



# Gifts to the President of the United States

**Jack Maskell**  
Legislative Attorney

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## Summary

This report addresses provisions of federal law and regulation restricting the acceptance of personal gifts by the President of the United States.

Although the President, like all other federal officers and employees, is prohibited from receiving personal gifts from foreign governments and foreign officials without the consent of Congress (U.S. Const., art. I, §9, cl. 8), the President is generally free to accept unsolicited personal gifts from the American public. Most of the restrictions on federal officials accepting gifts from “prohibited sources” (those doing business with, seeking action from, or regulated by one’s agency) are *not* applicable to the President of the United States (5 C.F.R. §2635.204(j)), although the President may not *solicit* gifts from such sources. The President, in a similar manner as other federal officials, may also receive unrestricted gifts from relatives and gifts that are given on the basis of personal friendship. When personal gifts accepted by the President or his immediate family exceed a certain amount, those gifts are required to be publicly disclosed in financial disclosure reports filed annually by the President. 5 U.S.C. app., §§101(f)(1), 102(a)(2). The President remains subject to the bribery and illegal gratuities law which prohibits the receipt of a gift or of anything of value when that receipt, or the agreement to receive such thing of value, is connected in some way to the performance (or nonperformance) of an official act.

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Federal laws have long prohibited *corrupt* payments of things of value to federal officials, such as payments in the form of “bribes” from favor-seekers in the private sector.<sup>1</sup> The regulations and limitations on mere “gifts” to federal officials from domestic sources — where there is not necessarily any bargain (reciprocity), compensation, or favor explicitly sought, understood, or agreed to — are, however, of a more recent vintage.<sup>2</sup>

The ethical issues and problems of “gifts” to public officials may arise because of the tacit or subtle influence or feelings of gratitude and appreciation that a public official may feel towards his or her benefactors that might “sway his decisions” and erode the official’s “sense of mission to the public” in favor of loyalty to “his private benefactors and patrons.”<sup>3</sup> This concern, of course, must be balanced to some extent with the normal, expected, and generally innocent expressions of gratitude from the public, the realities of friendships and personal relationships, as well as the requirements of protocol and etiquette in a public officer’s official and ceremonial duties and functions. With respect to the President, the exigencies of the office and considerations of protocol, courtesy, and etiquette, have led to an express exemption from the general limitation in regulations on the acceptance of private gifts which might apply to other officers and employees in the executive branch of the United States Government.<sup>4</sup>

## General Gift Limitations in Federal Law

The current restriction under federal statutory law on the receipt or solicitation of “gifts” by federal employees and officials was enacted as part of the Ethics Reform Act of 1989.<sup>5</sup> The underlying *statutory* restriction enacted in 1989 in many respects merely codified similar gift standards which had already been applicable to all executive branch employees by way of executive orders and regulations since 1965.<sup>6</sup> The current law, codified at 5 U.S.C. §7353(a), prohibits any federal officer or employee from soliciting or receiving any gift of any amount from a prohibited source, that is, from someone who is seeking action from, doing business with, or is regulated by one’s agency, or whose interests may be substantially affected by the performance or nonperformance of one’s official duties.<sup>7</sup>

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<sup>1</sup> Bribery is one of the express crimes constituting grounds for impeachment of the President, Vice President, and all civil officers of the United States originally stated within the Constitution, U.S. CONST. art. II, §4. The first federal statutes on bribery began with the 1<sup>st</sup> Congress in 1789 and 1790, 1 Stat. 46, July 31, 1789 (custom officials); 1 Stat. 117, April 30, 1790 (federal judges). *See* discussion generally in Noonan, BRIBES, 427 - 435 (MacMillan 1984).

<sup>2</sup> Regulation of gifts before the 1960’s was sporadic within the individual agencies of the federal government in their internal regulations. *See*, The Association of the Bar of the City of New York, CONFLICT OF INTEREST AND FEDERAL SERVICE, 72 - 83 (Harvard University Press 1960). A government-wide rule on gifts was promulgated in 1965 by President Johnson in Executive Order 11222, superseded by E.O. 12674, April 12, 1989 (President Bush), and modified by E.O. 12731. The current gifts statute was adopted in the Ethics Reform Act of 1989 (P.L. 101-194, November 30, 1989). Gifts to federal officials from foreign governments without congressional consent have been banned, however, since the adoption of the Constitution (U.S. CONST. art. I, §9, cl. 8).

