

# **NTEU**

**The National Treasury Employees Union**

January 21, 2016

VIA E-MAIL (usoge@oge.gov)

Christopher J. Swartz, Assistant Counsel  
Vincent J. Salamone, Associate Counsel  
Office of Government Ethics  
1201 New York Avenue, N.W., Suite 500  
Washington, D.C. 20005-3917  
ATTN: Proposed Amendments to Subpart B

**RE: RIN 3209-AA04 -- Proposed Amendments to Subpart B**

Dear Mr. Swartz and Mr. Salamone:

The National Treasury Employees Union (NTEU) submits these comments in response to the Federal Register notice published on November 27, 2015, 80 Fed. Reg. 74004, concerning proposed amendments to subpart B of the standards of ethical conduct for employees of the executive branch. NTEU is the nation's largest independent federal union, representing approximately 150,000 employees in 31 federal agencies in the executive branch. As such, NTEU has considered the effect of the proposed rules on both the employees it represents and the union itself.

NTEU welcomes many of OGE's proposed changes. For example, NTEU believes proposed § 2635.304(m), a gift exception for books, periodicals, and other written material, removes a needless barrier to the flow of useful information to executive branch employees. NTEU also notes with approval OGE's proposal at § 2635.203(b)(2) to discard the rigid standard that an employee may accept items intended "solely" for presentation in favor of the more tolerant standard that an employee may accept items intended "primarily" for presentation.

While NTEU applauds these proposed changes, other proposed changes raise concerns. Foremost, NTEU objects to OGE's proposal to impose the requirement for written authorization in every case when an employee is offered free attendance to a

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widely attended gathering (WAG). In the Supplementary Information accompanying the proposed rules, OGE acknowledges that proposed § 2635.204(g) significantly increases agency ethics officials' workloads. This added layer of red tape could have the effect of discouraging attendance at WAGs altogether, and this potential chilling effect would hurt both federal employees and agencies. As the rules themselves recognize, many WAGs promote agencies' interests and further agencies' programs and operations without calling federal employees' integrity into question.

NTEU posits that the current § 2635.204(g) suffices to prevent impropriety or the appearance of it by singling out for written authorization only those WAGs most likely to raise ethical questions--that is, those to which an employee is invited by a person with substantial interests in the employee's performance of his or her duties. And in any event, whereas OGE reasons that "requiring a written authorization on all occasions will promote the public's confidence in Government operations," saddling agencies with more paperwork is no way to engender such public confidence.

NTEU further requests that OGE clarify or modify proposed § 2635.206, regarding proper disposition of prohibited gifts. NTEU appreciates OGE's recognition that returning or paying for an otherwise impermissible gift is sometimes impracticable. When the only available alternative is destroying the gift, however, the rule invites waste. Proposed Example 1 to paragraph (a)(1) demonstrates precisely such waste by instructing that an employee who received a \$25 t-shirt may destroy this prohibited gift by throwing it in the trash.

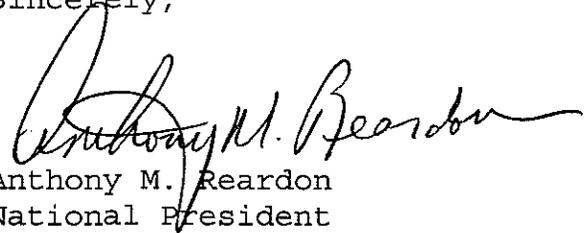
Instead, an employee should be permitted to donate the impermissible gift, like a t-shirt, to a charity that would give it to someone in need. Donating items under \$100 would not have the same ethical implications highlighted in Example 1 to paragraph (f)(2) of § 2635.203, which advises that an employee may not suggest that a gift of a personal computer be donated to a charity. Unlike donating a valuable item such as a computer, donating a \$25 t-shirt would not "create an incentive for donors to offer employees items they cannot accept" or "result in [employees'] favorite charities profiting from their official positions." 57 Fed. Reg. 32006 (Aug. 7, 1992) (setting forth OGE's reasons for rejecting proposal to allow charitable donations of prohibited gifts). Therefore, NTEU requests that

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OGE clarify or modify proposed § 2635.206 to reflect that donating gifts valued less than \$100 constitutes proper disposition.

Thank you for the opportunity to submit these comments. Please do not hesitate to contact NTEU for elaboration of these views.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony M. Reardon". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Anthony M. Reardon  
National President