  
On August 7, 1992, the U.S. Office of

and multiple in-person meetings. OGE has considered the input received from these agency ethics officials and has incorporated many of their comments and suggestions into the proposed rule.

**II. Regulatory Amendments to Subpart B**

*Technical Changes*  
OGE proposes amending the Table of Contents to subpart B of the Standards to conform to the proposed substantive amendments to subpart B, which are explained elsewhere in this document. OGE also proposes a number of general technical and non-substantive changes that would apply throughout subpart B to enhance clarity and readability and to remove gender-specific terms from the substantive regulatory text. OGE also proposes to replace the term "shall" as

- November 27, 2015
- 80 Fed. Reg. 74004-74018
- First Comprehensive Amendments since 1992

# Proposed Regulation: Timeline



**(1) Feb 2014:** OGE Begins Review of Subpart B (continues through Nov. 2015)

**(2) May 2014:** OGE Surveys Ethics Officials

**(3) Sep. 2014- Mar. 2015:** OGE Receives Agency Input on Draft

**(4) Feb. 2015:** OGE Holds In-Person Meetings with Ethics Officials

**(5) Mar. 2015- July 2015:** OGE Coordinates with OPM/DOJ

**(6) Aug. 2015- Nov. 2015:** OGE Coordinates with OMB + Agencies

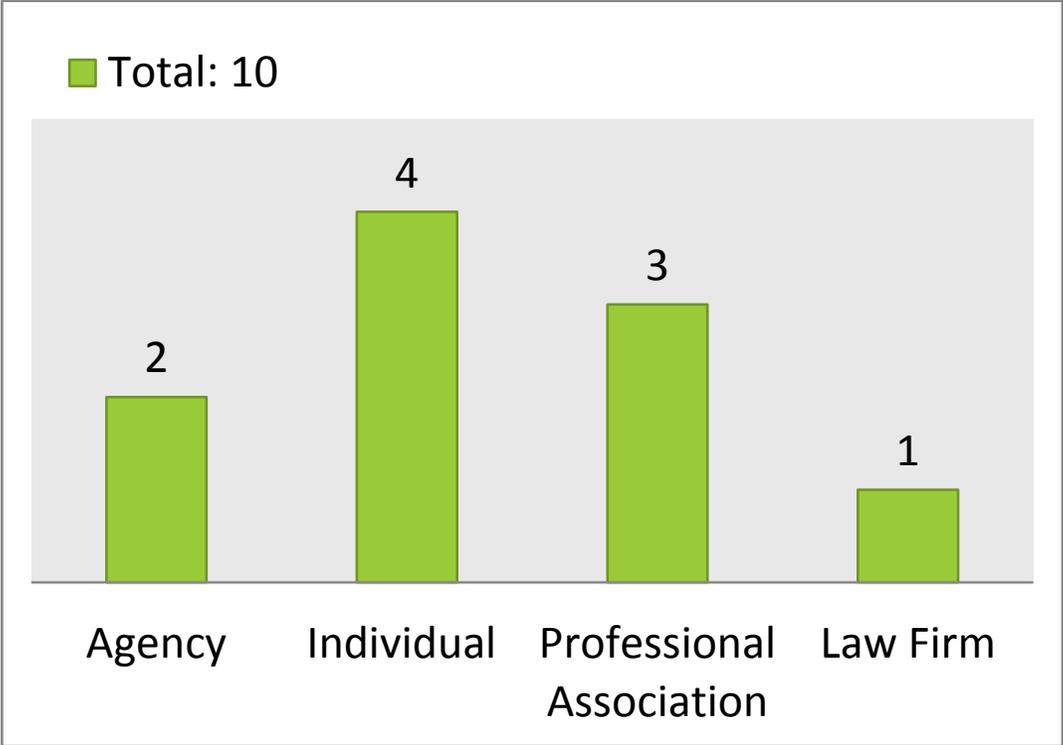
**(7) Nov 2015:** OGE Publishes Proposed Rule

