

CRS Report for Congress

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Gifts to the President of the United States

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Summary

This report addresses inquiries from congressional offices for information on the federal statutes, regulations and guidelines concerning restrictions on the acceptance of personal gifts by the President of the United States. While the President, like any other officer or employee of the Federal Government, is prohibited from receiving personal gifts from foreign governments and from official foreign interests without the consent of Congress, he is generally free to accept personal gifts from the American public. Most of the regulatory restrictions on the acceptance of gifts by federal officials from so-called “prohibited sources” are *not* applicable to the President of the United States, although the President may not *solicit* gifts from such sources. The President, in any event, may receive gifts that are given on the basis of personal friendship. When personal gifts accepted by the President or his family exceed a certain amount, those gifts are required to be publicly disclosed in financial disclosure reports filed by the President. The President remains subject to the bribery and illegal gratuities law which prohibits the receipt of a gift or of anything of value when that receipt, or agreement to receive, is connected to the performance (or nonperformance) of an official act.

While federal laws have long prohibited *corrupt* payments to federal officials, such as those in the form of “bribes” from favor-seekers in the private sector,¹ the regulation and limitation on mere “gifts” to federal officials from domestic sources – where there is not necessarily any bargain (reciprocity), compensation or favor explicitly sought, understood or agreed to – are of a more recent vintage.² The ethical issues and problems

¹ Bribery is one of the express crimes constituting grounds for impeachment of the President, Vice President, and all civil officers of the United States, originally stated within the Constitution, Article II, Section 4. The first federal statutes on bribery began with the 1st Congress in 1789 and 1790, 1 Stat. 46, July 31, 1789 (custom officials); 1 Stat. 117, April 30, 1790 (federal judges). See discussion generally in Noonan, *Bribes*, 427 - 435 (MacMillan 1984).

² Regulation of gifts before the 1960's was sporadic within the individual agencies of the Government in their internal regulations. See, The Association of the Bar of the City of New York, *Conflict of Interest and Federal Service*, 72 - 83 (Harvard University Press 1960). A

(continued...)

of gifts to public officials may arise because of the tacit or subtle influence or feelings of gratitude and appreciation that a public official may feel towards his or her benefactors that might “sway his decisions” and erode the official’s “sense of mission to the public” in favor of loyalty to “his private benefactors and patrons.”³ This concern, of course, must be balanced to some extent with the normal, expected and innocent expressions of gratitude from the public, the realities of friendships and personal relationships, as well as the requirements of protocol and etiquette in an officer’s official and ceremonial duties and functions. With respect to the President, the exigencies of the office and considerations of protocol, courtesy and etiquette, have led to an express exemption from the general limitation on the acceptance of private gifts which might apply to other officers and employees in the executive branch of the United States Government.⁴

General Gift Limitations in Federal Law

The current restriction under federal statutory law on the receipt or solicitation of “gifts” by federal employees and officials was enacted as part of the Ethics Reform Act of 1989.⁵ The underlying *statutory* restriction enacted in 1989, in many respects merely codified similar gift standards which had been applicable to executive branch employees by way of executive orders and regulations since 1965.⁶ The current law, codified at 5 U.S.C. § 7353(a), prohibits any federal officer or employee from soliciting or receiving any gift of any amount from a prohibited source, that is, from someone who is seeking action from, doing business with, or is regulated by one’s agency, or whose interests may be substantially affected by the performance or nonperformance of one’s official duties:

5 U.S.C. § 7353.

(a) Except as permitted by subsection (b), no Member of Congress, or officer or employee of the executive, legislative or judicial branch shall solicit or accept anything of value from a person –

(1) seeking official action from, doing business with, or (in the case of executive branch offices or employees) conducting activities regulated by, the individual’s employing entity; or

² (...continued)

Government-wide rule on gifts was promulgated in 1965 by President Johnson in Executive Order 11222, superseded by E.O. 12674, April 12, 1989 (President Bush), and modified by E.O. 12731. The current gifts law was adopted in the Ethics Reform Act of 1989 (P.L. 101-194, November 30, 1989). Gifts from foreign governments have been banned, however, since the adoption of the Constitution (Art. I, Sec. 9, cl.8).

