

Office of Government Ethics Issues Guidance Regarding Inaugural Events

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With the upcoming inauguration of President Obama on January 21, 2013, Washington will play host to a myriad of inauguration-related events in the coming weeks, including inaugural balls, receptions and dinners. For federal contractors and others who do business with the Government, attendance or sponsorship of these events can raise thorny questions regarding compliance with federal gift and gratuity laws, which broadly prohibit contractors and their employees from providing anything of value to federal employees. A recent memorandum issued by the U.S. Office of Government Ethics (OGE) serves as an important reminder of these restrictions, and at the same time provides useful guidance regarding the potential application of various exceptions to inaugural activities.

Under the federal gift and gratuity laws and implementing regulations, it is a crime to give "anything of value" to a public official "for or because of an official act" or because of the employee's official position. For purposes of these restrictions, a "gift" is broadly defined to include anything of value, including for example entertainment, lodging, meals and tickets. In addition to the restrictions imposed by the gift and gratuity laws, certain Administration appointees are also subject to the Obama Administration's Ethics Pledge ban on accepting gifts from a registered lobbyist or lobbying organization.

In a recent memorandum to agency ethics officials, OGE reminds agency employees to be mindful of these restrictions in light of the upcoming inaugural activities. At the same time, OGE's memorandum notes that in certain cases, inauguration-related activities may fall within one of the exceptions or exclusions to the general prohibition against providing gifts to federal employees. Among other things,

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OGE's recent memorandum offers guidance regarding the potential application of the following exceptions to inauguration-related activities:

- **Gifts of \$20 or Less.** Under OGE's "*de minimis*" exception, federal employees may accept gifts (other than cash) that are valued at \$20 or less, provided that the total value of all gifts from the same source does not exceed \$50 in a calendar year. According to OGE's recent memorandum, this exception could potentially allow federal employees to accept unsolicited gifts of food or drink at a reception or other inaugural event. However, OGE's guidance notes that for full-time non-career appointees, the *de minimis* exception does not apply if the donor is a registered lobbyist or lobbying organization. OGE also notes that, for events where tickets are sold, the face value of the ticket will determine whether the value of the gift falls below the \$20 *de minimis* threshold. Finally, OGE rules require that the aggregate value of all gifts from a particular source (e.g., a contractor and any of its officers or employees) to a particular federal employee may not exceed \$50 during the course of a calendar year; therefore, even if the value of a single gift (e.g., attendance at an inaugural event) was under \$20, a contractor would need to be careful to ensure that neither it nor any of its employees had provided other gifts that would in the aggregate exceed \$50.
- **Gifts Based on Personal Relationship or Resulting from Spouse's Business or Employment.** Under OGE's existing regulations, federal employees may accept gifts that are clearly motivated by a family relationship or personal friendship. Moreover, employees may accept gifts that result from a spouse's employment or business activities under certain circumstances. Applying these principles, OGE's memorandum suggests that this exception could potentially allow a federal employee to attend an inaugural event for free where, for example, the employee's spouse works for a firm that has provided free tickets to its personnel and their spouses. It is important to note that in order for this exception to apply, however, OGE's rules and guidance require that it be "clear that the gift was not offered or enhanced because of the employee's official position."
- **Widely Attended Gatherings.** OGE's memorandum notes that another gift exception that may apply to inauguration-related events is the "widely attended gathering" exception. In order to take advantage of this exception, however, OGE's regulations require that the federal employee's attendance must be authorized by an agency designee, based on a written determination that the employee's attendance is in the agency's interest. Also, OGE notes that this exception will not apply to full-time non-career appointees, if the donor is a registered lobbyist or lobbying organization.
- **Miscellaneous Exceptions.** Finally, in addition to these exceptions, OGE's memorandum notes that federal employees may attend any event or accept any item that is available free to the public; items for which the employee pays market value; items provided by federal agencies or political parties; or items that have actually been paid for under a Government contract.

With the inauguration only a few weeks away, OGE's memorandum provides a timely reminder of the restrictions that apply under the federal gift and gratuities laws, along with helpful illustrations of the potential exceptions that may allow federal employees to accept certain benefits in connection with inaugural events. However, OGE's guidance also shows that these exceptions are often subject to limitations, and can be

difficult to interpret and apply in practice. In addition, many contractors' own policies contain more stringent "no gift" policies that prohibit any gifts to federal employees, regardless of any potential exceptions. Therefore, contractors and others who do business with the federal Government should be sure to conduct a careful analysis before deciding whether or how to participate in inaugural events, and caution their employees to be wary of any interactions with Government personnel that could run afoul of these restrictions.