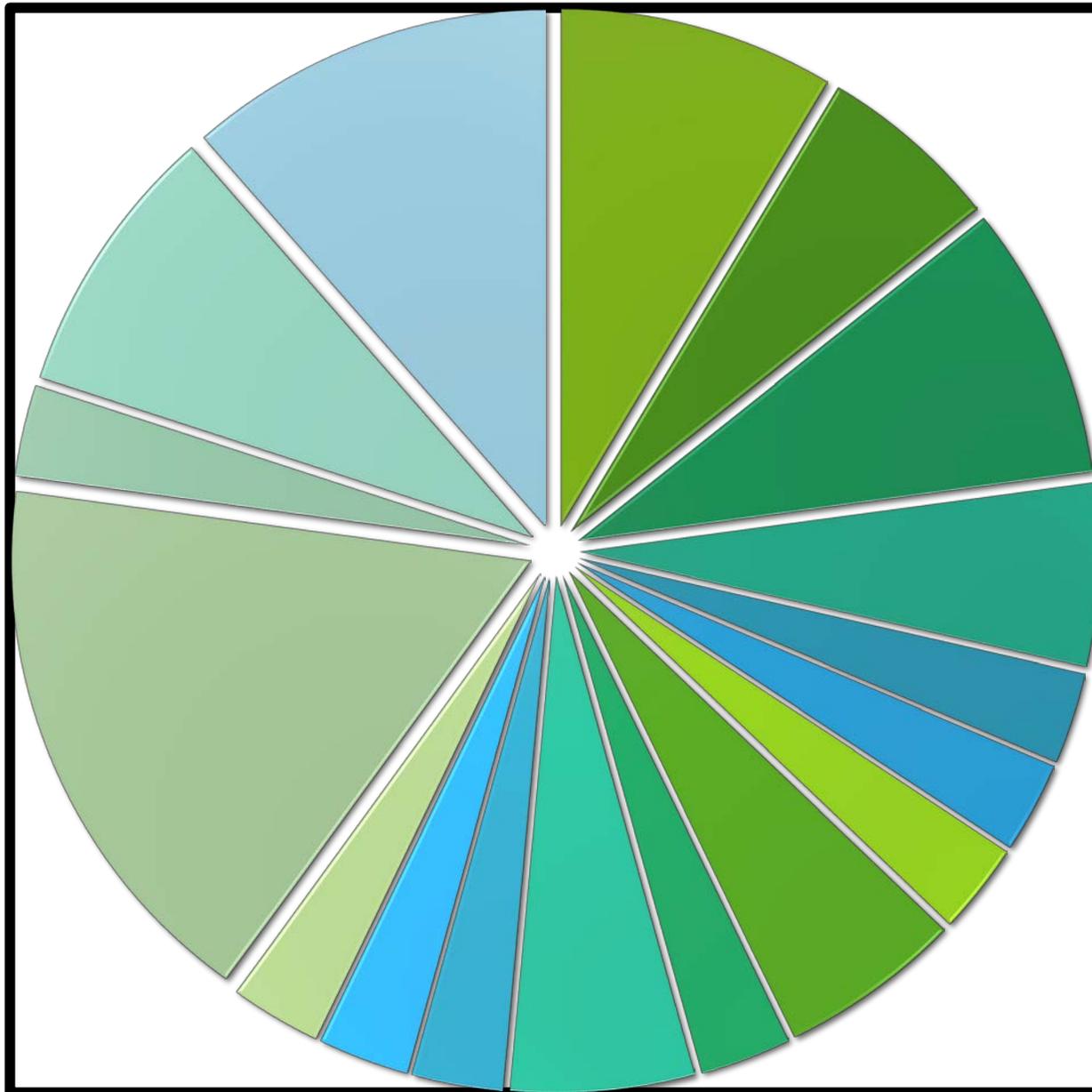
**(8) Jan. 2016:** Comment Period Closes

**(9) Spring-Summer 2016:** Anticipated Date of Final Rule Publications

# Proposed Regulation: Comments

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- Appearance Standard (3)
- De Minimis Rule (2)
- Alcohol as a Gift (3)
- Presentation Items (2)
- Rewards and Prizes (1)
- Frequent Flyer Programs (1)
- Free Attendance for Private Capacity Speeches (1)
- Market Value Definition (2)
- Relationship Between Gifts & Fundraising (1)
- Free Attendance for Official Capacity Speeches (2)
- Personal Relationship Exception (1)
- Foreign Emoluments (1)
- Former Employer Reunion Exception (1)
- WAG (6)
- Social Events (1)
- Informational Materials (3)
- Disposition of Gifts (4)