³ Senator Paul H. Douglas, *Ethics in Government*, 44, 49 (Harvard University Press 1952).

⁴ In most cases, gifts to the First Lady would be “imputed” to the President, and would thus come within the same kinds of restrictions, limitations or permissions on gifts to the President himself. The OGE regulations apply to gifts accepted or solicited directly or indirectly, and provide that a gift which is “solicited or accepted indirectly includes” gifts which are “[g]iven with the employee’s knowledge and acquiescence to his parent, sibling, spouse, child or dependant relative because of that persons’s relationship to the employee” 5 C.F.R. § 2635.203(f)(1).

⁵ P.L. 101-194, November 30, 1989.

⁶ See Executive Order No. 11222, Section 201, May 8, 1965 (now superseded by E.O. 12674, April 12, 1989), and former regulations, 30 F.R. 12529, October 1, 1965, 5 C.F.R. §735.202.

(2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.

The statute expressly provides, however, that the designated supervisory ethics agencies in the Government may make exceptions to this general restriction, and may issue regulations setting out circumstances under which gifts may be accepted.⁷ Thus, the Rules of the Senate as interpreted by the Senate Select Committee on Ethics operate as the regulations and exceptions under the gift law for Senators and Senate employees; the Rules of the House and the interpretations of the House Committee on Standards of Official Conduct operate as the regulations and exceptions for Members and employees of the House; and in the executive branch, it is the regulations and interpretations of the Office of Government Ethics which apply to executive branch officials.

Executive Regulations on Acceptance of Gifts

The regulations of the Office of Government Ethics [OGE] set out the guidelines and standards for receipt of gifts by officials in the executive branch of Government.⁸ The executive branch gift regulations generally follow the statutory prohibitions which restrict the solicitation or acceptance of gifts by executive branch employees from a "prohibited source," *and* further restrict the solicitation or receipt of any gifts that are given "because of the employee's official position."⁹ The regulations at 5 C.F.R. § 2635.202, state:

5 C.F.R. § 2635.202

(a) *General prohibitions.* Except as provided in this subpart, an employee shall not, directly or indirectly, solicit or accept a gift:

- (1) From a prohibited source; or
- (2) Given because of an employee's official position.

"Prohibited sources" under the regulations are persons seeking official action from the employee's agency, those who do business or are seeking to do business with the agency, those whose activities are regulated by the employee's agency, persons whose interests may be substantially affected by the performance of the employee's official duties, or an organization a majority of whose members fit the above categories.¹⁰ While an official may not receive a gift given because of his official position,¹¹ an executive branch official may accept a gift without limitation when it is clear that the gift "is motivated by a family relationship or personal friendship rather than the position of the employee."¹²

⁷ See 5 U.S.C. § 7353(b).

⁸ 5 C.F.R. §§ 2635.201 *et seq.*

⁹ 5 C.F.R. § 2635.202.

¹⁰ 5 C.F.R. § 2635.203(d).

¹¹ A gift is given because of one's official position if it would not have been given "had the employee not held the status, authority or duties associated with his Federal position." 5 C.F.R. § 2635.203(e).

¹² 5 C.F.R. § 2635.204(b). There are numerous general exceptions to the gift restriction for executive officials within the OGE regulations, such as, for gifts of minimal value (under \$20), incidental food or drinks at events, *bona fide* awards, normal loans, prizes, honorary degrees,

Presidential Exemption

As noted, the President and Vice President are generally exempt by regulation from the statutory gift restrictions and the regulations promulgated by the Office of Government Ethics as to the receipt of gifts.¹³ Under these regulations, the President is expressly exempt from the broad restrictions on receiving or accepting gifts from prohibited sources or gifts given because of his official position, and thus may accept gifts from the general public, even from “prohibited sources” or gifts given because of his official position, as long as the President does not “solicit or coerce” the offering of gifts from such sources,¹⁴ nor accept a gift in return for an official act.¹⁵ The exception for the President and Vice President in the OGE regulations states:

Because of the considerations relating to the conduct of their offices, including those of protocol or etiquette, the President and the Vice President may accept any gift on his own behalf or on behalf of any family member, provided that such acceptance does not violate § 2635.202(c)(1) or (2), 18 U.S.C. § 201(b) or 201(c)(3), or the Constitution of the United States.¹⁶

