

UNITED STATES OFFICE OF
GOVERNMENT ETHICS

December 20, 2016
LA-16-11

LEGAL ADVISORY

TO: Designated Agency Ethics Officials

FROM: David J. Apol
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SUBJECT: Presidential Inaugural Events

On January 20, 2017, 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.¹

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. 5 C.F.R. § 2635.202(a), (b).² 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:

- Widely attended gatherings: One gift exception that may apply to many Inauguration-related events is the widely attended gathering (WAG) provision. 5 C.F.R. § 2635.204(g). An employee may accept an offer of free attendance at a WAG, 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. 5 C.F.R. § 2635.204(g)(3), (4).

¹ This Legal Advisory references and cites to the recently amended gift rules at 5 C.F.R. § 2635, subpart B, which will be effective on January 1, 2017. See Standards of Ethical Conduct for Employees of the Executive Branch; Amendment to the Standards Governing Solicitation and Acceptance of Gifts from Outside Sources, 81 Fed. Reg. 81641-81657 (November 18, 2016), available at <https://www.gpo.gov/fdsys/pkg/FR-2016-11-18/pdf/2016-27036.pdf>.

² Additionally, a full-time, non-career appointee continues to be bound by the Ethics Pledge ban on accepting gifts from a registered lobbyist or lobbying organization for the duration of his or her service as an appointee. Executive Order 13490. This Legal Advisory does not address these additional restrictions. See DO-09-007 and LA-12-10 for additional guidance.

- 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. *See* 5 C.F.R. § 2635.204(a). This exception could apply, for example, if the value of food, drink, or entertainment at a reception or other event was not more than \$20. Note, however, that any events 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 an employee's or 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 or 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), (2). 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(f). 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, for the employee and an accompanying spouse or other guests, when provided in connection with the employee's 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.

Even where a gift exception is available, an employee should decline to accept otherwise permissible gifts when 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. *See* 5 C.F.R. § 2635.201(b). 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 significantly disproportionate access to the donor. 5 C.F.R. § 2635.201(b)(2).

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, as such events and items are not covered by the definition of "gift." *See* 5 C.F.R. § 2635.203(b)(4), (10). Similarly, an employee may accept any items from an entity of the Federal Government or an employee acting on behalf of such entity. 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 or the Presidential Inaugural Committee (PIC). *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 regarding any questions about the government ethics issues addressed in this Legal Advisory. Agency ethics officials may also wish to consult the website and issuances of the U.S. Office of Special Counsel for additional guidance on the Hatch Act.