

Lobbyist Gifts to Obama Political Appointees: They Can't Take It Anymore

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An Executive Order issued by President Obama on January 21, 2009, imposed a "lobbyist gift ban" on political appointees in the executive branch. Exceptions to this ban are strictly limited. The Office of Government Ethics (OGE) issued important guidance on the scope of the ban in a February 11, 2009, advisory memorandum. The memo can be found at www.usoge.gov/ethics_guidance/daeograms/dgr_files/2009/do09007.html.

The ban covers all full-time, non-career appointees appointed after January 20, 2009, whether appointed by the president, vice president, an agency head or otherwise. Unless one of the limited exceptions applies, appointees covered by the ban may not accept any gift from a registered lobbyist or lobbyist employer.

"Gift" as used in the Executive Order has the same broad meaning as under Executive Branch gift regulations generally. The rule of thumb: if it has any monetary value and the recipient does not pay market value for it, it's a gift.

The limited number of exceptions to the lobbyist gift ban for political appointees include the following:

- Modest items of food and refreshment, such as soft drinks, coffee and donuts, offered other than at a meal
- Greeting cards and items of little intrinsic value, such as plaques, certificates and trophies intended solely for presentation
- Opportunities, benefits, favorable rates and discounts available to the public, to a class consisting of all government employees

Authors

Robert L. Walker
Of Counsel
202.719.7585
rlwalker@wiley.law

or all uniformed military personnel, or to a class unrelated to government employment

- Gifts based on personal friendship or on a family relationship.
- Gifts resulting from a spouse's business or employment (if not enhanced because of the official's government position)
- Gifts customarily offered by a prospective employer.
- Gifts authorized by specific agency regulation or by specific statute.
- Gifts to the president or vice president.

It is important to remember, and OGE has underscored, that a number of often-used exceptions to the general executive branch gift regulations are *not* applicable to gifts to an appointee covered by the lobbyist gift ban. For example, covered appointees may *not* accept lobbyist gifts under the "\$20 or less" exception to the general gift rule. Also—and this may be the provision of the lobbyist gift ban likely to have the greatest impact on private sector interactions with government officials—covered appointees may *not* accept free attendance at "widely attended gatherings" from registered lobbyists or lobbying organizations. As OGE puts it in its February 11, 2009, advisory memo on the ban, this means "an appointee may not accept a \$15 lunch from a registered lobbyist or go to a widely attended reception sponsored by a registered lobbying organization."

OGE's February 11 memo provides useful guidance on and clarification of the gift ban. On appointee attendance at events, for instance, the OGE memo makes clear that, even under the ban, covered appointees may still accept "offers of free attendance on the day of an event when they are speaking or presenting information in an official capacity." Citing executive branch gift regulations, OGE notes that such participation "is viewed as a customary and necessary part of the [appointee's] assignment and does not involve a gift to him or to the agency."

The OGE memo also contains specific and important guidance on gifts from 501(c)(3) organizations and from media organizations. Under this OGE guidance, developed in consultation with the White House Counsel's Office, the gift ban does not apply to a gift from a 501(c)(3) organization or from a "media organization," as long as the gift otherwise may be accepted under executive branch gift regulations and provided the organization employee who extends or offers the gift is not himself or herself a registered lobbyist.

Right now, the lobbyist gift ban covers only political appointees. But the Executive Order directs OGE to adopt rules and procedures to apply the lobbyist gift ban to all executive branch employees. OGE says that "any such rules or procedures will be developed in due course." Stay tuned.