

Memorandum dated February 28, 2007,  
from Robert I. Cusick, Director,  
to Designated Agency Ethics Officials  
Regarding Clarification of the Scope  
of an Exception and an Exclusion to the  
Public Financial Disclosure Reporting Requirements

It has come to our attention that some filers of public financial disclosure reports<sup>1</sup> may not fully understand the scope of (1) a reporting exception for reimbursement of certain political travel and (2) a reporting exclusion for the acceptance of certain food and beverages. We hope the following explanation clarifies the limited scope of both provisions.

*Scope of Public Financial Disclosure Reporting Exception for Reimbursement of Travel-Related Expenses Required to Be Reported Under Section 304 of the Federal Election Campaign Act of 1971 (2 U.S.C. § 434)*

Public financial disclosure filers must report travel-related reimbursements, including the source, with a value of at least \$305<sup>2</sup> received by the filer during the preceding calendar year. 5 U.S.C. app. § 102(a)(2)(B). "Reimbursement" is defined as a payment or thing of value received by the reporting individual to cover the travel-related expenses of the individual. 5 U.S.C. app. § 109(15). Three kinds of payments, however, are excluded from the definition of reimbursement. 5 U.S.C. app. § 109(15)(A)-(C). One reimbursement is for those travel-related expenses required to be reported to the Federal Election Commission (FEC) under Section 304 of the Federal Election Campaign Act (FECA) (2 U.S.C. § 434). 5 U.S.C. app. § 109(15)(C).

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<sup>1</sup> These clarifications likewise apply to the reporting of gifts and reimbursements to employees who are required to file confidential financial reports (OGE Form 450). 5 U.S.C. app. § 107(a)(1); 5 C.F.R. § 2634.907(g).

<sup>2</sup> This threshold amount is the value that applies during 2005-2007; it is adjusted periodically for inflation.

This exception to the reporting requirements has restricted application. The FECA reporting requirements apply only to expenditures for Federal campaigns or elections.<sup>3</sup> 2 U.S.C. § 434. They do not extend to reimbursements for expenses related to travel exclusively for a State or local campaign or election. Thus, an executive branch public filer is required to include on his financial disclosure report any travel-related reimbursements received in the preceding year when the travel related exclusively to a State or local campaign or election. The following are examples of travel-related reimbursements that must be reported on a filer's form 278:

- Travel-related reimbursement by a State or local candidate
- Travel-related reimbursement by a State or local party committee or other non-Federal committee exclusively for a State or local campaign or election
- Travel-related reimbursement by a so-called "527" group<sup>4</sup> exclusively for a State or local campaign or election

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<sup>3</sup> In some instances, the FEC also requires reporting of expenditures for events that benefit both state or local and Federal candidates so that the portion of the expenditure allocable to the Federal campaign or election can be determined. Thus, such "mixed" events, if reported to the FEC, would need not be reported on a filer's SF 278 per the exception.

<sup>4</sup> A "527" group is a type of tax-exempt organization, named after a section of the United States tax code, created primarily to influence the nomination, election, appointment or defeat of candidates for public office. Although candidate committees and political action committees are created under the same section of the code, the term generally is used to refer to political organizations that are not regulated by the FEC and are not subject to the same contribution limits as political action committees. 26 U.S.C. § 527(e)(1).

In addition, the FEC has determined<sup>5</sup> that certain political committees sponsored by corporations, labor organizations or trade associations (so-called "connected organizations") may invite executive branch officials to appear at a committee fundraising event that only members of the political committee or representatives of committee donors will attend. FEC rules permit the sponsoring corporation, union or trade association to pay directly the costs of such events for their political committees, and those costs are not reported to the FEC. If the sponsoring organization directly reimburses the travel expenses of an executive branch official to attend such an event, the executive branch official must report the reimbursement on his SF 278.

A public filer need not report on his SF 278 travel-related reimbursements reported to the FEC by a political committee for events for Federal candidates or elections, or travel-related reimbursements for events that benefit both Federal and State or local candidates.

*Scope of the Gift Reporting Exclusion for Food and Beverages Not Consumed in Connection With Overnight Lodging*

A public filer must report each gift received that is worth at least \$122 when the total value of all such gifts from one source exceeds \$305 in a calendar year<sup>6</sup>. 5 U.S.C. app. § 102(a)(2)(A). The term "gift" means "any payment, advance, forbearance, rendering, or deposit of money, or anything of value, unless consideration of equal or greater value is received by the donor . . . ." 5 U.S.C. app. § 109(5). Various types of items, however, are excluded from the definition of "gift," including "food and beverages which are not consumed in connection with overnight lodging." 5 U.S.C. app. § 109(5)(D).

This exclusion for food and beverages not consumed in connection with overnight lodging does not extend to the entire value of a ticket/admission to an event where food and beverages

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<sup>5</sup> See FEC Advisory Opinion 2003-5, question 3 (available through the FEC's website, <http://www.fec.gov>). These political committees are known as "separate segregated funds."