In promulgating its rules and exceptions, the Office of Government Ethics has noted that: “The ceremonial and other public duties of the President and Vice President make it impractical to subject them to standards that require an analysis of every gift offered.”¹⁷

The regulations and the exemptions indicate that the President is still subject to the prohibition on receiving a gift “in return for being influenced in the performance of an official act,”¹⁸ and is still subject to the instruction not to “solicit or coerce the offering of a gift” under 5 C.F.R. § 2635.202(c)(2). It appears that the continued restriction on *solicitation* in § 2635.202(c)(2) would reach only solicitations of gifts restricted by the general rule, that is, from a “prohibited source,” or concerning gifts given “because of the employee’s official position.”¹⁹ If the § 2635.202(c)(2) caveat to the exemption extended to solicitations of gifts from *any* source, even gifts from those who are not prohibited sources, then what was intended merely to be a limitation on an exemption from the

¹² (...continued)

pensions, generally available discounts, and attendance at certain widely attended conferences and like events which may benefit the agency. 5 C.F.R. §§ 2635.203(b)(1)-(9); 2635.204.

¹³ 5 C.F.R. §2635.204(j); *note* 57 F.R. 35049, August 7, 1992. The President was also exempt from the standards of conduct promulgated in 1965, *note* OGE Advisory Opinion, 83 x 16, October 20, 1983; and because of potential interference with constitutional duties, is generally exempt from the statutory conflict of interest provisions. *Id.*, *see* now 18 U.S.C. § 202(c).

¹⁴ 5 C.F.R. § 2635.202(c)(2).

¹⁵ 5 C.F.R. § 2635.202(c)(1), *see* also 18 U.S.C. § 201.

¹⁶ 5 C.F.R. § 2635.204(j). The constitutional restriction on gifts from foreign governments still applies to the President. *See* Art. I, Sec. 9, cl. 8, and 5 U.S.C. §7342, and discussion below.

¹⁷ 56 F.R. 33783, July 23, 1991.

¹⁸ 5 C.F.R. § 2635.202(c)(1), also 18 U.S.C. § 201(b)(2).

¹⁹ 5 C.F.R. § 2635.202(a). “Executive branch employees can neither solicit nor accept anything of monetary value *from such sources*” OGE Advisory Opinion 98 x 8, June 25, 1998.

general rule, would actually operate as a broader restriction than the general rule itself, and would result in an inconsistent and illogical statutory construction of an exemption from a prohibition barring something not even barred by the underlying prohibition.²⁰

It is also not precisely clear how broadly the solicitation prohibition would apply to “suggestions” or recommendations for gifts by members of the First Family without any specific “request” for gifts, nor whether a solicitation by another with the President or First Lady’s knowledge and acquiescence could be considered as an indirect “solicitation” by the President. It may be noted, however, that establishing a fund and specific repository for gifts by the President and First Lady, and providing information sheets on how the public may contribute (concerning the establishment by the President and First Lady of a “Legal Expense Trust” fund), did not constitute a “solicitation” of such funds, even though the President and First Lady personally set up the instrumentality and repository for contributions, and such establishment certainly suggested or intended to invite the giving of gifts.²¹

Gifts From Foreign Governments

The President and all federal officials are restricted by the Constitution from receiving “presents” from foreign governments, kings or princes, without the consent of the Congress.²² The Congress has consented generally, in the Foreign Gifts and Decorations Act, to the acceptance of gifts of “minimal value” from foreign governments offered as souvenirs or marks of courtesy,²³ and the acceptance of other gifts when a refusal of the gift may cause “offense or embarrassment” or otherwise harm the foreign relations of the United States.²⁴ A tangible gift of more than minimal value accepted for reasons of protocol or courtesy may not be kept as a personal gift, however, but is considered accepted on behalf of and property of the United States, and must be utilized and disposed of in accordance with instructions of the General Services Administration.²⁵

²⁰ See, Singer, *Sutherland Statutory Construction*, Vol 2A, §§ 46.05, 47.01, 47.08, 47.11.