# Presidential Transition & Election Period

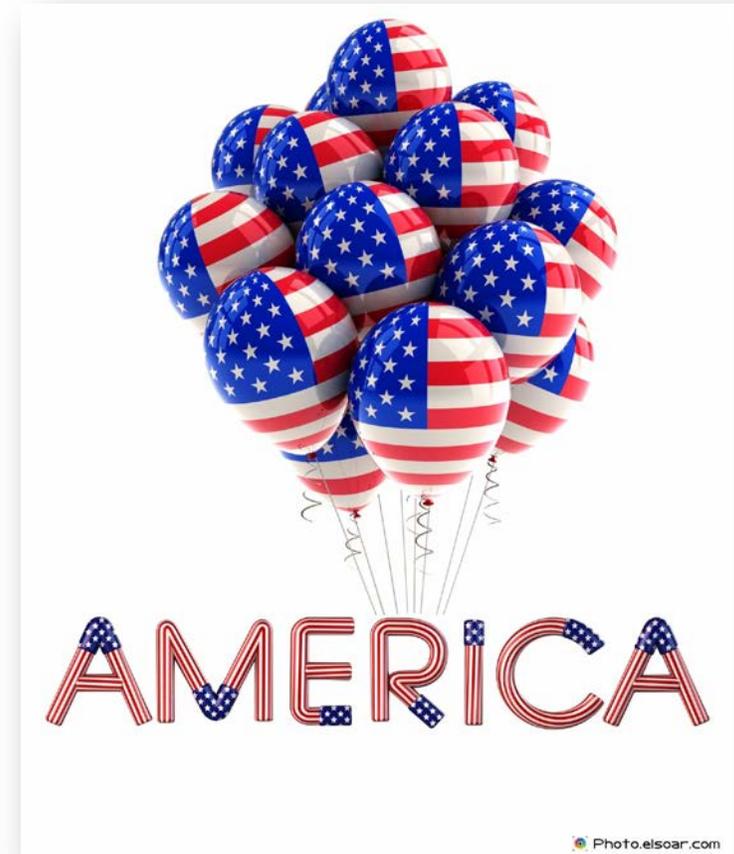
## Gift Topics



# Transition & Election Related Gifts

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- Hatch Act Exception, 5 C.F.R. 2635.204(f)
- Political Conventions & Associated Parties
- Inauguration Parties
- Gifts Between Employees & Transition Team Members
- Going Away Gifts To Outgoing Appointees
- Gifts To Pre-confirmation Nominees
- Gifts For New Appointees & Swearing-in Parties
- Reporting Politically-related Gifts (OGE Form 278/450)



# 5 C.F.R. 2635.204(f): “The Hatch Act Exception”

*(f) Gifts in connection with political activities permitted by the Hatch Act Reform Amendments. An employee who, in accordance with the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323, may take an active part in political management or in political campaigns, may accept meals, lodgings, transportation and other benefits, including free attendance at events, when provided, in connection with such active participation, by a political organization described in 26 U.S.C. 527(e). Any other employee, such as a security officer, whose official duties require him to accompany an employee to a political event may accept meals, free attendance and entertainment provided at the event by such an organization.*

*Example 1: The Secretary of the Department of Health and Human Services may accept an airline ticket and hotel accommodations furnished by the campaign committee of a candidate for the United States Senate in order to give a speech in support of the candidate.*

Provides a limited exception permitting the acceptance of otherwise prohibited gifts from outside sources if:

- The employee may take an active part in political management or political campaigns. See 5 C.F.R. 734.201-208.
- The gift is given in connection with active participation in the political management or in a political campaign
- The gift is provided by a 527(e) organization

# What is a 527(e) “political organization”?

## Examples of 527(e) organizations:

- National Political Party Committees
- State & Local Party committees
- Authorized Candidate Committees
- Political Action Committees
- Nonconnected Committees (e.g. Leadership PACs)
- Some Corporate or Labor Separate Segregated Funds (SSFs) (if 527)

## Examples of Non-527(e) organizations:

- 501(c)(3) Charitable Organizations
- 501(c)(4) Social Welfare Organizations
- For-profit Law firms & Consulting agencies
- Other organizations and individuals affiliated with, but not agents or entities of, a 527(e)

**Hint: Check the IRS Website for Form 8871 Filings!**

# E.O.13490 & The Hatch Act Exception

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Full-time, non-career appointees in the Executive Branch must pledge to: “not accept gifts from registered lobbyists or lobbying organizations.”

