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LEGAL ADVISORY

TO: Designated Agency Ethics Officials

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SUBJECT: Farewell Receptions Provided by Former Employers; Partial Revocation of
OGE Informal Advisory Opinion 94 x 2

This Legal Advisory provides guidance on whether it is permissible for an employee to attend a farewell reception held in his or her honor by a former employer. The U.S. Office of Government Ethics (OGE) is reaffirming that under certain circumstances an employee may accept attendance at such receptions. This Legal Advisory explains that while such receptions were not previously treated as “gifts” for purposes of the gift regulations at 5 C.F.R. part 2635, OGE now treats attendance at such receptions as a “gift” that may be accepted pursuant to a new exception found at 5 C.F.R. § 2635.204(e)(4).

Under the Standards of Conduct for Employees of the Executive Branch (Standards), employees are generally prohibited from accepting any “gift” given by a prohibited source or because of the employee’s official position, unless excepted under 5 C.F.R. § 2635.204. *See* 5 C.F.R. § 2635.202. Although almost anything having monetary value is a gift for purposes of the Standards, certain items do not qualify as “gifts.” *See* 5 C.F.R. § 2635.203(b). For example, “[p]ension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a current or former employer” are not gifts under the Standards. *Id.* § 2635.203(b)(6).

OGE previously opined in 1994 that a farewell reception from a former employer would not be considered a “gift” to an employee, under the theory that such receptions were similar to “employee welfare or benefit plan” benefits:

a farewell party or reception for an employee, hosted by a former employer after the employee has been appointed to his Government position, could be considered a continued benefit from the former employer and not a “gift” under the Standards if the former employer has an established policy or practice of giving similar parties or receptions for departing employees.



OGE Inf. Adv. Op. 94 x 2 (1994). OGE has reconsidered that guidance and has now determined that the plain text of the exclusion at 5 C.F.R. § 2635.203(b)(6) does not cover social events such as farewell receptions. As a result, ethics officials should instruct employees that they can no longer rely on the portion of OGE Informal Advisory Opinion 94 x 2 quoted above.

However, the Standards now provide an exception specifically for certain receptions held by former employers. *See* 5 C.F.R. § 2635.204(e); 81 Fed. Reg. 81,461, 81,645 (Nov. 18, 2016).¹ Under that exception, employees may accept:

meals, lodgings, transportation and other benefits...[p]rovided by a former employer to attend a reception or similar event when other former employees have been invited to attend, the invitation and benefits are based on the former employment relationship, and it is clear that such benefits have not been offered or enhanced because of the employee's official position.

5 C.F.R. § 2635.204(e). Although intended principally for holiday and alumni parties,² the exception can apply to a farewell party hosted by a former employer, so long as all of the criteria of the exception are met.³ The invitation to and benefits at the farewell must be “based on the former employment relationship” and it must be “clear that such benefits have not been offered or enhanced because of the employee's official position.” 5 C.F.R. § 2635.204(e)(4). Whether the former employer has a well-established practice of providing receptions of similar quality to other similarly-situated departing employees who are not entering Government service is particularly relevant for this determination. In addition, the former employer must have invited other former employees to attend the reception. *Id.*⁴

Even if the exception at 5 C.F.R. § 2635.204(e)(4) does not apply, an employee may still be able to attend a farewell reception held in their honor in certain cases. For example, if the only benefits provided at a farewell reception are “[m]odest items of food and non-alcoholic refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal” then the farewell reception would not constitute a “gift” to the employee. *See* OGE Legal Advisory LA-15-05 (2015). Likewise, if the employee has a personal friendship with his or her former boss or former colleagues, a farewell reception personally paid for by the former boss or colleague might be acceptable under the “personal relationship exception” so long as it was

¹ Full-time, non-career appointees who signed the Ethics Pledge found in section 1 of Executive Order 13770 are further prohibited from receiving gifts from registered lobbyists and registered lobbying organizations. *See* Exec. Order No. 13770, § 1, para. 5. The definition of “gift” for purposes of the Executive Order does not exclude farewell receptions from former employers that meet the criteria of section 2635.204(e)(4). *See id.* § 2(k). As such, covered appointees may not rely on that provision to accept gifts from registered lobbyists and lobbying organizations, including a former employer who is a registered lobbying organization.

² *See* 5 C.F.R. § 2635.204(e)(4) ex. 1 to paragraph (e)(4); 80 Fed. Reg. 74,004, 74,007 (Nov. 27, 2015).

³ The exception at 5 C.F.R. § 2635.204(e)(4) only covers benefits provided by a former employer that are part of the reception. Other gifts, including gifts from individual attendees, are not covered by 5 C.F.R. § 2635.204(e)(4). Employees must therefore separately consider whether acceptance of such gifts would be permissible under the Standards.

⁴ Employees who are required to file financial disclosure reports must disclose the “fair market value” of the benefits provided to them at a farewell reception that meet or exceed the reporting threshold. *See* 5 C.F.R. §§ 2634.304, 2634.907(g). Ethics officials should counsel public and confidential financial disclosure filers as to the application of the financial disclosure reporting requirements for gifts of farewell receptions.

“clear that the gift [was] motivated by a . . . personal friendship rather than the position of the employee.” 5 C.F.R. § 2635.204(b).⁵

Even when it is legally permissible to accept a farewell reception, an employee should consider declining the gift if the employee concludes that “a reasonable person with knowledge of the relevant facts would question the employee’s integrity or impartiality as a result of accepting the gift.” *Id.* § 2635.201(b)(1). In making this determination, employees should look to the value and timing of the reception,⁶ whether the former employer could be affected by the performance of the employee’s duties, and whether the reception would provide the former employer with significantly disproportionate access to the employee. *Id.* § 2635.201(b)(2).⁷

⁵ This exception would be unavailable if the employee’s former company paid for the farewell reception or reimbursed others for expenses associated with the farewell reception. 5 C.F.R. § 2635.204 ex. 2 to paragraph (b).

⁶ Employees should be particularly cautious about invitations for receptions to be held weeks or months after they have left their former employer or that are lavish in nature.

⁷ Beyond the gift rules, employees are also generally required to recuse from government matters affecting their recent former employers. *See* 5 C.F.R. § 2635.502(a)(1), (b)(iv); Exec. Order No. 13770, § 1, para. 6.