

NOTE: All substantive legal interpretations in this advisory that pertain to Executive Order 13490, sec. 1, par. 1, are applicable to Executive Order 13770, sec. 1, par. 5. *See* LA-17-02 and LA-17-03.



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MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Don W. Fox
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SUBJECT: Presidential Inaugural Events

On January 21, 2013, the Presidential Inauguration will mark an important and historic national event. In connection with this occasion, a Federal employee may receive offers of free attendance from various sources to attend Inauguration-related events, including the Inaugural Parade, Inaugural Balls, receptions, dinners, and fundraisers. The Office of Government Ethics (OGE) thought it appropriate to remind agencies of the ethical requirements relevant to a Federal employee during the inauguration celebration, particularly those requirements regarding gifts.

Generally, an executive branch employee may not accept a gift from a prohibited source or a gift given because of the employee's official position. 5 C.F.R. § 2635.202(a). Additionally, a full-time, non-career appointee in the Obama Administration continues to be bound by the Ethics Pledge ban on accepting gifts from a registered lobbyist or lobbying organization.¹

However, many of the offers of free attendance at Inauguration-related events may fall within one of the exceptions or exclusions to the gift prohibitions. Some of the more relevant exceptions and exclusions are set out below:

- **Gifts of \$20 or less:** A Federal employee may accept from any source unsolicited gifts that are valued at \$20 or less per occasion, provided the total value of gifts from the same source does not exceed \$50 in a calendar year and, for a full-time non-career appointee, the donor is not a registered lobbyist or lobbying organization. *See* 5 C.F.R. § 2635.204(a); Executive Order 13490. This exception could apply, for example, to gifts of food or drink at a reception or dinner or other event. Note, however, that any events

¹ The Pledge prohibits gifts from a lobbyist or lobbying organization that is “registered” under the Lobbying Disclosure Act, 2 U.S.C. § 1601, *et. seq.* *See* Executive Order 13490, sec. 2(e). An appointee may accept an otherwise permissible gift from an employee of a 501(c)(3) nonprofit, institution of higher education, or media organization even if that organization is a registered lobbying organization, provided that the person extending the invitation is not personally a registered lobbyist. *See* DO-09-007.

for which there are tickets are to be valued according to the face value on the ticket. 5 C.F.R. § 2635.203(c).

- Gifts based on a personal relationship or resulting from a spouse's business or employment: Gifts that are clearly motivated by a family relationship or personal friendship are permissible. 5 C.F.R. § 2635.204(b). Similarly, a gift that results from the employment or business activities of the employee's spouse may be accepted, as long as it is clear that the gift was not offered or enhanced because of the employee's official position. 5 C.F.R. § 2635.204(e)(1). Because neither exception implicates the purposes of the lobbyist gift ban, both exceptions are available to a full-time non-career appointee. For example, if an employee's spouse works for a law firm that has provided its personnel and their spouses with tickets to an Inauguration-related reception, the Federal employee may attend the event for free, even if the law firm is a prohibited source for the employee.
- 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. 5 C.F.R. § 2635.204(e). Under this exception, an employee who actively participates in political management or campaigns may accept various benefits from political organizations, including travel and free attendance at events, in connection with their political participation. Examples of political organizations would be the Democratic and Republican National Committees, Federally registered candidate committees, State party committees, and tax-exempt 527(e) political action committees. In this connection, note that the official Presidential Inaugural Committee (PIC) is not a political organization but rather a 501(c)(4) organization, although gifts of free attendance from the Presidential Inaugural Committee are permissible for other reasons discussed below. Moreover, a political action committee may be a registered lobbying organization subject to the lobbyist gift ban.
- Widely attended gatherings: Another gift exception that may apply to many Inauguration-related events is the widely attended gathering (WAG) provision. 5 C.F.R. § 2635.204(g)(2). An employee may be authorized by an agency designee to accept an offer of free attendance at a WAG, provided that the appropriate agency designee determines that the employee's attendance is in the agency's interest and, for a full-time non-career appointee, the donor is not a Federally registered lobbyist or lobbying organization.

Of course, an employee may attend any event or accept any other item that is available for free to the public or for which the employee pays market value. *See* 5 C.F.R. § 2635.203(b)(4), (9). Therefore, an employee may enjoy access to entertainment and other gatherings made available to the general public in connection with the Inauguration. Moreover, an employee may accept any items actually paid for under Government contract. *See* 5 C.F.R. § 2635.203(b)(7).

Similarly, an employee may accept any items from an entity of the Federal Government or an employee acting on behalf of such entity. *See* 5 C.F.R. § 2635.102(k) (defining “person” to exclude any “agency or entity of the Federal Government” for purposes of the gift prohibitions). Thus, for example, an employee may accept tickets or other Inaugural items offered by Members of Congress to constituents, or they may accept similar items from the Joint Congressional Committee on Inaugural Ceremonies, which 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. *See* 36 U.S.C. § 507. Moreover, employees may accept offers of free attendance and related gifts from Presidential Inaugural Committee (PIC), which is separate from the Joint Congressional Committee. OGE has viewed PICs as *sui generis*, at least with respect to the application of the gift rules in subpart B, and OGE has advised in the past that employees may accept gifts of free attendance from PICs for PIC events. *See* DO-09-001.

Finally, apart from gifts, the usual restrictions on fundraising apply to any fundraisers held in connection with the Inauguration. *See* 5 C.F.R. § 2635.808; DO-93-024. Although the OGE fundraising rule does not apply to fundraising for a political party, candidate for partisan political office, or partisan political group, the Hatch Act and implementing regulations continue to restrict political fundraising. *See* 5 U.S.C. § 7323(a)(2); 5 C.F.R. § 734.303.

Agency ethics officials should consult with their OGE Desk Officer Team regarding any questions about the issues addressed in this legal advisory.