



# PROTECT the PUBLIC'S TRUST

June 4, 2024

The Honorable Christi A. Grimm  
Inspector General  
U.S. Department of Health and Human Services  
330 Independence Avenue, SW  
Washington, DC 20201

**RE: Request for investigation into apparent violations of federal employee gift regulations.**

Dear Inspector General Grimm:

The American people should feel confident that federal employees are adhering to all ethics rules and regulations. These were enacted by Congress to ensure the accountability and transparency necessary for federal employees to be answerable to the American people and not any outside entities, advocacy organizations, or corporations.

Protect the Public's Trust (PPT) is a nonpartisan organization dedicated to the idea that public service is a public trust. We believe that the American people deserve a government that is impartial, free from conflicts of interest, and operates without political interference or favoritism. To this end, we are requesting that the Department of Health and Human Services Office of Inspector General open an investigation into the circumstances surrounding the apparent solicitation of a gift by Kathy Crosby, a former official at The Food and Drug Administration, Center for Tobacco Products (CTP). Media reports, first reported by the Daily Caller News Foundation (DCNF), indicate that Ms. Crosby appears to have solicited a ticket to the Campaign for Tobacco Free Kids (CTFK) gala.<sup>1</sup> Emails upon which the story is based, originally obtained by the Functional Government Initiative (FGI), also show that she used that event to meet with a board member of the Truth Initiative, another advocacy organization and one that subsequently hired Ms. Crosby as its new CEO.

Although the FDA stated that Ms. Crosby received ethics officials' approval to attend the gala, the more concerning fact of Ms. Crosby's inappropriate solicitation of a gift from a prohibited source went unaddressed (perhaps intentionally). It is possible that this material fact was withheld from ethics officials prior to receiving approval to accept the gift. If so, no safe harbor should be provided for Ms. Crosby's apparent violation. An investigation into the matter is necessary to both bring accountability and to ensure that current federal employees do not also believe they can evade ethics restrictions on their way out the door to private sector enrichment without consequence.

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<sup>1</sup> Robert Schmad, "EXCLUSIVE: Former FDA Official Cozied Up To Activists Months Before Joining Them, Emails Show", Daily Caller News Foundation, May 15, 2024, <https://dailycaller.com/2024/05/15/exclusive-former-fda-official-cozied-up-to-activists-months-before-joining-them-emails-show/>



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## Background

As you know, CTP enforces tobacco regulations under the Family Smoking Prevention and Tobacco Control Act. CTFK operates as an advocacy organization striving to advance policies aimed at reducing the consumption of tobacco products, particularly among minors. CTFK has launched various issue campaigns focusing on curbing nicotine product usage among minors. In executing these campaigns, CTFK often advocates for regulatory actions under the purview of CTP. For these reasons, CTFK likely qualifies as a prohibited source under federal ethics regulations<sup>2</sup> and one that should be dealt with at arms-length by all federal employees with authority or influence over CTP programs and operations.

Kathy Crosby served as the Director for the CTP Office of Health Communications. As announced on August 15, 2023<sup>3</sup>, she left CTP to become CEO of the Truth Initiative, another advocacy group allied with CTFK and by all appearances, also a prohibited source for federal ethics purposes.

According to the May 15, 2024 story,

In April 2022, the Campaign for Tobacco-free Kids (CTFK) offered Crosby free tickets to its 2022 gala. Crosby was busy that year, so she declined the tickets but asked CTFK to “keep [her] in mind for next year’s event.”

Roughly a year later, Crosby responded to the same email thread and asked the CTFK if it would be “extending an invitation to any FDA colleagues to attend” the 2023 gala. Hours later, the organization offered Crosby complimentary tickets, which she then accepted, saying that she “should definitely be able to join” them this year.

Emails show that Crosby indeed attended the May 18, 2023, CTFK gala and networked with employees of the Truth Initiative while there.<sup>4</sup>

The DCNF report is supported by the original documents FGI obtained, which PPT received from DCNF.<sup>5</sup> While the story does not reveal the 2023 event’s ticket prices, the price for the 2024 gala is listed on the CTFK website as \$400.00.<sup>6</sup> There was no indication that Ms. Crosby was otherwise asked to attend the event for the purpose of presentation of official agency

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<sup>2</sup> 5 C.F.R. § 2635.203.

<sup>3</sup> <https://truthinitiative.org/press/press-release/truth-initiative-board-announces-appointment-kathy-crosby-new-ceo-and-president>

<sup>4</sup> Robert Schmad, “EXCLUSIVE: Former FDA Official Cozied Up To Activists Months Before Joining Them, Emails Show”, Daily Caller News Foundation, May 15, 2024, <https://dailycaller.com/2024/05/15/exclusive-former-fda-official-cozied-up-to-activists-months-before-joining-them-emails-show/>

<sup>5</sup> FDA response to FOIA documents, “FDA-Crosby-Docs-from DCNF”, pp. 63-64, <https://protectpublictrust.org/wp-content/uploads/2024/05/FDA-Crosby-Docs-from-DCNF.pdf>

<sup>6</sup> <https://www.tobaccofreekids.org/gala-2024-tickets>



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material. This action potentially violates the prohibition on soliciting or accepting gifts attributable to Ms. Crosby's official position, as outlined in the Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. § 2635).

