

OFFICE OF GOVERNMENT ETHICS

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**Letter to an Organization
dated September 11, 1998**

This is in response to your fax to this Office of August 31, 1998. In your fax you request clarification of the restrictions that apply to Government officials that may be invited to an event in October celebrating [your organization's] 40th Anniversary (Anniversary). [Your organization] would like to invite a number of "[G]overnment officials, who have played an integral part in [your organization's] history, to attend the [Anniversary]." In particular, you wish to confirm that these officials would be free to accept the invitation under the exception to the prohibition on gifts from outside sources, found at 5 C.F.R. § 2635.204(h), that permits acceptance of invitations to social events, from persons who are not prohibited sources, provided no one is charged a fee to attend the event.

As an initial matter, we note that our authority (and therefore our advice) extends only to matters concerning employees of the executive branch of the Federal Government. If some of the "government officials" that you are considering inviting to your event are from other branches of the Federal Government, or from State or local governments, you should contact those entities concerning any restrictions that may apply to such individuals.

Even if the prospective invitees to the Anniversary are Federal executive branch employees, it is not generally feasible for the Office of Government Ethics (OGE) to issue rulings or opinions to private sponsors of events concerning whether their invitations and related gifts may be accepted by executive branch employees from an agency or a group of agencies. OGE works with ethics officials and employees to ensure that they do not violate ethical standards of conduct and conflict-of-interest statutes in accepting such offers. For sponsors and donors, however, we ordinarily can only provide general information to alert them of potential ethical concerns; we have included such general information below to help you as you plan your event. Ultimately, however, each agency must decide whether its employees may accept free attendance and other items of monetary value at an event, a decision that must be based upon the application of the conduct laws and regulations to a particular factual context.

The phrasing of your inquiry indicates that you have some familiarity with the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), which are found at

5 C.F.R. part 2635.¹ As you know, subpart B of the Standards of Conduct prohibits an executive branch employee from soliciting or accepting, directly or indirectly, any gift from a prohibited source or given because of the employee's official position unless the item is excluded from the definition of "gift" in the subpart or falls within one of the exceptions set forth in the subpart. Generally, an employee's free attendance at an event such as yours would be considered a "gift" to the employee under the Standards of Conduct. However, such attendance would not be considered a "gift," and acceptance would therefore be permissible, if the only items offered at the reception are modest refreshments that are not a meal (such as soft drinks, coffee, and donuts), or if attendance at the Anniversary could be said to have no monetary value. 5 C.F.R. § 2635.203(b).

If attendance at the Anniversary would be of monetary value, and [your organization] is considered a "prohibited source" for the employee's agency or the invitation to the Anniversary was extended because of the employee's official position, then executive branch employees could not accept the free attendance unless an exception to the gift rules permitted it. Although your materials cite the exception for social events not from a prohibited source, found at 5 C.F.R. § 2635.204(h), it is not clear that [your organization] would not be considered a prohibited source for the prospective invitees. A "prohibited source" is any person (including any organization more than half of whose members are persons who would be considered prohibited sources) seeking official action by the employee's agency; doing business or seeking to do business with the employee's agency; conducting activities regulated by the employee's agency; or having interests that may be substantially affected by the performance or nonperformance of the employee's official duties. 5 C.F.R. § 2635.203(d). Because your letter refers to your desire to invite Government officials who have played an integral part in [your organization's] history, it seems likely that [your organization] would be a prohibited source for at least some of these invitees under this definition. If you are not sure whether [your organization] would be considered a prohibited source for an employee of a particular agency, then you should contact the Designated Agency Ethics Official at that agency for a determination.

If [your organization] is not considered a "prohibited source" for an employee or group of employees, and no fee is charged to those attending, then the employees may accept food, refreshments and entertainment from [your organization] as part of attendance at

¹ All citations contained herein are to sections in the Standards of Conduct, 5 C.F.R. part 2635, unless otherwise noted.

a social event. 5 C.F.R. § 2635.204(h). The examples in the Standards of Conduct, which refer to a movie premier and a cocktail party, illustrate the kinds of events the exception encompasses -- those that can clearly be understood as not primarily being arranged for a business purpose, such as sales or marketing of a business product. Based upon your description, the planned Anniversary would meet this requirement.

Even if [your organization] is considered a "prohibited source" for an executive branch employee or group of employees, there are other exceptions that may permit executive branch employees to accept free attendance at the Anniversary. If the value of the free attendance at the Anniversary is less than \$20, employees would be free to accept the offered attendance so long as they do not accept additional gifts from [your organization] in the same calendar year which, with this gift, together are worth more than \$50. 5 C.F.R. § 2635.204(a). The value of the attendance would be measured by the cost employees would incur to obtain the gift on the retail market. Employees may estimate the value of the proffered attendance by reference to the retail cost of attendance at similar receptions. 5 C.F.R. § 2635.203(c).

An executive branch employee may also accept meals, lodging and other benefits if they result from the employee's outside business or employment activities and it is clear that the benefits have not been offered or enhanced because of the employee's official position. 5 C.F.R. § 2635.204(e). Thus if prospective invitees' "integral role in [the organization's] history" prompting their invitation to the Anniversary relates to employment they hold outside of their Government position, and would have received the invitation without regard to their Government position, then employees would be free to accept the invitation to attend the Anniversary. Another exception permits executive branch employees to accept an unsolicited gift of free attendance from the sponsor of a widely attended gathering of mutual interest to a number of parties. 5 C.F.R. § 2635.204(g)(2). In order to accept this free attendance, however, there must be a determination that it is in the interest of the employee's agency to have the employee attend the event because it will further agency programs and operations. As with the issue of whether an entity would be considered a prohibited source, this determination must be made by the agency employing the individual in question.

We hope that this information is helpful to you. If you have any questions concerning the matters discussed in this letter, please feel free to contact my staff.

Sincerely,

Marilyn L. Glynn
General Counsel