

Office of Government Ethics
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Memorandum dated August 25, 1993,
from Stephen D. Potts, Director,
to Designated Agency Ethics Officials
Regarding Fundraising Activities

This memorandum addresses some recurring questions that have been raised concerning the "Fundraising activities" section of the Standards of Ethical Conduct, at 5 C.F.R. § 2635.808.

Section 2635.808 of the Standards describes the circumstances under which an employee may engage in fundraising in either an official or a personal capacity. In accordance with this section of the Standards, an employee may participate in fundraising in an official capacity if there is authority for the employee to do so as part of his official duties. An employee may engage in fundraising activities in a personal capacity if the employee does not use his official title, position, or authority to further that effort or personally solicit funds or other support from subordinates or from anyone known to him to be a prohibited source for purposes of the gift restrictions in subpart B of the Standards. A special Government employee, however, may solicit charitable contributions from a prohibited source as long as that person does not have interests affected by the performance or nonperformance of his official duties.

**Authority For An Employee To Engage In
Fundraising As Part of His Official Duties**

Section 2635.808(b) of the Standards provides, "An employee may participate in fundraising in an official capacity if, in accordance with a statute, Executive order, regulation or otherwise as determined by the agency, he is authorized to engage in the fundraising activity as part of his official duties." (Emphasis added.) The phrase, "or otherwise as determined by the agency," was included in this provision because several agencies who commented on the proposed Standards of Ethical Conduct suggested that authority for an employee to engage in fundraising as part of his official duties may be found, for example, in statutes more general in character than those specifically providing for

agency personnel to engage in fundraising. The phrase recognizes that agencies may have authority to permit official fundraising notwithstanding that such authority is not expressly set forth in a statute, Executive order, or regulation.

As noted in the Federal Register notice for the Standards, at 57 Fed. Reg. 35040 (Aug. 7, 1992), a recommendation that section 2635.808(b) be changed "to allow official fundraising that is consistent with the agency's mission or otherwise furthers agency programs" was not adopted in the final rule. An agency would have to have some authority for official fundraising to be permissible under section 2635.808(b); it would not be enough for the fundraising simply to be consistent with an agency's mission or for the fundraising simply to further the agency's programs.

The Standards of Ethical Conduct and the Combined Federal Campaign

The Combined Federal Campaign (CFC) is the program that governs charitable fundraising among Federal employees at the Federal workplace. The CFC allows charities to solicit contributions during an annual fundraising drive that is intended to be fair, trustworthy, and nondisruptive. Federal employees are officially assigned to distribute a brochure containing information about all of the charities participating locally in the CFC, to collect contributions, and to be involved otherwise in the administration of the CFC. The CFC is authorized by Executive Order 12353, as amended, and is conducted under regulations issued by the Office of Personnel Management (OPM), in 5 C.F.R. part 950.

Employees' fundraising activities at the Federal workplace must comply with the CFC regulations, as well as the Standards of Ethical Conduct. The reference to the CFC regulations, in the introductory paragraph of section 2635.808, is intended to establish that the standards do not supersede the CFC regulations.

Section 4 of Executive Order 12353 provides that there shall be "only one annual solicitation except, in cases of emergency or disaster appeals for which specific provision shall be made by the Director [of OPM]." In accordance with this directive, the CFC regulations provide: "The CFC is the only authorized charitable fundraising drive in the Federal workplace No other fundraising drive may be conducted in the Federal workplace without the express written permission of the Director." 5 C.F.R.

§ 950.102(a).

Thus, section 2635.808(b) of the Standards, regarding "fundraising in an official capacity," does not eliminate the need for an agency to request permission from the Director of OPM for employees of the agency to engage in fundraising at the Federal workplace if the fundraising is outside the confines of the CFC. On the other hand, when a fundraising drive outside the confines of the CFC has been approved by the Director of OPM, an employee would be "authorized to engage in the fundraising activity as part of his official duties" at his Federal workplace in accordance with section 2635.808(b) of the Standards of Ethical Conduct.

Information as to whether a fundraising drive has been approved by the Director of OPM may be obtained from OPM's Office of CFC Operations.