Some exceptions available; not 5 C.F.R.2635.204(f).

Thus, If:

- Gift is from a registered lobbying organization, or
- Person offering the gift is a registered lobbyist

Pledge signer would not be able to accept.

See e.g., OGE DO-09-007; OGE LA-12-10

Executive Order 13490 of January 21, 2009

## Ethics Commitments by Executive Branch Personnel

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

**Section 1. Ethics Pledge.** Every appointee in every executive agency appointed on or after January 20, 2009, shall sign, and upon signing shall be contractually committed to, the following pledge upon becoming an appointee:

“As a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

“1. *Lobbyist Gift Ban.* I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

# Scenario: Hatch Act Exception (1)

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- **Mindy is a GS-12 analyst with the Department of Labor. She is a less restricted employee and can therefore participate in political organizations. On the weekends during election season she travels to various states to help her party drum up support for a particular candidate. Occasionally a state party organization will offer her and others with free lodging while they are in-town with a candidate. Can she accept the offer of lodging?**
- **What if Mindy was a Schedule C, full-time political appointee and the person providing Mindy with the gift was a registered lobbyist?**

# Scenario: Hatch Act Exception (2)

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**Let's change the facts slightly:**

- **Occasionally while Mindy is in town she will be asked to attend dinners with representatives of organizations that are considering endorsing the candidate that Mindy favors. Mindy does not engage in fundraising during these dinners.**
- **Generally Mindy pays for these dinners out of her own funds, however, last weekend she went to a dinner with the head of an influential labor organization who offered to pick up her tab of \$50.**
- **The Department of Labor has interfaced with the labor organization in the past, and is likely to do so in the future, but the labor organization has no matters currently before Mindy's "employing office." Can she accept?**

# Political Conventions & Associated Parties

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## Major Party Political Conventions

### Typically Held Outside of D.C.

- Volunteers may be able to rely on the Hatch Act exception for transportation, lodging, food, etc.
- Not from 527(e)? Can't use Exception

### Expect Numerous D.C. Parties

- Held by 527(e)?
- Privately Sponsored?
- Who Pays?



# Inauguration Events

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## Presidential Inaugural Committee (PIC):

- Because of its *sui generis* nature, gifts from the PIC are not prohibited under Subpart B. *See* DO-09-001.

