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LEGAL ADVISORY

TO: Designated Agency Ethics Officials

FROM: Emory A. Rounds, III
Director

SUBJECT: Application of Gifts and Fundraising Rules to Presidential Inaugural Events

The U.S. Office of Government Ethics (OGE) is issuing this Legal Advisory to remind agency ethics officials of the ethical requirements relevant to executive branch employees during the Presidential Inauguration celebration, particularly regarding gifts.¹ In connection with the national, historic event of Inauguration on January 20, 2021, executive branch employees may receive offers of free attendance to attend Inauguration-related events, including the Inaugural Parade, Inaugural balls, receptions, dinners, and fundraisers.

Although generally an executive branch employee may not solicit or accept a gift from a prohibited source or a gift given because of the employee's official position,² many offers of free attendance to Inauguration-related events, whether held virtually or in-person, may fall within one of the exclusions or exceptions to the gift rules.³ Some of the most relevant exceptions and exclusions for Inauguration-related events are set out below:

- Events that are Free to the Public or Free to All Government Employees: Events that are free to the public, or free to a class consisting of all Government employees or uniformed military personnel, are not considered "gifts."⁴ Employees may accept invitations to such events, or accept other items affiliated with the Inauguration, even if they are given by a prohibited source or because of the employee's official position. For example, an executive branch employee may accept free attendance to a virtual Inaugural

¹ For purposes of the Standards of Ethical Conduct for Employees of the Executive Branch, a gift is defined as "any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value." 5 C.F.R. § 2635.202(b).

² *Id.* § 2635.202(a), (b). Full-time, non-career appointees continue to be bound by the Ethics Pledge ban on accepting gifts from a registered lobbyist or lobbying organization for the duration of their service as appointees. Exec. Order No. 13,770 para. 5. This Legal Advisory does not address these additional restrictions. *See* OGE Legal Advisory LA-12-10 (Dec. 20, 2012); *see also* OGE DAEOgram DO-10-003 (Feb. 18, 2010); OGE DAEOgram DO-09-007 (Feb. 11, 2009).

³ *See* OGE Legal Advisory LA-20-10 (Dec. 7, 2020).

⁴ 5 C.F.R. § 2635.203(b)(4), (8).



event hosted by a prohibited source, even though others must pay a \$30 registration fee, provided that free attendance is offered to all Government employees.⁵

- Employee Pays Market Value: Similarly, Inaugural events for which an executive branch employee pays market value are excluded from the definition of “gifts.”⁶ An employee may therefore accept an invitation to an Inaugural event that requires the employee to pay market value for the ticket, even if the invitation to the event is from a prohibited source or is offered because of the employee’s official position.
- Gifts of \$20 or Less: Executive branch employees may accept unsolicited gifts that are valued at \$20 or less per occasion, provided that the total value of gifts from the same source does not exceed \$50 in a calendar year.⁷ This exception could apply, for example, if the value of food, drink, or entertainment at an Inaugural reception is not more than \$20. Note, however, that if there are tickets, the market value of the event is equal to the face value of the ticket.⁸ The exception would also apply to a virtual Inaugural event if attendees are charged an admission fee of \$20 or less.
- Gifts from the Federal Government: An executive branch employee may accept gifts from an entity of the Federal Government or an employee acting on behalf of such entity.⁹ For example, an employee may accept tickets or other Inaugural items offered by Members of Congress to constituents, the Joint Congressional Committee on Inaugural Ceremonies,¹⁰ or the Presidential Inaugural Committee (PIC).¹¹
- Gifts Offered by Political Organizations: Because certain Inauguration-related gifts may be offered by political organizations, as described in 26 U.S.C. § 527(e), an employee may be able to rely on the exception for gifts in connection with political activities.¹² Under this exception, an executive branch employee who actively participates in political management or political campaigns may accept various benefits from political organizations¹³ when provided in connection with the employee’s active participation. Such benefits include travel and free attendance to events for the employee and an accompanying spouse or other guests.

⁵ The same analysis would apply if the event was held in-person.

⁶ 5 C.F.R. § 2635.203(b)(10), (c).

⁷ *Id.* § 2635.204(a).

⁸ *Id.* § 2635.203(c).

⁹ *See id.* § 2635.102(k) (excluding from the definition of “person” “any agency or other entity of the Federal Government or any officer or employee thereof when acting in [their] official capacity on behalf of that agency or entity”).

¹⁰ The Joint Congressional Committee on Inaugural Ceremonies is the official committee appointed by Congress to arrange for the inauguration of the President-elect and the Vice President-elect on property under Congressional jurisdiction. 36 U.S.C. § 507.

