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## Gift Rules for the Executive Branch

Employees of the Executive Branch are subject to regulations related to gifts that they may accept.<sup>1</sup> The term “gift” refers to any gratuity, favor, discount, entertainment, hospitality, loan or other item having monetary value. In particular, the term includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

A gift is deemed to be ‘solicited’ if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held the status, authority or duties associated with his Federal position.<sup>2</sup>

### General Provisions

In general, an employee of the Executive Branch may accept a gift only if it is unsolicited and the:

- Favors or benefits are not offered under circumstances that might be construed by reasonable persons as influencing the performance of their governmental duties;<sup>3</sup>
- Gift is not cash or a cash equivalent (e.g. stocks and bonds);<sup>4</sup>
- Gift is valued at \$20 or less;<sup>5</sup> and the
- Aggregate value of gifts from one source in a calendar year is less than \$50.<sup>6</sup>

These limitations seem to make Executive Branch gift rules very strict. However, numerous exceptions reduce the scope of regulation dramatically.

### Exceptions to Executive Branch Gift Rules

An employee of the Executive Branch may accept gifts that exceed the \$20 value limit for individual gifts and \$50 annual limit for gifts from one source if they are subject to one of 12 exceptions:<sup>7</sup>

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<sup>1</sup> 5 C.F.R. § 2635.203 - 205 Revised as of Jan 1, 2005

<sup>2</sup> 5 C.F.R. § 2635.204(d)

<sup>3</sup> 5 U.S.C. § 7353 (b)(2)(B)

<sup>4</sup> 5 C.F.R. § 2635.204(a)

<sup>5</sup> 5 C.F.R. § 2635.204(a)

<sup>6</sup> Id.

<sup>7</sup> 5 C.F.R. § 2635.204 (a – f)

1. **Anything for which the employee pays the market value, or does not use and promptly returns.** If it is not practicable to return the item to the giver because it is perishable, it may be given to an appropriate charity or discarded.
2. **Gifts based on a personal or family relationship.** Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.
3. **Discounts and similar benefits that are not directly related to government employment.**
4. **Awards (other than cash) and honorary degrees with an aggregate market value of \$200 or less.** If aggregate market value is in excess of \$200, acceptance is contingent upon the written determination by an agency ethics official.
5. **Meals, lodgings, transportation and other benefits that result from the outside business or employment of that employee or his/her spouse.** The benefits should be customarily provided and not offered or enhanced because of the government employee's position.
6. **Gifts in connection with political activities permitted by the Hatch Act.** An employee may take an active part in political management or in political campaigns. Meals, lodgings, transportation, and other benefits in connection with such active participation may be accepted.
7. **Admission into widely attended gatherings.** An employee may accept free admission to represent the agency as a speaker or panelist by the sponsor only. If the event is considered to be in the best interests of that agency, the employee may accept free attendance as a gift from a person other than the sponsor of the event only if there will be more than 100 persons expected to attend and the free admission has a market value of \$285 or less.
8. **Social invitations from persons other than prohibited sources or where there is no admission charge.** An employee may accept food, refreshments and entertainment, not including travel or lodgings, at a social event attended by several persons.
9. **Meals, refreshments and entertainment in foreign areas.**
10. **Gifts to the President and Vice President.** Both offices may accept any gift on his own behalf or on behalf of any family member, provided that such acceptance does not violate conflict of interest or anti-bribery laws,<sup>8</sup> or the Constitution of the United States.

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<sup>8</sup> Sec. 2635.202(c)(1) or (2), 18 U.S.C. 201(b) or 201(c)(3)

**11. Gifts authorized by supplemental agency regulation.** An employee may accept any gift if it is specifically authorized by a supplemental agency regulation.