²¹ The underlying rule is that one may not solicit “directly or indirectly” gifts from prohibited sources, and an indirect solicitation may arguably be one done by one’s “agents” acting for and on behalf of the principals. In the case of the Clinton’s first Legal Expense Trust Fund, the Office of Government Ethics, however, noted: “We do not view the mere establishment of the trust as a solicitation, nor do we view the provision of an information sheet as a solicitation. Solicitation must involve some request.” Letter from OGE, to Michael H. Cardoza, Executive Director, Presidential Legal Expense Trust, July 22, 1994. That first fund did not actively “solicit” contributions. A later Legal Expense Fund, set up in 1998, was not established by the Clintons personally as grantors (as was the first), but was established by third parties and was allowed to “solicit” money for the trust without an imputed violation to the President. *Note, Washington Post*, “Clinton’s Approve New Legal Fund,” at A12, February 19, 1998, indicating OGE approval of solicitation of funds by the new trust.

²² Article I, Section 9, clause 8.

²³ 5 U.S.C. § 7342(c)(1)(A). “Minimal value” is pegged to the consumer price index and adjusted every 3 years; and as of 1999 it is \$260 or less. 41 C.F.R. § 101-49.001-5.

²⁴ 5 U.S.C. § 7342(c)(1)(B).

²⁵ 5 U.S.C. § 7342(c)(1)(B)(i); note 41 C.F.R. Part 101-49.

Bribery, Illegal Gratuities

The President and all federal officials are subject to the restrictions of the bribery law at 18 U.S.C. §201(b)(2), prohibiting the receipt of or agreement to receive anything of value “in return for being influenced” in the performance of one’s official duties; and the so-called “illegal gratuities” clause of that statute, 18 U.S.C. §201(c)(1)(B), prohibiting the receipt of anything of value “for or because of” an official act performed or to be performed. The bribery provision requires a “corrupt” bargain or understanding to do some official act in return for something of value (often referred to as a *quid pro quo*), where the payment was the motivation for the official act; while under the “illegal gratuities” provision, the official act may have been done even without the payment as motivation, but the payment was connected to the act in some way, for example as a thank-you or other reward (*i.e.* a “gratuity”). Neither provision is technically a “gift” law, and neither applies merely to gifts given with no shown connection to an official act.²⁶

Financial Disclosure

In addition to restrictions on the receipt of gifts, the President is required to publicly disclose personal financial information, including gifts over minimal amounts (now \$260) which have been received by him and his immediate family. These public disclosure reports are required each May 15th, and upon leaving office, under the provisions of the Ethics in Government Act of 1978, as amended.²⁷

Public Opinion, Criticism

Despite the permissibility of the receipt and acceptance of gifts by the President and the First Lady from the general public, such receipt of private gifts has in the past engendered some public criticism, and thus the receipt of particularly lavish or excessive gifts, even if free of legal liability, may not be free from political consequences.²⁸

²⁶ *United States v. Sun-Diamond Growers of California*, 526 U.S. 398 (1999).

²⁷ *See now*, 5 U.S.C., app. §§ 101(d)-(f), 102(a)(2), as amended.

²⁸ The acceptance by First Lady Nancy Reagan of the use of designer gowns valued up to \$25,000, and expensive jewelry for formal occasions was subject to a series of criticisms (*note The Washington Post*, “IRS Looking Into Gifts to Reagans,” December 5, 1989; *New York Times*, “Looking A Gift House in the Mouth,” September 19, 1999), as was the Reagans’ acceptance upon leaving office of the use of a \$2.5 million home in Bel Air purchased by undisclosed friends (*The Washington Post*, “Reagans Probably Could Accept House as Gift, Ethics Office Says,” April 13, 1988), which has been described recently by Mrs. Reagan as merely a “loan,” which was paid back with interest. *National Journal*, at p. 358, February 3, 2001. Criticisms of gifts received by the Clintons upon leaving office has led to their decision to pay for a large portion of those gifts, and to return others which were apparently intended for the White House rather than as personal gifts. *The Washington Post*, “Clinton Will Pay for Half of Gifts,” February 3, 2001, and “Clinton Say They’ll Return Disputed Gifts,” February 6, 2001.