<sup>3</sup> Senator Paul H. Douglas, ETHICS IN GOVERNMENT, 44, 49 (Harvard University Press 1952).

<sup>4</sup> 5 C.F.R. §2635.204(j); *note* 57 F.R. 35049, August 7, 1992, and discussion at 56 F.R. 33783, July 23, 1991.

<sup>5</sup> P.L. 101-194, November 30, 1989.

<sup>6</sup> *See* Executive Order No. 11222, Section 201, May 8, 1965 (now superseded by E.O. 12674, April 12, 1989), and former regulations, 30 F.R. 12529, October 1, 1965, previously at 5 C.F.R. §735.202.

<sup>7</sup> 5 U.S.C. §7353(a).

The statute expressly provides in the next paragraph, however, that the designated supervisory ethics agencies in the government may make exceptions to this general restriction, and may issue regulations setting out circumstances under which gifts from private sources may be accepted for those under their jurisdictions.<sup>8</sup> In the executive branch of the federal government, the regulations and interpretations of the Office of Government Ethics [OGE] apply to gifts that are offered to or received by executive branch officials.

## **Executive Regulations on Acceptance of Gifts**

The regulations of the Office of Government Ethics set out the guidelines and standards for receipt of gifts by officials in the executive branch of the federal government.<sup>9</sup> The executive branch gift regulations generally follow the statutory prohibitions by restricting the solicitation or acceptance of gifts from a “prohibited source” *and*, furthermore, restrict the solicitation or receipt of any gifts that are given “because of the employee’s official position,”<sup>10</sup> often referred to as “status gifts.” Under the regulations, “prohibited sources” are persons seeking official action from the employee’s agency, those who do business or are seeking to do business with the agency, those whose activities are regulated by the employee’s agency, persons whose interests may be substantially affected by the performance of the employee’s official duties, or an organization a majority of whose members fit the above categories.<sup>11</sup> Although an official may not receive a gift given because of his official position, that is, if the gift would not have been given “had the employee not held the status, authority or duties associated with his Federal position,”<sup>12</sup> an executive branch official may accept a gift without limitation when it is clear that the gift “is motivated by a family relationship or personal friendship rather than the position of the employee.”<sup>13</sup>

Within the executive branch gift regulations there are numerous exceptions which would permit the acceptance (but not the solicitation) of certain things of value in particular circumstances. Such exceptions to the prohibition may allow, for example, the receipt of gifts of “minimal value” (under \$20 in value), incidental food or drinks at events, *bona fide* awards, normal loans, prizes, honorary degrees, pensions, discounts which are generally available, and free attendance at certain widely attended conferences and similar events which are seen to benefit the agency.<sup>14</sup>

The federal regulations on gifts are not directly applicable to the spouses of federal officials since such regulations extend only to “officers or employees” of the government. However, in many cases, gifts to the spouse of a federal official may be “imputed” to the federal official himself or herself, and would thus come within the same kinds of restrictions, limitations, or permissions on gifts to the federal employee. The OGE regulations apply to gifts accepted or solicited directly or indirectly, and expressly provide that a gift which is “solicited or accepted indirectly includes”

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<sup>8</sup> See 5 U.S.C. §7353(b).

<sup>9</sup> 5 C.F.R. §§2635.201 et seq.

<sup>10</sup> 5 C.F.R. §2635.202: “(a) General prohibitions. Except as provided in this subpart, an employee shall not, directly or indirectly, solicit or accept a gift: (1) From a prohibited source; or (2) Given because of an employee’s official position.”

<sup>11</sup> 5 C.F.R. §2635.203(d).

<sup>12</sup> 5 C.F.R. §2635.203(e).

<sup>13</sup> 5 C.F.R. §2635.204(b).