**12. Gifts accepted under specific statutory authority.**

## **Ethics Commitments by Executive Branch Personnel**

On January 21, 2009, President Barack Obama issued an executive order requiring every appointee in every executive agency on or after January 20, 2009 to sign a pledge committing the appointee to a set of obligations that are binding and enforceable by law. The first obligation by which the appointee must abide by, the *Lobbyist Gift Ban*, states **I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.**<sup>9</sup> The Pledge prohibits gifts from lobbyists and lobbying organizations that are "registered" under the Lobbying Disclosure Act (LDA), 2 U.S.C. § 1601, et seq.,<sup>10</sup> regardless of whether they lobby other government agencies or even solely the legislative branch. However, the lobbyist gift ban does not prohibit gifts from organizations that retain "outside" lobbyists or lobbying firms, as long as the organization itself is not registered under the LDA.<sup>11</sup>

The *Lobbyist Gift Ban* is in addition to the Federal Regulation (5 C.F.R. § 2635) regarding gifts from outside sources. However, it provides fewer exceptions than the original regulation:<sup>12</sup>

The exceptions that carry over from Executive Branch Gift Rules (5 C.F.R. § 2635.204) are:<sup>13</sup>

- Gifts based on a personal or family relationship.<sup>14</sup>
- Discounts and similar benefits.<sup>15</sup>
- Gifts resulting from the business or employment activities of an employee's spouse.<sup>16</sup>
- Gifts customarily provided by a prospective employer in connection with bona fide employment discussions.<sup>17</sup>
- Gifts to the President or Vice-President.<sup>18</sup>
- Gifts authorized by an OGE-approved agency supplemental regulation.<sup>19</sup>
- Gifts accepted under specific statutory authority.<sup>20</sup>

<sup>9</sup> Exec. Order No. 13,490, FR Doc. E9-1719 (Jan 26, 2009)

<sup>10</sup> [http://www.usoge.gov/ethics\\_guidance/daeograms/dgr\\_files/2009/do09007.html](http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2009/do09007.html)

<sup>11</sup> [http://www.usoge.gov/ethics\\_guidance/daeograms/dgr\\_files/2009/do09007.html](http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2009/do09007.html)

<sup>12</sup> Exec. Order No. 13,490, sec 2(c)

<sup>13</sup> Exec. Order No. 13,490, sec 2(c)(3)

<sup>14</sup> 5 C.F.R. § 2635.204(b)

<sup>15</sup> 5 C.F.R. § 2635.204(c)

<sup>16</sup> 5 C.F.R. § 2635.204(e)(1)

<sup>17</sup> 5 CFR § 2635.204(e)(3)

<sup>18</sup> 5 C.F.R. § 2635.204(j)

<sup>19</sup> 5 C.F.R. § 2635.204(k)

<sup>20</sup> 5 C.F.R. § 2635.204(l)

The following exceptions in the Executive Branch Gift Rules are prohibited in the *Lobbyist Gift Ban*:<sup>21</sup>

- Gifts of \$20 or less.<sup>22</sup>
- Awards and Honorary Degrees.<sup>23</sup>
- Gifts resulting from his outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of his official status.<sup>24</sup>
- Gifts in connection with political activities permitted by the Hatch Act Reform Amendments.<sup>25</sup>
- Admission into widely attended gatherings.<sup>26</sup>
- Social invitations from persons other than prohibited sources.<sup>27</sup>
- Meals, refreshments, and entertainment from persons other than a foreign government in a foreign area.<sup>28</sup>

The few exceptions included in the *Lobbyist Gift Ban* allow for unintended consequences of the obligation to be circumvented, while imposing considerably stricter restrictions on the influence of lobbyists and lobbying organizations on executive branch offices in the U.S Government. However, this restriction of gifts falls short in one major category. Travel is explicitly exempted from this gift ban. Unlike congress' similar gift ban, the Honest Leadership and Open Government Act of 2007 (HLOGA), the *Lobbyist Gift Ban* fails to address a highly valued gift provided by lobbyists and lobbying organizations. While members of Congress are limited to one day of travel paid for by lobbying organizations, the gift ban in President Obama's executive order fails to explicitly address this issue.

Prepared by Bryan Kappe and Prateek Reddy, Public Citizen (June 2011)

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<sup>21</sup> [http://www.usoge.gov/ethics\\_guidance/daeograms/dgr\\_files/2009/do09007.html](http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2009/do09007.html)

<sup>22</sup> 5 C.F.R. § 2635.204(a)

<sup>23</sup> 5 C.F.R. § 2635.204(d)

<sup>24</sup> 5 C.F.R. § 2635.204(e)(2)

<sup>25</sup> 5 C.F.R. § 2635.204(f)

<sup>26</sup> 5 C.F.R. § 2635.204(g)(2)

<sup>27</sup> 5 C.F.R. § 2635.204(h)

<sup>28</sup> 5 C.F.R. § 2635.204(i); 5 C.F.R. § 2635.204(l)(2)