## 527(e) Political Organizations:

- May qualify under Hatch Act exception

## Other Sources/Privately Sponsored:

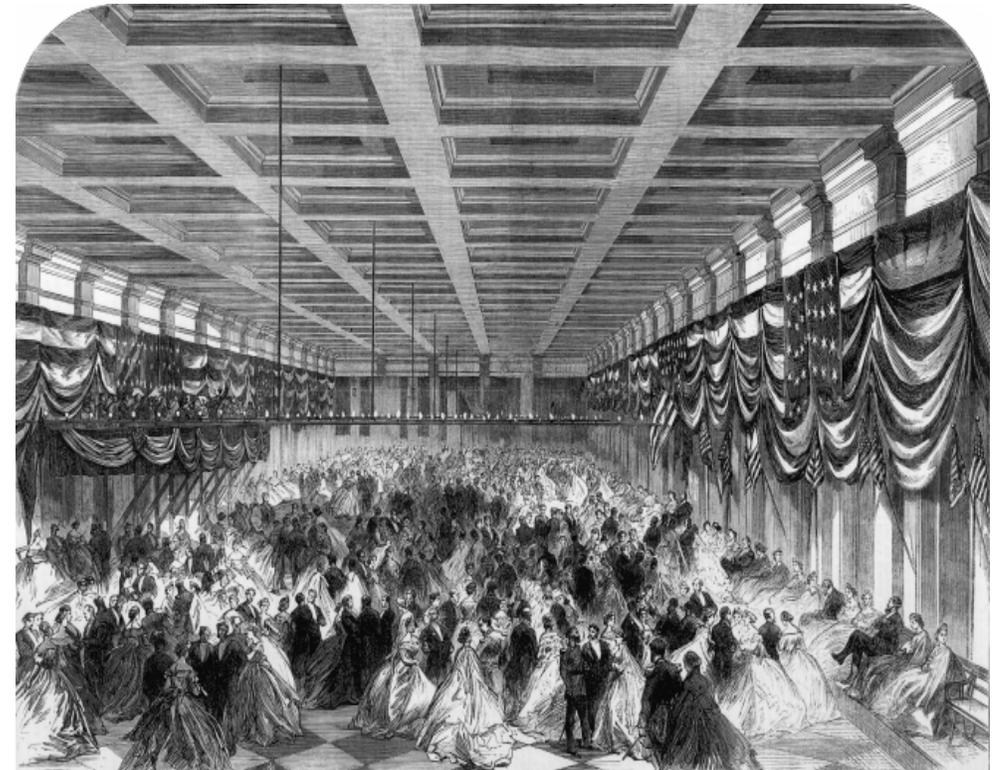
- Is it a gift?
- If so, is the gift prohibited?
- If so, is there an exception?

# Inauguration Events, Cont.

## Possible Exceptions

- Gifts of \$20 or less: Note that any events for which there are tickets are to be valued according to the face value on the ticket.\*
- Gifts that are clearly motivated by a family relationship or personal friendship.
- Gifts offered by political organizations if in connection with their political participation.\*
- Widely attended gatherings if in agency interest. Review OGE 07 x 14 regarding Social Events first.\*

*See also* OGE LA-12-10.



\*Not available to Pledge signers if from registered lobbyist or lobbying organization

# Scenario: Inaugural Events

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- **Cesar works at HUD in a supervisory position. Cesar is not a more restricted employee. During the election period, he frequently attended fundraisers in the D.C. Metro area for his favorite candidate, who was eventually elected to be the President. Cesar is not involved in the transition, but is very excited that the candidate won the election.**
- **Three days before the inauguration, he receives a phone call from a local real estate management company, offering him two tickets to attend an inauguration party. Can he accept?**
- **Let's say that instead of a local real estate management company, it was the 527(e) organization that he was affiliated with, which wants to reward volunteers for their hard work on the campaign by offering them free attendance at an unofficial event thrown by the political organization? What if they want to provide Cesar with tickets to the official inaugural ball?**

# Gifts to and from Transition Team Members

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Transition team not part of Gov't, typically established as non-profit 501(c)(4).

Members of the transition team are generally not executive branch employees, unless on detail.

They may be volunteers from outside the Government, Congressional employees, state employees, or campaign workers.

**Must analyze gifts under Subpart B.**



# Gifts to and from Transition Team Members

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- Transition Team will likely have a code of conduct.
- Highly encouraged: See ACUS Recommendation 88-1 (1988).
- Typically Code will impose limitations on transition team members from accepting bribe-like gifts
- Some members may also be subject to Congressional or State rules!

## ***Obama-Biden Transition Team Code of Ethical Conduct***

4. I will not solicit or accept any money or things of value in exchange for a promise to influence in any way the Transition Project operations or decision-making, including to support or use influence on behalf of any person who is a candidate for any appointive office or place in the United States Government.

## ***Bush-Cheney Transition Team Code of Ethical Conduct***

2. I will not solicit or accept any money or things of value in exchange for a promise to support or use influence on behalf of any person who is a candidate for any appointive office or place in the United States Government.

