



Proposed Amendments to OGE Gift Rules

The Office of Government Ethics (OGE) is proposing amendments to the ethics rules for government employees, imposing new limits on the use of exceptions in the rules allowing employees to accept invitations to “widely attended gatherings” from registered lobbyists and lobbying organizations (*See Federal Register Vol. 76, No. 177, September 13, 2011*).

Background

Standards of Conduct for Employees of the Executive Branch were first promulgated by OGE in 1992. In general, all executive branch employees are restricted from soliciting or accepting gifts from a prohibited source or because of an employee’s official position. Prohibited sources include registered lobbyists and lobbying organizations. There are several exceptions in the current regulations that cover a range of situations, such as gifts from family members and friends, de minimis gifts (valued under \$20), and gifts of free attendance at widely attended gatherings.

In addition to these existing regulations, President Obama signed a Jan. 20, 2009 Executive Order that imposes an additional gift prohibition on full-time political appointees. The order requires appointees to sign an “Ethics Pledge” that they will not accept gifts from lobbyists and organizations that are registered under the Lobbying Disclosure Act (LDA), and restricts appointees from using the widely attended gatherings exception that had previously been permissible. However, the OGE carved out two categories of organizations from the definition of lobbying organizations: 501(c)(3) nonprofit organizations, and media organizations.

The proposed rules that were released Sept. 13 represent OGE’s efforts to extend the lobbyist gift ban for political appointees to the ranks of career government employees. Like the 2009 guidance, the proposed rules also exclude certain types of organizations from the definition of lobbying organizations from which gifts are banned. OGE intends that these exclusions from the gift rules would be applicable to all employees, including political appointees.

Highlights of Proposed OGE Rules

- Like the 2009 Executive Order, the proposed OGE rules would limit the use of certain gift exceptions for all government employees. The proposed rules would not allow any employee to use the following exceptions in connection with gifts from registered lobbyists or lobbying organizations: the \$20 de minimis exception; the widely attended gathering exception; and the social invitation exception.
- OGE indicates, however, in the proposed rules that it “does not believe that employees, including political appointees subject to the Pledge, should be precluded categorically from accepting offers of free attendance at substantive events that would provide a legitimate educational or professional development benefit that furthers the interests of an agency.”

- Therefore, OGE proposes to exclude from the definition of registered lobbyist or lobbying organization the following types of organizations, even if these organizations are registered under the LDA: “nonprofit professional associations, scientific organizations, and learned societies.”
- The proposed rules state that the exception for widely attended gatherings held by 501(c)(3) organizations generally has worked well for political appointees and it makes sense to extend it now to the rules that cover all government employees. Additionally, OGE proposes to adjust the current guidance concerning gifts from 501(c)(3) organizations to do away with the requirement that an invitation to an event not come directly from a registered lobbyist. Basically, if the gift is coming from a 501(c)(3) organization – even one that is registered under the LDA – it’s allowable.
- A major change, however, in the OGE exception for gifts from 501(c)(3) organizations states that government employees can still rely on the “widely attended gathering” exception to accept free attendance at a training or professional development event hosted by a nonprofit professional association, scientific organization, or learned society, but the WAG exception does NOT apply to invitations to purely social events, including gala dinners, fundraisers, parties, etc.
- It’s important to note that OGE’s proposed rules specifically exclude trade associations from the list of organizations that can extend invitations to government employees to attend widely attended gatherings. In its reasoning, OGE states that, “Trade associations may sponsor educational activities for their members and even the public, but the primary concern of such associations generally is not the education and development of members of a profession or discipline, which is the focus of the proposed exclusion.”
- The OGE rules do not acknowledge that both trade associations and professional societies are typically exempt under section 501(c)(6) of the tax code. The proposed rules appear to allow employees to attend widely attended gatherings that are held by professional societies, stating that “OGE would not limit this exclusion to scientific organizations but would extend it to any professional or learned societies that promote the development or education of members of a profession or discipline.”
- The proposed rules do not affect the ability of employees to accept offers of free attendance at events if an employee is speaking or presenting information on behalf of the government. OGE’s explanation is that a speaking engagement is not a gift, and the employee’s participation in these events is viewed as a customary and necessary part of his or her duties.
- The proposed rules permit employees to accept offers of free attendance at social events attended by several persons, provided that the invitation does not come from a registered lobbyist or lobbying organization and no attendance fee is charged to anyone.

Comments are due to OGE before Nov. 14, 2011.

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