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Office of Government Ethics
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MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Robert I. Cusick
Director

SUBJECT: Presidential Inaugural Events

January 20, 2009 will mark an important and historic national event, the Presidential Inauguration. In connection with this occasion, Federal employees may receive offers of free attendance from various sources to attend Inauguration-related events, including the Inaugural Parade, Inaugural Balls, receptions, dinners and fundraisers. Therefore, the Office of Government Ethics (OGE) thought it appropriate to remind agencies and their employees of relevant ethical requirements, particularly those pertaining to gifts.

Generally, an executive branch employee may not accept a gift from a prohibited source or a gift given because of the employee's official position. See 5 C.F.R. §§ 2635.203(d)(definition of prohibited source); 2635.203(e)(definition of gift because of official position). However, an employee may accept some gifts under certain exceptions and exclusions. Many of the offers of free attendance at Inauguration-related events may fall within one of these exceptions or exclusions. For your convenience, some of the more relevant exceptions and exclusions are set out below.

Any gifts valued at \$20 or less per occasion may be accepted from any source, provided that the total value of gifts from the same source does not exceed \$50 in a calendar year. 5 C.F.R. § 2635.204(a). This exception could apply, for example, to gifts of food or drink at a reception or dinner or other event. 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 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'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). 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 employee may attend the event for free, even if the law firm is a prohibited source for the employee.

Because certain Inauguration-related gifts may be offered by political organizations, as described in 26 U.S.C. § 527(e), some employees may be able to rely on the exception for gifts in connection with political activities. 5 C.F.R. § 2635.204(e). Under this exception, employees who actively participate in political management or campaigns may accept various benefits from political organizations, including travel and free attendance at events, in connection with their 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. In this connection, note that the official Presidential Inaugural Committee is not a political organization but rather a 501(c)(4) organization, although gifts of free attendance from the Presidential Inaugural Committee are permissible for other reasons discussed below.

Another gift exception that may apply to many Inauguration-related events is the widely attended gathering (WAG) provision. 5 C.F.R. § 2635.204(g)(2). An employee may be authorized by an agency designee to accept an offer of free attendance at a WAG, provided that the appropriate agency designee determines that the employee's attendance is in the agency's interest. The meaning of "widely attended gathering," as well as other requirements of this exception, are addressed more fully in DAEOgram DO-07-047, and ethics officials should note in particular the discussion of social events as possible WAGs. <https://www.oge.gov/Web/OGE.nsf/Resources/DO-07-047:+Widely+Attended+Gatherings>.

Of course, employees may attend any event or accept any other item available for free to the public or for which the employee pays market value. 5 C.F.R. § 2635.203(b)(4), (9). Therefore, employees may enjoy access to entertainment and other gatherings made available to the general public in connection with the Inauguration. Moreover, employees may accept any items actually paid for under Government contract. 5 C.F.R. § 2635.203(b)(7)(Government contract). Similarly, employees may accept any items from an entity of the Federal Government (or an employee acting on behalf of such entity). See 5 C.F.R. § 2635.102(k)(definition of "person," which is used in gift prohibitions, excludes any "agency or entity of the Federal Government"). Thus, for example, employees 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, which is the official committee appointed by Congress "to arrange for the inauguration of the President-elect and the Vice President-elect" on property under Congressional jurisdiction. 36 U.S.C. § 507.

A special word is in order concerning offers of free attendance and related gifts from the Presidential Inaugural Committee (PIC), which is separate from the Joint Congressional Committee. The PIC occupies a unique position in American public life. First recognized by a

joint resolution of Congress in 1881 and then by subsequent resolutions for each Inaugural year, PICs were permanently recognized by the Presidential Inaugural Ceremonies Act of 1956, which was enacted "to provide for the maintenance of public order and the protection of life and property in connection with the Presidential inaugural ceremonies." Pub. L. No. 70-986. As amended, the Act provides, among other things, for an Inaugural Committee "appointed by the President-elect to be in charge of the Presidential inaugural ceremony and functions and activities connected with the ceremony." 36 U.S.C. § 501(1). The PIC "organizes and directs the social events of a Presidential inauguration, including preinaugural receptions and performances, the Inauguration Day parade, and the inaugural ball [and develops] and markets souvenirs, including the official program and/or book and the official medal." NARA, Records of Presidential Inaugural Committees, 274.1, <http://www.archives.gov/research/guide-fed-records/groups/274.html#274.1>.

As noted above, gifts from entities and personnel of the Federal Government are not covered by the restrictions in subpart B of the OGE Standards of Ethical Conduct for Employees of the Executive Branch. Strictly speaking, the PIC may not be a part of the Federal Government: among other things, it is organized as a 501(c)(4) organization, it operates with funds from donations and sales rather than direct appropriations, and it is appointed by the President-elect rather than a current Federal official. However, Congress has long provided that PICs would have direct support from, and close coordination with, Government agencies in connection with Inaugural activities. See, e.g., 36 U.S.C. § 503 (use of Federal reservations or grounds); 36 U.S.C. § 511 (appropriations for District of Columbia and Department of Interior); 10 U.S.C. § 2553 (assistance from Secretary of Defense); GSA Inaugural Support Team, <http://www.gsa.gov/portal/category/26427>. Official recognition of a PIC also depends on compliance with specific requirements concerning the acceptance and disclosure of donations. 36 U.S.C. § 510. Moreover, because the PIC oversees a national celebration of an important occasion in the democratic process, the attendance of various Federal officials at many of these events often has been viewed as a ceremonial duty. For these reasons, OGE has viewed PICs as *sui generis*, at least with respect to the application of the gift rules in subpart B, and OGE has advised in the past that employees may accept gifts of free attendance from PICs for PIC events.

Finally, apart from gifts, OGE wants to remind ethics officials and employees that the usual restrictions on fundraising apply to any fundraisers held in connection with the Inauguration. These restrictions are set out at 5 C.F.R. § 2635.808 and are described in various OGE documents, including DAEOgram DO-93-024, <https://www.oge.gov/Web/OGEnsf/Resources/DO-93-024:+Answers+to+Recurring+Questions+about+Fundraising>. Although the OGE fundraising rule does not apply to fundraising for a political party, candidate for partisan political office, or partisan political group, employees should remember that the Hatch Act and implementing regulations do restrict political fundraising. See 5 U.S.C. § 7323(a)(2); 5 C.F.R. § 734.303.