<sup>14</sup> 5 C.F.R. §§2635.203(b)(1)-(9); 2635.204.

gifts which are “[g]iven with the employee’s knowledge and acquiescence to his parent, sibling, spouse, child or dependant relative because of that person’s relationship to the employee....”<sup>15</sup>

## Presidential Exemption

As noted, the President and Vice President are generally exempt by regulation from the statutory gift restrictions and the regulations promulgated by the Office of Government Ethics as to the receipt of gifts.<sup>16</sup> Under these regulations, the President is expressly exempt from the broad restrictions on receiving or accepting gifts from prohibited sources or gifts given because of his official position, and thus may accept gifts from the general public, even from “prohibited sources,” or gifts given because of his official position, as long as the President does not “solicit or coerce” the offering of gifts from such sources,<sup>17</sup> nor accept a gift in return for an official act.<sup>18</sup> The exception for the President and Vice President in the OGE regulations states:

Because of the considerations relating to the conduct of their offices, including those of protocol or etiquette, the President and the Vice President may accept any gift on his own behalf or on behalf of any family member, provided that such acceptance does not violate §2635.202(c)(1) or (2), 18 U.S.C. §201(b) or 201(c)(3), or the Constitution of the United States.<sup>19</sup>

In promulgating its rules and exceptions, the Office of Government Ethics has noted that: “The ceremonial and other public duties of the President and Vice President make it impractical to subject them to standards that require an analysis of every gift offered.”<sup>20</sup>

The regulations and exemptions indicate that the President is still subject to the prohibition on receiving a gift “in return for being influenced in the performance of an official act,”<sup>21</sup> and is still subject to the instruction under the regulations not to “solicit or coerce the offering of a gift,” at 5 C.F.R. §2635.202(c)(2). It appears that the existing prohibition on “solicitations” of gifts would reach only solicitations which are restricted by the general rule, that is, solicitations of gifts from “prohibited sources,” or given “because of the employee’s official position.”<sup>22</sup>

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<sup>15</sup> 5 C.F.R. §2635.203(f)(1).

<sup>16</sup> 5 C.F.R. §2635.204(j); *note* 57 F.R. 35049, August 7, 1992. The President had also been exempt from the standards of conduct originally promulgated in 1965, *note* OGE Advisory Opinion, 83 x 16, October 20, 1983; and because of potential interference with constitutional duties, is generally exempt from the statutory conflict of interest provisions. *Id.*, *see now* 18 U.S.C. §202(c).

<sup>17</sup> 5 C.F.R. §2635.202(c)(2).

<sup>18</sup> 5 C.F.R. §2635.202(c)(1), *see* 18 U.S.C. §201.

<sup>19</sup> 5 C.F.R. §2635.204(j). The constitutional restriction on gifts from foreign governments still applies to the President. *See* art. I, Section 9, cl. 8, and 5 U.S.C. §7342, and discussion below.

<sup>20</sup> 56 F.R. 33783, July 23, 1991.

<sup>21</sup> 5 C.F.R. §2635.202(c)(1), also 18 U.S.C. §201(b)(2).

<sup>22</sup> 5 C.F.R. §2635.202(a). “Executive branch employees can neither solicit nor accept anything of monetary value *from such sources* ....” OGE Advisory Opinion 98 x 8, June 25, 1998. *Emphasis added.* If the §2635.202(c)(2) caveat to the exemption extended to solicitations of gifts from *any* source (even gifts from those who are *not* prohibited sources), then what was intended merely to be a limitation on an exemption from the general rule, would actually operate as a broader restriction than the general rule itself, and would result in an illogical statutory construction of an exemption from a prohibition, barring something not even barred by the underlying prohibition. Singer, SUTHERLAND STATUTORY CONSTRUCTION, Vol 2A, §§46.05, 47.01, 47.08, 47.11. It is not precisely clear how broadly the prohibition on “solicitation” would apply to “suggestions” for gifts by the First Family without a specific “request,” nor whether a (continued...)