¹¹ Although, “[s]trictly speaking, the PIC may not be a part of the Federal Government,” OGE has long viewed gifts of free attendance from PICs for PIC events as permissible under Subpart B because of the unique nature and mission of the entity. OGE DAEOgram DO-09-001 (Jan. 15, 2009).

¹² 5 C.F.R. § 2635.204(f).

¹³ Examples of political organizations are the Democratic and Republican National Committees, Federally-registered candidate committees, state party committees, and tax-exempt 527(e) political action committees.

- Gifts Based on a Personal Relationship or Resulting from an Employee’s or Spouse’s Business or Employment: Gifts that are clearly motivated by a family relationship or personal friendship may be accepted by executive branch employees.¹⁴ Similarly, gifts that result from the employment or business activities of the employee or the employee’s spouse may be accepted, as long as it is clear that the gifts were not offered or enhanced because of the employee’s official position.¹⁵ For example, if an employee’s spouse works for a law firm that has provided its personnel and their spouses with free tickets to an Inauguration-related reception, the employee may attend the event, even if the law firm is a prohibited source for the employee.
- Widely Attended Gatherings: The widely attended gathering (WAG) exception may also apply to Inaugural events.¹⁶ An executive branch employee may accept an offer of free attendance to a WAG from the sponsor of the event, provided that the appropriate agency designee makes a written determination that the agency’s interest in the employee’s attendance outweighs the concern that the employee may be, or may appear to be, improperly influenced in the performance of official duties.¹⁷ When the offer of free attendance comes from a non-sponsor, the agency designee also must determine that more than 100 persons are expected to attend the event, and that the market value of the gift is \$415 or less.¹⁸

Even if a gift satisfies one or more of the above exceptions or exclusions, the executive branch employee can still decline the gift. Overall, an executive branch employee should decline a gift if the employee determines that a reasonable person with knowledge of all relevant facts would question the employee’s integrity or impartiality if he or she accepted the gift.¹⁹ To properly evaluate this standard, employees should consider: (1) the value of the gift; (2) the timing of the offer of the gift; (3) the identity of the donor; and (4) whether the gift would provide the donor with significantly disproportionate access.²⁰

Finally, apart from the gift rules, the restrictions on fundraising apply to any fundraisers held in connection with the Presidential Inauguration.²¹ OGE’s regulations limit executive branch employees’ participation in fundraising in both their official and personal capacities. Employees are permitted to participate in fundraising activities in an official capacity if they are

¹⁴ 5 C.F.R. § 2635.204(b).

¹⁵ *Id.* § 2635.204(e)(1)–(2).

¹⁶ *Id.* § 2635.204(g). “A gathering is widely attended if it is expected that a large number of persons will attend, that persons with a diversity of views or interests will be present, for example, if it is open to members from throughout the interested industry or profession or if those in attendance represent a range of persons interested in a given matter, and that there will be an opportunity to exchange ideas and views among invited persons.” *Id.* § 2635.204(g)(2).

¹⁷ 5 C.F.R. § 2635.204(g)(3)–(4). Depending on the size of the event and cost to attend, the agency may also have to determine whether the donor is a “sponsor” of the event. *See* OGE Legal Advisory LA-17-04 (Apr. 18, 2017).

¹⁸ *See* 5 C.F.R. § 2635.204(g)(3)(iv); *see also* OGE Legal Advisory LA-17-04.

¹⁹ 5 C.F.R. § 2635.201(b).

²⁰ *Id.* § 2635.201(b)(2).

²¹ *See id.* § 2635.808(a)(1) (defining “fundraising” as “the raising of funds for a nonprofit organization, other than a political organization”); *see also* OGE DAEOgram DO-93-024 (Aug. 25, 1993).

authorized to engage in the fundraising activity as a part of their official duties.²² Employees are also permitted to engage in fundraising activities in their personal capacity, provided they: (1) do not solicit funds or other support from a subordinate employee; (2) do not use their official title, position, or authority associated with public office to further the fundraising effort; and (3) do not use Government resources or time in support of private fundraising efforts.²³ Note, however, that the OGE fundraising rules do not apply to fundraising for a political party, candidate for partisan political office, or partisan political group; rather, the Hatch Act and implementing regulations apply to political fundraising in connection with Inaugural events.²⁴

Agency ethics officials should consult with their OGE Desk Officers regarding any questions about the Government ethics issues addressed in this Legal Advisory. In addition, agency ethics officials also may wish to consult the website and issuances of the U.S. Office of Special Counsel for additional guidance on the Hatch Act.

²² 5 C.F.R. § 2635.808(b).

²³ *Id.* § 2635.808(c); *see also id.* §§ 2635.704, .705.

²⁴ *See* 5 U.S.C. § 7323(a)(2); *see also* 5 C.F.R. § 734.303.