<sup>6</sup> These threshold amounts are adjusted periodically for inflation.

are served.<sup>7</sup> Thus, a public filer who attends an event that does not require travel must report the value of the ticket minus the value of the food and beverages consumed at the event on his SF 278. For example, if a public filer accepted free attendance to a local \$500-per-ticket gala and the food and beverages provided to each guest for consumption at the gala were valued at \$75, the filer must disclose the net \$425 value of the gift of admission to the gala on his SF 278.

Confusion about reporting such gifts may have arisen because of gift acceptance regulations promulgated in response to the Hatch Act Reform Amendments of 1993 (5 U.S.C. § 7323). Under those rules, an employee who is permitted to actively participate in political management or in political campaigns under the Hatch Act may accept meals, lodging, transportation, and other benefits, including free attendance at events, when it is provided by political organizations in connection with his active participation. 5 C.F.R. § 2635.204(f). In addition, such an employee may accept the cost of attendance, any participation fees, and items such as complimentary products

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<sup>7</sup> There is an apparent inconsistency between Example 3 to 5 C.F.R. § 2634.304(d) and the Note to 5 C.F.R. § 2634.304(e) in the method for valuing tickets to events that include food and beverages not consumed in connection with overnight lodging for reporting purposes. Those consumables are excluded from the definition of "gift" for reporting purposes under 5 U.S.C. app. § 109(5)(D). The Note provides the correct method for valuation. The reportable value of a ticket to an event is the market value of the ticket minus the value of food and beverages not consumed in connection with overnight lodging. Example 3 may be read to suggest that the entire value of the ticket need not be reported even though it is (intended) to exceed the required monetary reporting threshold because of the food and beverages reporting exclusion. This only would be true if the value of the food and beverages consumed were equal to the full market value of the ticket to the event. There also is a mathematical error in Example 3 to 5 C.F.R. § 2634.304(d) (two tickets valued at \$150 each do not exceed the \$305 threshold as suggested in the example). The value of the two tickets should have been adjusted at the same time as the \$305 threshold so that the total would exceed the \$305 threshold. This will be corrected in the next revision of the Standards of Ethical Conduct for Employees of the Executive Branch.

bestowed at the event if the gifts were provided by the political organization sponsoring the event. However, the ability to accept such gifts does not negate a public filer's requirement to include the value of all reportable gifts on his form 278.

### *Conclusion*

This memorandum discusses two public financial disclosure reporting issues that may be relevant to public filers who attend political events. Attached to this memorandum is a simplified, one-page summary of this guidance. The Office of Government Ethics (OGE) cautions that this memorandum and the attached summary are not exhaustive with respect to the reporting exception for travel-related reimbursements to political events. New issues regarding political events, groups, and campaigns could arise that have not been addressed or anticipated here.<sup>8</sup> Therefore, the guidance on this exception is limited to the information provided in this memorandum. We encourage ethics officials to seek the assistance of OGE and the FEC to sort through any questions concerning the reporting of political events if they arise.

### Attachment

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<sup>8</sup> OGE has no jurisdiction over the Federal Election Campaign Act and resulting interpretations and opinions of the FEC, although we have consulted FEC staff about the content of this memorandum. Any changes to the FECA or the FEC's rules and interpretations cannot be anticipated and could affect the validity of the content of this memorandum.

**ATTACHMENT TO DAEOGRAM CLARIFYING  
THE REQUIREMENTS FOR REPORTING CERTAIN  
TRAVEL-RELATED REIMBURSEMENTS  
AND FREE GIFTS OF ATTENDANCE**

*Reporting of Reimbursement of Travel-Related Expenses*

Financial disclosure filers must report travel-related reimbursements they receive, including the source, with a value of at least \$305 in a calendar year *unless* those reimbursements are required to be reported to the Federal Election Commission (FEC) because they are for a Federal campaign or election.

The following political, travel-related reimbursements are not reported to the FEC and, therefore, must be disclosed by filers on their financial disclosure reports:

1. Reimbursements paid by a State or local candidate;
2. Reimbursements paid by a State or local party committee or non-Federal committee exclusively for a State or local election event;
3. Reimbursements paid by a "527" group exclusively for a State or local election event; and
4. Reimbursements paid by a "connected organization" for a PAC fundraising event that only members of the political committee or representatives of committee donors will attend.

*Reporting of Gifts of Attendance to Events That Do Not Include Overnight Lodging*

Financial disclosure filers must report gifts of free attendance worth more than \$122 if all gifts from one source exceed \$305 in a calendar year. However, when determining the value of attendance at an event that does not involve overnight lodging, a filer may subtract the value of food and beverages consumed at the event from the value of the gift of free attendance for reporting purposes.

For example, if a filer accepted free attendance to a local \$500-per-ticket gala and the food and beverages provided to each attendee for consumption at the gala were valued at \$75, the filer must disclose the net \$425 value of the admission to the gala on her financial disclosure report.