

**OFFICE OF PERSONNEL MANAGEMENT
OFFICE OF GOVERNMENT ETHICS**

**AGENCIES: Office of Government Ethics and Office
of Personnel Management**

5 CFR Parts 735 and 2635

**Employee Responsibilities and Conduct; New Office
of Government Ethics Regulation Preserving Certain
Executive Agency Gifts Regulations**

**RIN 3209 - AA01 (formerly 3206 - AA93),
3909 - AA04 (formly 3206 - AD90)**

54 FR 53310

Friday, December 28, 1989

ACTION: Final rule.

SUMMARY: The Office of Government Ethics (OGE), with concurrence of the Office of Personnel Management (OPM), is issuing a final rule under 5 U.S.C. 7351 and 7353, as amended and enacted, respectively, by the Ethics Reform Act of 1989 (Pub. L. 101-194). The new OGE regulation, 5 CFR 2635.101, preserves existing executive branch agency regulations promulgated under 5 CFR 735.202 (Gifts, entertainment, and favors), including exceptions to the regular gifts restrictions. Section 2635.101 and the agency regulations referred to will remain in effect until superseded by revised overall standards of conduct for the executive branch to be issued by the Office of Government Ethics. In the meantime, no such new or revised executive agency gifts regulations will be permitted.

EFFECTIVE DATE: November 30, 1989.

ADDRESSES: Any comments on this document may be sent to: the Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917, Attention: Ms. Wilcox or Mr. Gressman; as well as the Office of General Counsel, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Mr. Rick.

FOR FURTHER INFORMATION CONTACT: Leslie A. Wilcox or William E. Gressman, Office of Government Ethics, telephone (202/FTS) 523-5757; or Stuart D. Rick, Office of the General Counsel, Office of Personnel Management, telephone (202/FTS) 632-5030.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion

On October 1, 1989, in accordance with its 1988 reauthorization legislation (Pub. L. 100-598), the Office of Government Ethics became a separate agency in the executive branch of the United States government. See 5 U.S.C. appendix IV, @ 401. OGE was formerly part of OPM. OGE recently established its own chapter XVI of title 5 of the CFR as assigned by the Office of the Federal Register. Furthermore, with the concurrence of the Office of Personnel Management, OGE also transferred and redesignated to its new 5 CFR chapter certain government ethics regulations from OPM's chapter I of 5 CFR (parts 734, 737 and 738 of 5 CFR have become 5 CFR parts 2634, 2637 and 2638, respectively). See 54 FR 50229-50231 (December 5, 1989).

In this document, the Office of Government Ethics, again with the concurrence of OPM, is issuing a regulation preserving the validity of certain executive branch agency gifts regulations. This is needed as a result of the enactment of the Ethics Reform Act of 1989, Public Law 101-194 (November 30, 1989), a comprehensive revision of various government ethics laws and other provisions.

Among other things, the Ethics Reform Act amended, effective upon enactment, the statute generally prohibiting gifts to official superiors, 5 U.S.C. 7351. The amendments change the penalty for

violation from removal to appropriate disciplinary action, and give the Office of Government Ethics authority to issue implementing regulations, including appropriate exceptions for voluntary gifts on special occasions. See section 301 of the Ethics Reform Act. Regulations implementing 5 U.S.C. 7351 for the executive branch in effect prior to the effective date of the amendment are set forth at 5 CFR 735.202(d) of OPM's chapter I of 5 CFR and in the various implementing executive agency gifts regulations, as previously issued under Executive Order 11222. Although E.O. 11222 was revoked by Executive Order 12674, April 12, 1989 (54 FR 15159-15162), the regulations at 5 CFR 735.202, along with the other executive branch government ethics regulations, remain in effect pursuant to the general savings provision in section 502 of E.O. 12674. The new OGE regulation 5 CFR 2635.101, being issued with the concurrence of OPM, provides for the continuing effectiveness of 5 CFR 735.202(d) and the current executive agency regulations issued pursuant thereto or based thereon.

The Ethics Reform Act also added a new statutory prohibition, 5 U.S.C. 7353, effective upon enactment, against federal employee's solicitation or acceptance of gifts from certain persons involved with their agencies, who are often referred to as "prohibited sources." For the executive branch, section 7353 in effect codifies current regulatory gift constraints applicable to agency employees. The new law generally prohibits gifts from persons seeking official action from, having business with or conducting activities regulated by an officer's or employee's agency, as well as from those with interests that could be substantially affected by the official duties of the officer or employee. The statute (section 303 of the Reform Act) designates OGE as the supervising ethics office for all executive branch officers and employees. As such, OGE is authorized to issue implementing regulations, with reasonable exceptions, for the executive branch. In new regulation 5 CFR 2635.101, OGE preserves, again with OPM concurrence, the gifts restrictions and exceptions currently contained in 5 CFR 735.202 and the executive agency regulations issued pursuant thereto or based thereon.

