

Office of Government Ethics Revises Executive Branch Gift Rules

November 18, 2016

Effective January 1, 2017, the Office of Government Ethics (OGE) [is revising](#) the gift rules applicable to executive branch employees. The revisions were prompted by the Ethics in Government Act of 1978, which requires OGE to periodically update its regulations. For the most part, the revisions are non-substantive edits that enhance readability and remove gender references. *The OGE did, however make the following changes that persons and organizations interacting with the federal government should be aware of to stay in compliance with ethics rules:*

- **All Widely Attended Gatherings (“WAGs”) Now Require Written Agency Approval.** Under the previous regulations, an executive branch employee was required to receive written authorization to attend a “widely attended gathering” only if the person or organization extending the invitation had interests that could be substantially affected by the invited employee. All WAGs must now be reviewed and approved, in writing (an email suffices), by an agency ethics official. The revisions also emphasize that a WAG must include an opportunity for attendees to exchange ideas and views, although OGE clarified that this does not mean that the event must be a panel discussion or roundtable event. Agency ethics officials also are provided specific factors to consider when reviewing a WAG, including:
 - The importance of the event to the agency;
 - The nature and sensitivity of any pending matter affecting the interests of the person who extended the invitation and the significance of the employee’s role in any such matter;
 - The purpose of the event;
 - The identity of other expected participants;
 - Whether acceptance would reasonably create the appearance that the donor is receiving preferential treatment;
 - Whether the government is also providing persons with views or interests that differ from those of the donor with access to the government; and
 - The market value of the gift of free attendance.
- **New Informational Materials Exception.** OGE created a new exception specifically allowing executive branch employees to accept unsolicited gifts of “informational materials” totaling \$100 or less in value per source per calendar year provided primarily for educational or instructive (and not entertainment) purposes. Informational materials exceeding \$100 in value per source per calendar year may be accepted with written agency approval. The rule defines “informational materials” as “writings, recordings, documents, records, or other items” that are related in some manner to the employee’s official duties or agency.
- **Presenters-Only Meals Now Permissible.** The gift rules continue to allow executive branch employees to attend certain events, regardless of whether the event qualifies as a WAG, in order

to “present information on behalf of the agency.” The revised rules allow executive branch employees to also attend an exclusive presenters-only meal provided by the event sponsor in connection with such an event. Previously, executive branch employees could only accept meals “furnished to all attendees as an integral part of the event.”

- **Alcoholic Beverages Not Allowed Under the “Modest Food and Refreshments” Exception.** The gift rules have long permitted executive branch employees to attend certain events where modest items of food and refreshments, such as soft drinks, coffee and donuts are offered other than as part of a meal. The new rules now expressly state that alcoholic beverages cannot be offered to or consumed by executive branch employees at such an event, but also clarify that alcoholic beverages may be offered to and consumed by non-government personnel attending the event.
- **Events Hosted by an Executive Branch Employee’s Former Employer Now Permissible.** The new rules modify the existing allowance for gifts based on “outside business activities or employment relationships” to permit executive branch employees to attend “a reception or similar event” hosted by the employee’s former employer, such as a holiday dinner, provided that the employee is invited purely because of their status as a former employee and not because of their official position, other former employees are similarly invited, and the gift of attendance is not enhanced because of the employee’s official position.
- **“Group Gifts” Exceeding \$20 Prohibited.** The revised rules preserve executive branch employees’ ability to accept certain gifts valued at \$20 or less, but clarify that a group of donors may not combine their \$20 limits in order to provide an employee with a single gift of higher aggregate value. For example, six defense contractors could not jointly purchase a \$120 clock for a Department of Defense employee.
- **General-Use Gift Cards Prohibited.** The new rules provide that general-use prepaid gift cards, such as Visa or American Express gift cards, do not qualify for the \$20-per-source gift exception, because they are viewed as the functional equivalent of cash, which cannot be provided to an executive branch employee in any amount. However, a \$20 gift card to a specific vendor, such as a Starbucks gift card, is not considered a general-use card subject to this prohibition.
- **Personal Friendship Exception Narrowed.** The revised rules provide that the exception for the acceptance of gifts provided by a personal friend is only available for gifts given by individuals and not for gifts given directly by an organization (such as a friend’s employer). The revisions also emphasize that the nature of the personal relationship is key. For example, even an extensive history of friendly interactions may not qualify for this exception if the relationship arose in an official context and the interactions were primarily regarding official matters. The rules also suggest that merely being connected via social media (such as Twitter followers or Facebook friends) also is insufficient for the relationship to qualify for this exception.

- **Presentation Items Must Have Little Intrinsic Value.** Greeting cards and items with “little intrinsic value,” such as plaques, certificates, and trophies, which are intended primarily (rather than solely) for presentation may still be provided to executive branch employees. But the OGE no longer focuses the analysis on whether the item can theoretically be used for a purpose other than presentation, and instead focuses on whether the item has significant intrinsic value. The OGE stated that “[i]tems such as watches, artwork, items containing precious metals or gemstones, fine crystal, or that otherwise have significant independent value would not qualify for this exclusion, even if they were inscribed or otherwise adorned with personalized information”
- **“Market Value” of Gifts Clarified.** The new rules provide that the “market value” of a gift is the cost that a member of the public “would reasonably expect to incur to purchase the gift” on the open market, rather than the “retail cost” of the item if sold to an executive branch employee by the gift provider. This revision reflects OGE’s previous advice that the market value of a gift is not necessarily the amount the donor paid, and also relieves executive branch employees from having to consult with the donor regarding the cost they paid for the gift. In the case of ticketed events, the face value of the ticket rather than the cost incurred by the host per attendee, remains the value of attendance. If a ticket does not have a face value—such as private skybox—the employee must use the value of the most expensive publicly available tickets to the event plus the market value of any food, parking, or other tangible benefits provided in connection with the event. For receptions, the market value of attendance is the market value of any entertainment, food, beverages, or tangible benefits provided to attendees, but need not include any venue rental or maintenance costs, and employees may rely on a reasonable per-attendee cost estimate provided by the host (if such an estimate is provided).
- **Non-Familial Members of Employees’ Households Now Covered by Gift Rules.** The gift rules now limit gifts given to members of an executive branch employee’s household if given “with the employee’s knowledge and acquiescence” regardless of whether the recipient is the employee’s parent, sibling, spouse, child, or dependent relative.
- **Honorary Degrees from Foreign Universities Now Allowed.** The revised rules permit executive branch employees to accept certain honorary degrees from foreign institutions of higher education, and clarifies that the value of travel to accept an honorary degree counts toward the \$200 threshold which triggers certain additional restrictions.
- **Executive Branch Employees Encouraged to Decline Otherwise Acceptable Gifts.** Even if a gift qualifies for a specific exemption, the new rules “encourage” employees to decline a gift if they believe a “reasonable person with knowledge of the relevant facts would question the employee’s integrity or impartiality” by virtue of its acceptance. This new guidance offers several flexible, non-binding factors an employee should consider in making this determination, including whether:

- The gift has a high market value;
- The timing of the gift creates the appearance that the donor is seeking to influence an official action;
- The gift was provided by a person who has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; and
- Acceptance of the gift would provide the donor with significantly disproportionate access.

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