## **Disposition of Gifts, Gifts to the White House or the Government**

Since the President is not flatly prohibited from accepting gifts from the general public, such a gift made to the President personally, and accepted, may be retained by him when he leaves office. Gifts coming to the White House that are not intended for the President or First Lady personally, however, but rather are given with the intent to be made for the “White House,” or otherwise made to the government of the United States, and personal gifts not retained by the President or First Lady, are catalogued, distributed, or disposed of by the United States. “Furnishings,” for example, may be accepted by the National Park Service for use in the White House; “historic material” may be accepted by the Archivist for the Archives or Presidential Libraries; and other gifts for the United States, or ones not retained by the President, may be transferred to the General Services Administration for disposition, storage, or sale.<sup>23</sup> In practice, domestic or private gifts are screened, categorized, and evaluated by aides in the White House Gift Office, and then distributed appropriately. If personal gifts to the President or First Lady are not to be retained by them, they are generally recorded, tracked, and sent to the National Archives and Records Administration [NARA] for courtesy storage, and possible eventual use and display at a presidential library.<sup>24</sup> The process in the Reagan White House was explained as follows:

While gifts from family and friends go directly from the White House Gift Unit to the first family, it is simply impossible for the President and First Lady to retain, or even view, most of the gifts from the general public. The Gift Unit, therefore, sees to the disposition of most of these items. Some are transferred to the National Archives, and eventually join head of state gifts as part of a presidential library museum collection.<sup>25</sup>

## **Gifts From Foreign Governments**

The President and all federal officials are restricted by the Constitution, at Article I, Section 9, clause 8, from receiving any “presents” from foreign governments, kings, or princes, without the

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(...continued)

solicitation by a third party, with the President or First Lady’s acquiescence, could be considered as an indirect “solicitation” by the President. A fund for gifts established for the President and First Lady, where information was also provided on how the public may contribute (concerning the establishment by President Clinton and the First Lady of a “Legal Expense Trust” fund), did not constitute a “solicitation” of such funds, even though the President and First Lady had originally set up the instrumentality. In that case, OGE noted: “We do not view the mere establishment of the trust as a solicitation, nor do we view the provision of an information sheet as a solicitation. Solicitation must involve some request.” Letter from OGE, to Michael H. Cardoza, Executive Director, Presidential Legal Expense Trust, July 22, 1994. That first fund did not actively “solicit” contributions. A later Legal Expense Fund, set up in 1998, was not established by the Clintons personally as grantors (as was the first), but was established by third parties, and was allowed to “solicit” money for the trust without an imputed violation to the President. Note, *Washington Post*, “Clintons Approve New Legal Fund,” at A12, February 19, 1998, indicating OGE approval.

<sup>23</sup> Note testimony of Gregory S. Walden, former Associate Counsel to President George H.W. Bush, before the Subcommittee on Energy Policy, House Committee on Government Reform, Hearings on “Accountability For Presidential Gifts,” February 12, 2002, citing National Park Service authority to accept gifts for use in Executive Residence, 3 U.S.C. §110; acceptance of historic materials by the Archivist, 44 U.S.C. §§2112(a)(1)(A), (C), 2112(b); and disposition of gifts to the Government by GSA, 41 C.F.R. 102-36.405 - 102-36.420.

<sup>24</sup> See H.R. Rpt. No. 107-768, 107th Cong., 2d Sess. 308-311 (2002), N.A.R.A. procedures.

<sup>25</sup> Ronald Reagan Presidential Library, <http://www.reagan.utexas.edu/resources/handout/Gifts.htm>.

consent of the Congress. The Congress has consented generally, in the Foreign Gifts and Decorations Act, to the acceptance of gifts of “minimal value” from foreign governments offered as souvenirs or marks of courtesy,<sup>26</sup> and the acceptance of other gifts when a refusal of the gift may cause “offense or embarrassment” or otherwise harm the foreign relations of the United States.<sup>27</sup> A tangible gift of more than minimal value accepted for reasons of protocol or courtesy may not be kept as a personal gift, however, but is considered accepted on behalf of and property of the United States, and in the case of such a gift for the President or the President’s family, is handled by the National Archives and Records Administration.<sup>28</sup>

In the past, Presidents, as well as Vice Presidents and other federal officials, have been allowed to accept an award such as the Nobel Prize for a variety of reasons.<sup>29</sup> With respect specifically to the prohibition on acceptance of things of value and gifts from foreign governments, the Nobel Prize is funded and managed by a private foundation and a private foundation board, and is thus not considered to be a gift given by a foreign government nor an instrumentality of a foreign state.<sup>30</sup>