Further, the email records show interesting timing related to her departure from CTP to become the CEO of the Truth Initiative. As the DCNF reports,

Shortly after attending CTFK's gala, Crosby emailed then-Truth Initiative president and CEO Robin Koval on May 22 to schedule a meeting so the two could "catch-up." In the email, she also mentioned that she had already met with Howard Koh, a member of the organization's board of directors, and other staff at the gala. Koval and Crosby ultimately agreed to meet on May 24, 2023.

[...]

On Aug. 15, 2023, Truth Initiative's board announced its appointment of Crosby as the group's president and CEO. Following the announcement, and while Crosby was still at the FDA, multiple Truth Initiative employees reached out via email to congratulate her.

"I just wanted to reach out and send a note to say congratulations," one email from the group's vice president of communications, Sarah Shank, reads. "It's always a pleasure working with you and your team at FDA and I'm beyond thrilled to work with you in this new capacity here at Truth Initiative."

"So excited for this next chapter with our organization," Tina Morgan, the organization's vice president of sponsorships, said.<sup>7</sup>

Again, the DCNF's reporting is consistent with the content of the FGI FOIA records.<sup>8</sup> In the article, the FDA said that "Crosby 'immediately' notified the FDA that she was looking for a job outside the government and 'recused herself from any official actions that would financially impact her future employer.'" However, the agency wasn't specific about when "immediately" referred to.

## Analysis

Under federal law, specifically 5 C.F.R. § 2635, federal employees are barred from soliciting gifts, directly or indirectly, from prohibited sources given because of a recipient's official

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<sup>7</sup> Robert Schmad, "EXCLUSIVE: Former FDA Official Cozied Up To Activists Months Before Joining Them, Emails Show", Daily Caller News Foundation, May 15, 2024, <https://dailycaller.com/2024/05/15/exclusive-former-fda-official-cozied-up-to-activists-months-before-joining-them-emails-show/>

<sup>8</sup> FDA response to FOIA documents, "FDA-Crosby-Docs-from DCNF", p. 52, <https://protectpublictrust.org/wp-content/uploads/2024/05/FDA-Crosby-Docs-from-DCNF.pdf>



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position.<sup>9</sup> The definition of a gift encompasses items of monetary value, including complimentary attendance at events.<sup>10</sup> Exceptions to this prohibition exist, but they must be carefully applied.

Ms. Crosby's solicitation, as evidenced in the noted public records, was quite direct. CTFK is indisputably a prohibited source given its long-standing efforts to influence the operations and actions of the CTP. Ms. Crosby was also a senior member of the agency at the center of CTFK's sustained advocacy efforts, marking her solicitation and ultimate departure to another prohibited source of even greater concern.

None of the listed regulatory exceptions appear to apply.<sup>11</sup> The CTFK gala tickets were well above \$20 in value. The relationship between Ms. Crosby and CTFK was undeniably related to her employment at a federal agency frequently targeted for advocacy and lobbying efforts by CTFK. The free attendance to the CTFK gala was not available to other members of the public, nor even to federal employees within CTP until solicited by Ms. Crosby. There was no formal presentation at the gala planned by Ms. Crosby, honorary degree or award to be received, or related to any outside employment (other than of course, Ms. Crosby's future employment prospects that appear to have been advanced by attendance at the gala). An analysis of the other relevant regulatory exceptions all lead to the same conclusion – acceptance of the gift from the prohibited source in the face of Ms. Crosby's direct solicitation appears to have no support in the law.

Crosby's solicitation of an invitation suggests an intention to leverage her official position to avoid paying for a gala ticket, rather than attending the event in a manner consistent with ethical standards. Whether FDA ethics officials approved her attendance at the gala, they very likely did so without access to all material facts. In such circumstances when ethics approval is provided without all material information being provided, no safe harbor is available and a violation of pertinent regulations must be found.

## Conclusion

For too long, the public has had to watch the revolving door in Washington, D.C. spin to the financial benefit of high-ranking federal officials and special interests. Often, faithful adherence to the principle that public service is a public trust has been tossed by the wayside. Given the myriad examples available, it is not too difficult to wonder the effect that this has had on the public's health and welfare. The matter discussed in this complaint is simply the latest iteration.

Based on the foregoing facts and circumstances presented, there is a sufficient basis to open an investigation into Ms. Crosby's apparent violation of federal employee gift regulations. The circumstances surrounding her solicitation of an expensive gift from a prohibited source,

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<sup>9</sup> 5 C.F.R. § 2635.205 (2024).

<sup>10</sup> 5 C.F.R. § 2635.203 (2024).

<sup>11</sup> 5 C.F.R. § 2635.204.



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particularly in relation to her official duties at CTP, the nature of CTFK's activities, and her subsequent employment at another advocacy organization with whom she may have met at the event, all seek to undermine the public's faith that Ms. Crosby fully complied with her ethics obligations. The incentives for current and future federal employees to comply with the law, particularly as they are preparing to leave federal employment, demand investigation and accountability for any identified misconduct by Ms. Crosby. Thank you for your prompt attention to this matter.

Sincerely,

Michael Chamberlain  
Director  
Protect the Public's Trust