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Office of Government Ethics
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June 14, 2002

The Honorable Stephen Horn
Chairman
Subcommittee on Government Efficiency,
Financial Management and Intergovernmental Relations
Committee on Government Reform
U.S. House of Representatives
Washington, DC 20515-6143

Dear Chairman Horn:

In your letter of June 5, 2002, you asked this Office to provide you with information about the reporting requirements for gifts to the President under the Ethics in Government Act and what additional Presidential gifts and information about them would be subject to public release under H.R. 1081. Additionally, you welcomed any other observations or suggestions about H.R. 1081 and its relationship to the Ethics in Government Act.

With regard to your questions about the actual requirements of reporting under the Ethics in Government Act and H.R. 1081, I have enclosed a comparison of the gift reporting requirements for the President under the Ethics in Government Act and the Presidential gift reporting requirements for heads of government agencies and the Archivist pursuant to the terms of H.R. 1081. Since the Act and the bill refer to the definition of "gift" as it appears in section 109(5) of the Ethics in Government Act, I have also enclosed the language of section 109(5) for your reference. Please note, however, that "Presidential gift", as the term is used in H.R. 1081, would by its terms expand the definition of "gift" beyond the current section 109(5).

The Ethics in Government Act requires the President to report publicly all personal gifts he receives from any one source during a calendar year if the value of the gifts from that source exceeds \$260. Gifts with a market value of \$104 or less are not counted in determining the \$260 threshold. In addition, certain gifts are excluded from the reporting requirements, including gifts from relatives and certain gifts of a de minimis nature. The requirement to report is personal to the President and covers gifts accepted by him during the previous calendar year of his Presidency. It does not cover gifts offered to the President, but not accepted by him personally. We understand that, over the years

and many Administrations, the majority of the gifts that are offered to the President are not personally accepted, but rather accepted or otherwise disposed of by the Government.

The reporting requirements of H.R. 1081 would create what appears to be a public Government tracking system for "Presidential gifts" that must be maintained by others; these requirements would not be a personal obligation of the President. However, in tracking and accounting for the various Presidential gifts, the Archivist would be required to make available to the public a list of all gifts offered of any value to the President, both personal and non-personal. In addition, section 3 of the bill (proposed § 2208(e)) would require the Archivist to report "each proposed disposition" of all Presidential gifts valued at \$250 or above to Congress. This might be read to require the Archivist to make a report to the Congress before the President can personally accept any gift.

With regard to observations or suggestions about H.R. 1081, this Office has serious reservations concerning those provisions of the bill applicable to gifts to, or for the benefit of, the President personally. The documenting of gifts accepted personally, as opposed to those dealt with officially, has always been treated separately, and we believe that separate treatment should continue. Personal gifts are publicly documented on the financial disclosure form of each high-level government official, including the President, in order to allow the public to assure itself that there is integrity in a public official's decision-making. We believe that the requirement under current law of public disclosure of gifts above a stated value that have been accepted by the President personally is sufficient. We also regard the proposal (under one reading of the draft legislation), to require the Archivist to make a report to the Congress before the President can personally accept any gift, as unnecessary in light of the existing public disclosure requirements for gifts personally accepted by the President. To the extent that H.R. 1081 would require the President to report and release information that already must be disclosed pursuant to the Ethics in Government Act, we find such language to be redundant. Moreover, as H.R. 1081 would mandate the Archivist to inventory Presidential gifts given by relatives, we find the scope of the bill to be overly broad. Current law excludes gifts from relatives from public disclosure, and we believe that, in the interests of personal privacy, this limited exclusion from reporting should continue. For the public to be given knowledge of personal gifts exchanged between the first family and their relatives would be far too intrusive.

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Moreover, it is our view that the current system for public reporting of gifts accepted by the President personally has demonstrated its effectiveness in ensuring the proper disposition of Presidential gifts. As you know, in response to questions raised by the public about President Clinton's receipt of gifts during the last year of his Presidency, several gifts were returned to the Government for disposition.

Conversely, gifts dealt with officially should not be documented in a way that might imply personal involvement of the President. To merge the reporting of personal and official gifts in one report, especially when personal gifts are already publicly reported elsewhere, may mislead the public.