# Gifts to and from Transition Team Members, Cont.

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- Obama-Biden Transition also limited circumstances in which transition team members could accept gifts in similar fashion to the Standards of Ethical Conduct

- PTT members may not accept any gifts of any value from federally-registered lobbyists.
- Pursuant to Paragraph 12 of the Transition Code of Ethical Conduct, no PTT member will accept a gift with a value of over \$20 from a) anyone who is seeking a job with the federal government; b) a federal employee in any agency or department within the scope of their Transition responsibilities; c) any person or organization that conducts activities regulated by or has a matter pending before an agency or department within the scope of their Transition responsibilities; or d) any person or organization under circumstances where it may reasonable appear that the gift is being given in order to influence their decisions, advice, or recommendations or actions.
- The Code does not bar gifts from family members or close personal friends to PTT members if a prior relationship and history of gift giving establish that the gift is not intended unduly to influence the recipient.

# Scenario: Transition Team Members

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- **Sam is a career official with the Department of the Navy who is also the senior transition coordinator for his agency.**
- **During the transition period he is tasked with interfacing with the defense “parachute” team from the transition, and does so on a daily basis. The transition contact he works with volunteers with the transition, but works with a major defense contractor full-time.**
- **Sam and the transition contact met for the first time at the first meeting between the Department and the transition team.**
- **Following a tabletop exercise held at Navy offices, the transition contact offers to take Sam out to watch a basketball game at the Verizon center.**
- **Tickets cost \$70 each. Can he accept?**

# Going Away Gifts to Outgoing Appointees

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Subpart C of the Standards of Ethical Conduct, “Gifts Between Employees” will continue to apply to gifts given to outgoing appointees until they terminate Government service.

**Generally, employees may *not*:**

- Give gifts to an official superior, or
- Solicit other employees for contributions to a gift for an official superior

**Exceptions:**

- Gifts ***appropriate to the occasion*** upon termination of the superior-subordinate relationship
- May solicit ***voluntary contributions*** of ***nominal value*** for appropriate gifts to superior terminating

# Scenario: **Outgoing Appointees**

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- **Naomi works at the Department of Health and Human Services. She entered into Government service in 2010, and has worked under the same supervisor, Antonia, since she began. Antonia has decided to leave after the transition to seek employment in the private sector. Naomi would like to buy Antonia a gift. Which of the three gifts below would be most appropriate?**
  - **A three-day resort vacation at a well-known resort located in southern Florida?**
  - **A \$700 dollar bottle of champagne, purchased solely by Naomi?**
  - **A \$50 day-spa gift certificate to a local masseuse?**

# Gifts to and from Pre-Confirmation Nominees

Nominees may have lag time between nomination and appointment.

- If not in a Federal position during pendency=  
Gifts analyzed under Subpart B
- If in a Federal position during pendency=  
Gifts analyzed under Subpart C

Provided OPM criteria are met, expert and consultant appointments (5 U.S.C. 3109) may be used for:

- Individuals who have been nominated by the President, but not yet confirmed
- Individuals whose permanent excepted appointments are in process.



Average days between nomination and confirmation of appointees nominated during first year:

- President Obama (60.8)
- President Bush (57.9)
- President Clinton (48.9)

# Scenario: Pre-Confirmation Nominees

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- **Arun is a career SES with the Department of Energy.**
- **Recently, the new President nominated Sally to be Director for the Office of Science, a position requiring Senate confirmation.**
- **Sally and Arun went to college together, but haven't spoken for many years.**
- **Sally is expected to be confirmed quickly, but until she is confirmed the Department of Energy has determined that she meets the criteria of an expert under 5 U.S.C. § 3109, and has contracted for her to encumber a temporary position with the Office of Science.**
- **Arun would like to take Sally out to celebrate her nomination. Can he?**

# Gifts to New Appointees & Swearing-In Parties

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Subpart C will apply to incoming appointees at the time they enter upon the duties of their office (i.e. time they begin to accrue their salary). 26 O.L.C. Op. 32 (2002)

Because *not* a termination of superior-subordinate relationship, only:

- Non-cash gift of \$10 or less
- Items, such as food, shared among employees

Sometimes agency wants to throw party:

