NEW EXECUTIVE BRANCH GIFT RULES RELEASED: NEW ACTION REQUIRED BEFORE EXECUTIVE OFFICIALS CAN ATTEND BANQUET DINNERS

Date: 9 December 2016

Public Policy and LawAlert

By: Tim L. Peckinpaugh

The Office of Government Ethics (OGE), the agency within the executive branch that oversees conflict of interest compliance, recently published revised gift rules applicable to executive branch employees that become effective January 1, 2017. Although most of the revisions were minor, the OGE did make a few notable changes. Those changes, including a new requirement that agency ethics officials make a written determination before any executive branch employee can attend a "widely attended gathering" (WAG), such as a banquet dinner, are summarized below.

It is important for donors to note that failure to adhere to the OGE gift rules carries reputational risk for organizations that provide gifts to executive branch employees. If you are thinking of approaching an executive branch employee regarding a permissible gift, feel free to contact one of K&L Gates' political ethics lawyers with any questions.

WRITTEN AUTHORIZATION REQUIREMENT FOR WAG ATTENDANCE

The revised rules require that an executive branch employee receive written authorization from the employee's agency ethics official before attending a WAG free of charge. A WAG is a gathering of a large number of individuals from both the private sector and government who have diverse views and are able to exchange their viewpoints at the event. The new rule is a significant change from the predecessor rule, which required a written authorization only when the organization extending the invitation had interests that could be substantially affected by the invited executive branch employee. The previous rule also permitted blanket authorizations for all employees in a particular agency.

The OGE takes the position that an email is a sufficient form of written authorization and that agency ethics officials have broad discretion regarding the level of detail that is to be included in the written authorization. Additionally, the plain language of the new rule allows ethics officials to authorize multiple employees from a particular agency to attend a WAG based upon the same criteria determinations, although each employee must receive an individual written authorization.

Agency ethics officials now have to consider a number of factors determining whether the employee's attendance at the WAG is in the agency's interest. Two of these factors are new, including whether acceptance would reasonably create the appearance that the donor is receiving preferential treatment by gaining disproportionate access to the government employee, and whether the government is also providing similar access to other

©2005-2026 K&L Gates LLP. All Rights Reserved.

outside organizations with views or interests that differ from those of the donor. These factors reflect the OGE's commitment to ensuring that employees' integrity and impartiality are not affected by the receipt of gifts from a particular donor.

SPEAKERS' DINNERS AT EVENTS

The revised rules allow executive branch employees that attend an event, including a WAG, in a speaker's capacity also to take part in a "speakers only" dinner as part of their attendance. The previous rule prohibited government employees who were speakers at events from participating in a speaker dinner since the benefit was not available to all attendees of the event. The new rule provides more flexibility for event organizers in hosting customary speaker dinners since government employee speakers will now be able to attend.

MISCELLANEOUS GIFT REVISIONS

The revised rules clarify that alcoholic beverages are not permissible under the "Modest Food and Refreshment" exception to gift rules. Additionally, the revised rules clarify that general-use gift cards are prohibited under the $20 gift exception, although gift cards to specific vendors are permitted. For instance, a $20 prepaid Visa gift card is prohibited under the rules, but a $20 gift card to Starbucks is permissible.

REASONABLE PERSON STANDARD

Finally, the revised rules create a "reasonable person" standard under which government employees may decline otherwise permissible gifts. The standard is non-binding and is intended to encourage executive branch employees to carefully consider whether acceptance of the gift would harm the appearance of integrity and impartiality to a reasonable person. Executive branch employees are to consider such factors as whether: the gift has a high market value; the timing of the gift could reasonably call into question the employee's integrity or impartiality; the gift was provided by a person or organization 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.

The revised rules clarify that the standard is only intended to assist employees in making decisions about the acceptance of gifts, and that an employee has not violated the rule if he or she accepts a permissible gift under one of the exceptions to the gift rule.

KEY CONTACTS



TIM L. PECKINPAUGH
PARTNER

WASHINGTON, DC
+1.202.661.6265
TIM.PECKINPAUGH@KLGATES.COM

©2005-2026 K&L Gates LLP. All Rights Reserved.

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.

©2005-2026 K&L Gates LLP. All Rights Reserved.