Based on these concerns, we suggest that the reporting of any gifts accepted by the President personally be deleted from coverage in H.R. 1081. For those provisions of the bill that address the inventory and reporting of gifts offered to the President, but not accepted by him personally, we defer to the views of the National Archives and Records Administration, the National Park Service, and other agencies that have a role in the inventory and disposition of such gifts. Those agencies are in a better position to judge the appropriateness of H.R. 1081 to gifts not accepted by the President personally.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report to the Committee.

Sincerely,



Amy L. Comstock
Director

Enclosures (2)

| | Ethics in Government Act (EIGA) Requirements | H.R. 1081 Requirements |
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| Who must report. | The President. | The head of a federal office or agency, having possession of any record containing any information regarding the receipt, location, control, or disposition of a Presidential gift, must report such information to the Archivist. In turn, the Archivist must make available to the public upon request any information in the inventory maintained and report to the Congress the "proposed disposition" of certain Presidential gifts. |
| What must be reported. | <p>Any gift, as defined by § 109(5) of EIGA, accepted by the President and any gift accepted by the President's spouse or dependent child not received totally independent of their relationship to the President which meets the following current value requirements:</p> <ul style="list-style-type: none"> • a value of more than \$260; or • one of other gifts of more than \$104 from the same source which aggregated during the reporting period have a value of more than \$260.¹ <p>(Note: This can include gifts accepted pursuant to the Foreign Gifts Act.)</p> <p><i>Exceptions:</i></p> <p>Gifts from relatives, as that term is defined in § 109(16) of EIGA; gifts of food, lodging and entertainment received as personal hospitality, as that is defined in § 109(14) of EIGA; certain other de minimis gifts. Reimbursements by political organizations are reported to the Federal Election Commission.</p> <p><i>Details of Gifts:</i></p> <ul style="list-style-type: none"> • the identity of the source; • a brief description of gift; and • the value of gift. | <p>Any gift, as defined by § 109(5) of EIGA, that is also a "Presidential gift" defined as one to, or for the benefit of, the President personally, the President in his or her official capacity, the Executive Residence at the White House, or a Presidential archival depository, other than a gift from a foreign government.</p> <p><i>Exceptions:</i></p> <p>None.</p> <p><i>Details of Gifts:</i></p> <ul style="list-style-type: none"> • the donor; • a description of the gift; • the estimated cost or appraised value; • the date of receipt by the Federal Government; • any indication of whether the intent of the donor was to make the gift to the United States or to the President personally; and • the current location and status of the gift including identification of the federal agency or other person having control of the gift. |
| Prior approval/ notification of intent to accept or otherwise dispose of gift. | No. | Yes. The Archivist must report to the Committee on Governmental Affairs and the Committee on Government Reform each proposed disposition of a Presidential gift other than: <ul style="list-style-type: none"> • a gift from a relative of the President; and • a gift having a value of less than \$250. |
| Period covered by the report. | Each year the President must list reportable gifts accepted during his Presidency for the previous calendar year and upon leaving the Presidency. The President's financial disclosure reports are publicly available pursuant to the Ethics in Government Act for 6 years after filing. | The inventory maintained by the Archivist is permanently available to the public. |

¹The EIGA states that the minimum threshold is \$250 or the minimum threshold set for the Foreign Gifts Act. The value of gifts to be aggregated is also adjusted by the same percentage as the Foreign Gifts minimal amount. Consequently, these amounts are now \$260 and \$104, respectively.

TITLE 5--APPENDIX

ETHICS IN GOVERNMENT ACT OF 1978

TITLE I--FINANCIAL DISCLOSURE REQUIREMENTS OF FEDERAL PERSONNEL

Sec. 109. Definitions

For the purposes of this title, the term--

(5) "gift" means a payment, advance, forbearance, rendering, or deposit of money, or any thing of value, unless consideration of equal or greater value is received by the donor, but does not include--

(A) bequest and other forms of inheritance;

(B) suitable mementos of a function honoring the reporting individual;

(C) food, lodging, transportation, and entertainment provided by a foreign government within a foreign country or by the United States Government, the District of Columbia, or a State or local government or political subdivision thereof;

(D) food and beverages which are not consumed in connection with a gift of overnight lodging;

(E) communications to the offices of a reporting individual, including subscriptions to newspapers and periodicals; or

(F) consumable products provided by home-State businesses to the offices of a reporting individual who is an elected official, if those products are intended for consumption by persons other than such reporting individual;