

Office of Government Ethics

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**Memorandum dated May 19, 1999,
from Stephen D. Potts, Director,
to Designated Agency Ethics Officials
Regarding Supreme Court Decision in
*United States v. Sun-Diamond Growers***

This is a follow-up to the message on the *United States v. Sun-Diamond Growers* case that I sent to executive branch employees on April 8, 1999. The purpose of that message was to alert employees to the fact that the outcome of the *Sun-Diamond Growers* case would not have legal effect on the administrative standards of conduct regarding acceptance of gifts from outside sources.

On April 27, 1999, the Supreme Court issued its decision in *Sun-Diamond Growers*, affirming the ruling of the U.S. Court of Appeals for the District of Columbia Circuit. The issue before the Supreme Court involved the interpretation of the criminal illegal gratuities statute. In siding with the Appeals Court, the Supreme Court adopted a more narrow interpretation of that statute than that which had been advocated by the Independent Counsel. The Supreme Court held that "in order to establish a violation of 18 U.S.C. § 201(c)(1)(A), the Government must prove a link between a thing of value conferred upon a public official and a specific 'official act' for or because of which it was given."

The Supreme Court's decision does not disturb the noncriminal prohibitions on gifts found at 5 U.S.C. § 7353. Nor does it affect Executive Order 12674 which directed the Office of Government Ethics (OGE) to promulgate executive branch standards of conduct. The administrative standards of conduct contained in 5 C.F.R. part 2635, Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), which, in part, implement those authorities, were not in issue in the *Sun-Diamond Growers* case. They continue to be fully effective as to executive branch employees.

In particular, subpart B of the Standards of Conduct, which contains prohibitions on the acceptance of gifts from outside sources, continues to be fully applicable to the conduct of executive branch employees. Section 2635.202(a)(1) bars an executive branch employee from accepting gifts from prohibited sources. Prohibited sources, as defined at 5 C.F.R. § 2635.203(d), are persons who have interests that may be affected by some official agency action. Section 2635.202(a)(2) prohibits an employee from accepting a gift that is given because of the employee's official position. Section 2635.203(e) defines when a

gift is solicited or accepted because of an employee's official position.

There are limited exceptions which permit acceptance of gifts under certain circumstances. Those exceptions, found in 5 C.F.R. § 2635.204, also continue to apply and are unaffected by the Supreme Court's decision. Section 2635.202(b) states that anything accepted consistent with the Standards of Conduct will not constitute an illegal gratuity otherwise prohibited by 18 U.S.C. § 201(c)(1)(B) unless it is accepted in return for being influenced in the performance of an official act. The provision clarifies the relationship between 18 U.S.C. § 201(c)(1) and 5 U.S.C. § 7353(b), and it reflects Congressional intent that acceptance of a gift in accordance with the Standards of Conduct will not subject an employee to prosecution for violation of the illegal gratuities statute.

It is important that all executive branch employees have a correct understanding of their obligations under the Standards of Conduct and that they do not create difficulties for themselves through some misunderstanding regarding the effect of the *Sun-Diamond Growers* case on the administrative standards regarding the acceptance of gifts. It is also important that employees be aware of any additional agency-specific prohibitions on the acceptance of gifts. Employees should also be aware of any additional gift exceptions in their agency supplemental regulations and appreciate the significance in terms of the rules on gifts of the division of an agency or department into separate components.