## **Bribery, Illegal Gratuities**

The President and all federal officials are subject to the restrictions of the bribery law at 18 U.S.C. §201(b)(2), prohibiting the receipt of or agreement to receive anything of value “in return for being influenced” in the performance of one’s official duties; and the so-called “illegal gratuities” clause of that statute, 18 U.S.C. §201(c)(1)(B), prohibiting the receipt of anything of value “for or because of” an official act performed or to be performed. The bribery provision requires a “corrupt” bargain or understanding to do some official act in return for something of value (often referred to as a *quid pro quo*), where the payment was the motivation for the official act; while under the “illegal gratuities” provision, the official act may have been done even without the payment as motivation, but the payment was connected to the act in some way, for example, as a thank-you or other reward (*i.e.*, a “gratuity”). Neither provision is technically a “gift” law, and neither applies merely to gifts given with no demonstrated connection to a particular official act.<sup>31</sup>

## **Financial Disclosure**

In addition to restrictions on the receipt of gifts, the President is required to publicly disclose personal financial information, including personal gifts over minimal amounts (\$350 as of this writing) which have been received by him and his immediate family. These public disclosure

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<sup>26</sup> 5 U.S.C. §7342(c)(1)(A). “Minimal value” is pegged to the consumer price index and adjusted every 3 years. In the most recent regulations it is defined as \$350 or less. 41 C.F.R. §102- 42.10.

<sup>27</sup> 5 U.S.C. §7342(c)(1)(B).

<sup>28</sup> 5 U.S.C. §7342(c)(1)(B)(i); note 41 C.F.R. §§102-42-15, 102-42.70.

<sup>29</sup> Examples of Nobel Peace Prize recipients include Presidents Theodore Roosevelt in 1906, Woodrow Wilson in 1919, Vice President Charles G. Dawes in 1925, Secretary of State Henry Kissinger in 1973, and President Barack Obama in 2009.

<sup>30</sup> Department of Justice, Office of Legal Counsel, “Applicability of the Emoluments Clause and the Foreign Gifts and Decorations Act to the President’s Receipt of the Nobel Peace Prize,” December 7, 2009.

<sup>31</sup> *United States v. Sun-Diamond Growers of California*, 526 U.S. 398 (1999).



reports are required each May 15<sup>th</sup>, and upon leaving office, under the provisions of the Ethics in Government Act of 1978, as amended.<sup>32</sup>

## **Public Opinion, Criticism**

Despite the permissibility of the receipt and acceptance of gifts by the President and the First Lady from the American public, certain acceptances of private gifts have in the past engendered some public and press criticism, and thus the receipt of particularly lavish or excessive gifts, even if free of legal liability, may not be free from political or public relations consequences.<sup>33</sup>

## **Author Contact Information**

Jack Maskell  
Legislative Attorney  
jmaskell@crs.loc.gov, 7-6972

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<sup>32</sup> 5 U.S.C. app., §§101(d)-(f), 102(a)(2), as amended.

<sup>33</sup> The acceptance by First Lady Nancy Reagan of the use of designer gowns valued up to \$25,000, and expensive jewelry for formal occasions was subject to a series of criticisms (note The Washington Post, “IRS Looking Into Gifts to Reagans,” December 5, 1989; New York Times, “Looking A Gift House in the Mouth,” September 19, 1999), as was the Reagans’ acceptance upon leaving office of the use of a \$2.5 million home in Bel Air, California, purchased by undisclosed friends (The Washington Post, “Reagans Probably Could Accept House as Gift, Ethics Office Says,” April 13, 1988), which had been later described by Mrs. Reagan as merely a “loan,” which was paid back with interest. National Journal, at p. 358, February 3, 2001. Criticisms of gifts received by the Clintons upon leaving office led to their decision to pay for a large portion of those gifts, and to return others which were apparently intended for the White House rather than as personal gifts. The Washington Post, “Clinton Will Pay for Half of Gifts,” February 3, 2001, and “Clinton Say They’ll Return Disputed Gifts,” February 6, 2001.