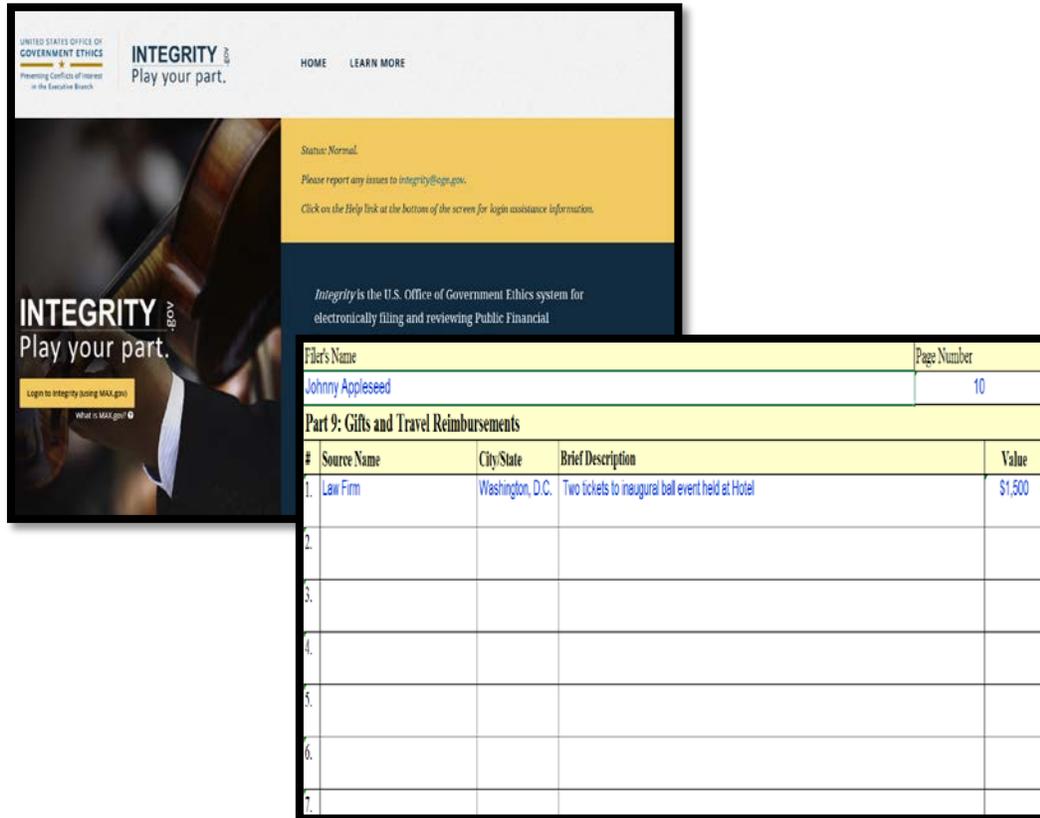
- Appropriations (normally can't use appropriations for free food and entertainment in duty station)

Sometimes former employer wants to provide funds:

- Appropriations (agency gift acceptance)
- 2635 Subpart B



# Reporting Gifts: OGE Form 278e & 450



The screenshot shows the OGE Integrity system interface. At the top, it says "UNITED STATES OFFICE OF GOVERNMENT ETHICS" and "INTEGRITY.gov Play your part." with navigation links for "HOME" and "LEARN MORE". Below this, there is a yellow banner with the text "Status: Normal." and instructions to report issues to integrity@oge.gov. A blue banner below that states "Integrity is the U.S. Office of Government Ethics system for electronically filing and reviewing Public Financial".

The main content area shows a table for "Part 9: Gifts and Travel Reimbursements". The table has columns for "#", "Source Name", "City/State", "Brief Description", and "Value". The first row is filled with the following data:

Filer's Name	Page Number			
Johnny Appleseed	10			
Part 9: Gifts and Travel Reimbursements				
#	Source Name	City/State	Brief Description	Value
1.	Law Firm	Washington, D.C.	Two tickets to inaugural ball event held at Hotel	\$1,500
2.				
3.				
4.				
5.				
6.				
7.				

278e & 450 Filers:

Received a gift over the threshold? **REPORT!**  
(\$375 per source, not including gifts \$150 or less)

## U.S. v. Joseph McCloskey

- Filer didn't report gifts from CEO of prohibited source, including tickets to inaugural event, on his OGE Form 450
- Charged with violating 18 U.S.C. 1018 (false certification) & sentenced to 12 months probation, and a \$1,000 fine.

See OGE LA-11-08

THANK YOU

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