Because of the pending issuance by OGE of the new overall standards of conduct regulation, new OGE section 2635.101 further states that executive agencies may not issue or amend their existing gifts regulations issued under 5 CFR 735.202. Section 2635.101 shall remain in effect until superseded by more detailed OGE regulations implementing 5 U.S.C. 7351 and 7353, which will be part of the forthcoming overall standards of conduct regulations

for the executive branch. The overall standards regulation, the "Principles of Ethical Conduct" to be codified at 5 CFR part 2635, will be issued by the Government Ethics Office pursuant to its authority under Executive Order 12674, the Ethics in Government Act and the Ethics Reform Act of 1989.

B. Procedural Matters

Administrative Procedure Act

This regulation solely concerns matters of federal agency organization and procedure; thus, it is not subject to the notice and opportunity for public comment requirements of the Administrative Procedure Act, 5 U.S.C. 553. Moreover, Office of Government Ethics and the Office of Personnel Management find that it is in the public interest that this new OGE regulation become effective retroactively to the date of signature of the new gifts provisions into law, November 30, 1989. This is needed in order to avoid any potential for violations by executive branch officers and employees of the two types of gifts constraints discussed above that otherwise would appear to be absolute under the Ethics Reform Act in the absence of a regulation continuing the validity of existing exceptions. OGE and OPM additionally believe that there is good cause to waive the notice and comment requirements because the passage of the new law has not allowed time for the normal development of new regulations and it is important to preserve the existing gifts regulations for the guidance of executive agencies and their officers and employees.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this regulation and because it will not have a significant economic impact on a substantial number of small entities, no Regulatory Flexibility Act (5 U.S.C. 601 et seq.) analysis is required.

E.O. 12291

The Office of Government Ethics has determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation Requirements.

Paperwork Reduction Act

This regulation does not impose any additional information collection requirements requiring Office of Management and Budget approval under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) (none are directly contained in the new rule itself).

Regulation Identifier Numbers

The Regulation Identifier Numbers (RIN's) in the heading of this document indicate the old OPM numbers concerning two proposed modifications to part 735 in OPM's chapter I of 5 CFR. See the most recent Unified Agenda of the agencies as published in the Federal Register of October 30, 1989 (54 FR 45432, 45437). The first RIN, old OPM number 3206-AA93, which has been assigned new OGE RIN 3209-AA01 (3209 being OGE's agency code assigned by the Office of Management and Budget), does not directly address this new regulation. Rather, it refers to future non-public reporting regulations to be issued by OGE for the executive branch. See new part 2633 (Reserved) in OGE's recently established chapter XVI of 5 CFR. The second prior OPM RIN, 3206-AD90, now assigned OGE RIN 3209-AA04, refers to the overall standards of conduct regulation for the executive branch, the forthcoming Principles of Ethical Conduct to be issued by OGE under E.O. 12674 and other authorities. As noted above, this regulation, to be codified in the future at 5 CFR part 2635, will supersede the new @ 2635.101 of 5 CFR being issued by this document as well as various portions of current 5 CFR part 735.

List of Subjects in 5 CFR Part 2635

Conflict of interests, Government employees.

Approved: December 11, 1989.

F. Gary Davis,
General Counsel, Office of Government Ethics.

Approved: December 14, 1989.

Constance B. Newman,
Director, Office of Personnel Management.

For the reasons set out in the preamble and under authority given to the Office of Government Ethics in 5 U.S.C. 7351 and 7353

(as amended and added, respectively, by the Ethics Reform Act of 1989) as well as its authority in Executive Order 12674 and the Ethics in Government Act, the Office of Government Ethics hereby adds the text of 5 CFR part 2635, previously reserved, and the authority citation for part 2635 to read as follows:

PART 2635 -- PRINCIPLES OF ETHICAL CONDUCT

Authority: 5 U.S.C. 7351, 7353, appendixes III, IV; E.O. 12674, 54 FR 15159.

@ 2635.101 Continuation of executive agency gifts regulations, including exceptions.

Existing executive branch agency gifts regulations issued pursuant to or based on 5 CFR 735.202, including exceptions to restrictions governing gifts to official superiors and to the gift restrictions regarding prohibited sources imposed by Executive order, shall remain in effect until superseded by further regulations to be issued by the Office of Government Ethics pursuant to 5 U.S.C. 7351 and 7353 (as amended and added, respectively, by the Ethics Reform Act of 1989, Public Law 101-194 (November 30, 1989)), as well as Executive Order 12674 and the Ethics in Government Act. Provided, however, that executive agencies may not issue or amend their existing gifts regulations issued under 5 CFR 735.202 subsequent to November 30, 1989.