Collection of Nonmonetary Items

Neither the CFC Executive order nor the CFC regulations indicate whether the collection of nonmonetary items such as food and clothing at the Federal workplace is a solicitation of charitable contributions covered by the CFC. OGE is asking the Director of OPM for guidance on that question. Until the Director of OPM responds to OGE, OGE recommends that agencies resolve questions about Federal employees' nonmonetary charity drives at the Federal workplace by referring to the provisions of the Standards of Ethical Conduct, particularly the provisions in subpart G regarding "Misuse of Position." Note, however, that the collection of nonmonetary items by employees at the Federal workplace would not be covered by section 2635.808 of the Standards of Ethical Conduct because that activity is not included in the definition of "fundraising" in section 2635.808(a).

The Federal Property Management Regulations issued by the General Services Administration (GSA), at 41 C.F.R. § 101-20.308, restrict the solicitation of "alms" on GSA-controlled property. While the term "alms" does mean money or goods given in charity, we understand that the restriction in GSA's regulations is directed primarily at members of the public who enter Government property. It has not been applied by GSA to prevent employees of an agency from setting up a box in a public part of the building to collect food or clothing for charity.

"Targeted" Solicitations

Section 2635.808(c) of the Standards of Ethical Conduct provides that an employee may engage in fundraising in a personal capacity provided that the employee does not, inter alia, personally solicit funds or other support from any person known to the employee to be a "prohibited source" of gifts within the meaning of section 2635.203(d) of the Standards, i.e., any person, including any organization more than half of whose members are persons, who are seeking official action by the employee's agency; doing or seeking to do business with the employee's agency; regulated by the employee's agency; or substantially affected by the performance of the employee's duties. Under section 2635.808(a)(4) of the Standards, the term "personally solicit" includes requesting or otherwise encouraging donations or other support "through the use of one's name or identity in correspondence or by permitting its use by others." However, "[i]t does not include solicitation of funds through . . . the contemporaneous dispatch of like items of mass-produced correspondence," if the correspondence is "addressed to a group consisting of many persons, unless it is known to the employee that the solicitation is targeted . . . at persons who are prohibited sources within the meaning of § 2635.203(d)." (Emphasis added.)

Whether a contemporaneous dispatch of like items of mass-produced correspondence is a "targeted" solicitation, and therefore an impermissible personal fundraising activity under the Standards, depends upon the circumstances. Among the factors to be considered in this regard are the extent to which the persons or organizations being solicited, as a group, have homogeneous interests in that each of them is seeking official action by the employee's agency, are doing business or seeking to do business with the employee's agency, are conducting activities regulated by the employee's agency, or have interests that may be substantially affected by the performance or nonperformance of the employee's official duties; the criteria for selecting persons to whom the correspondence will be sent; and whether the employee's name is being used by itself or with the names of others.

Use of Official Title

An employee engaged in fundraising in an official capacity may use or permit the use of his official title, position, or authority in connection with the fundraising effort. However, under section

2635.808(c)(2) of the Standards of Ethical Conduct, an employee engaged in fundraising in a personal capacity may not use his official title, position, or any authority associated with his public office to further the fundraising effort.

An employee engaged in fundraising in a personal capacity may use or permit the use of a general term (such as "The Honorable") or a rank with his name. Moreover, unless a solicitation is "targeted" at prohibited sources (see above), an employee engaged in fundraising in a personal capacity may use or allow the use of his name without his title or position to further the fundraising effort even if the employee is so well known that use of his name alone is tantamount to invoking his title or position.

Free Attendance at a Fundraising Event

Section 2635.808(a)(2) of the Standards of Ethical Conduct defines the phrase "participation in the conduct of an event" and provides that waiver of a fee for attendance at an event by a participant in the conduct of that event is not a gift under the Standards. This means that an employee participating in the conduct of a fundraising event, in either an official or a personal capacity, may attend the event without having to pay the fee that others attending the event are being charged if the fee is being waived by the sponsor of the event. Free attendance accepted under these circumstances is treated as if it were an additional exclusion to the definition of gift for purposes of applying the prohibitions in subpart B of the standards on gifts given by prohibited sources or because of official position.

It is not a "waiver" under section 2635.808(a)(2) if a third party pays the sponsor of the event the fee for an employee to attend the event, even though the employee is a participant in the conduct of the event. In such a case, the payment of the attendance fee would be a gift to the employee from the party that paid the fee on the employee's behalf and could be subject to the gift restrictions in the Standards.

Likewise, if an employee is not a participant in the conduct of a fundraising event but would only be attending the event, the event sponsor's waiver of the fee for the employee to attend the event could be subject to the gift restrictions in the Standards. In accordance with section 2635.203(c) of the Standards, the posted fee or ticket price to attend the event would be the market value

of attending the event.