

# New Year, New Gift Rules for the Federal Executive Branch

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Election and Political Law

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Corporations, trade associations, and others who interact with federal executive branch employees should be aware of the Office of Government Ethics' (OGE) recent [amendments](#) to the executive branch gift rules, which go into effect on January 1, 2017. Seeking to encourage transparency and advance public confidence in the integrity of federal officials, OGE redefined some of the gifts executive branch employees can receive from outside sources and suggested when permissible gifts should be declined because they may create an appearance of impropriety. The new amendments include some of the most detailed changes to the executive branch gift rules in many years. This alert outlines the most significant changes.

## Key Changes to the Rules on Gifts from Outside Sources

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The rulemaking includes many changes and clarifications to commonly used exceptions, as well as a new exception to the executive branch gift rules. These include:

- **Written authorization is now required for all widely attended gatherings (WAGs).** Free attendance at WAGs, one of the most commonly used exceptions to the executive branch gift rules, now requires written authorization. For an executive branch employee to attend a WAG, he or she must obtain a written determination that attendance is appropriate—regardless of whether the employee will be speaking at the event. This rule change does not require any action on the part of the WAG sponsor. WAG sponsors should be aware that any executive branch invitee will need to seek written approval to attend the event and that there will be a written record of this request.
- **“Free attendance” can include meals for speakers outside a group context.** Under the updated regulations, the definition of “free attendance” at an event, such as a WAG, now includes meals taken other than in a group setting with all other attendees if the executive branch employee is a presenter at the event and is invited to a separate meal for participating presenters that is hosted by the event sponsor.
- **Alcohol is not a “modest item of food or refreshment.”** There is no longer any doubt regarding whether alcohol is a modest item of food or refreshment excluded from the definition of a gift. The amended rules clarify that only “modest items of food and non-alcoholic refreshments” are excluded from the definition of a gift. However, this is not a complete ban on outside sources providing alcohol to executive branch employees. Alcohol may still be offered and accepted under other applicable exceptions to the gift rules (e.g., at WAGs or as a gift valued at \$20 or less).
- **Attendance at receptions hosted by former employers is permissible.** The new regulations make clear that employees may attend receptions or similar events hosted

by a former employer, including a government contractor, when other former employees are invited to attend, the invitation is based on the former employment relationship, and the invitation was not made because of the employee's official position. An example in the amended regulations shows that a Department of the Army employee may attend an annual holiday dinner party hosted by his or her former employer, an Army contractor, when other former employees, regardless of their current employment activities, are invited.

- **Informational materials may be accepted; approval is required if they exceed \$100.** Executive branch employees may accept informational materials that are educational or instructive in nature—not primarily created for entertainment, display, or decoration—and related to official duties or a topic of interest to the agency. While there has been an exception to the congressional gift rules for informational materials for some time, there previously was no executive branch corollary. Materials valued at over \$100 from the same person in a calendar year will require a written determination from the agency that the gift is permissible.
- **Social media relationships are not necessarily friendships.** Facebook friends are not necessarily personal friends for purposes of the gift rules. A new example to the exception for gifts based on a personal relationship clarifies that a social media relationship between a gift giver and recipient does not demonstrate that the gift was clearly motivated by a “personal relationship.”

## Considerations for Declining Permissible Gifts

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The new rules go beyond amending what constitutes a permissible gift. They also outline considerations for declining otherwise permissible gifts. The purpose of this provision is to encourage executive branch employees to decline permissible gifts when “accepting them would raise concerns about the appearance of impropriety.” Considerations include whether the gift has a high market value; the timing creates the appearance that the donor seeks to influence official action; the donor has interests that may be substantially affected by the recipient's performance or nonperformance of official duties; and acceptance would give the donor significantly disproportionate access to the government.

However, this standard is non-binding. Whether an otherwise permissible gift should be declined under this standard is determined by an employee's subjective analysis.

Covington's Election and Political Law Practice Group includes a multi-disciplinary and bipartisan group of lawyers specializing in campaign finance, lobbying, and government ethics law. Firm lawyers routinely provide advice to clients on the regulation of lobbying and gifts to government officials and staff.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Election and Political Law practice:

<b><u>Robert Kelner</u></b>	+1 202 662 5503	<a href="mailto:rkelner@cov.com">rkelner@cov.com</a>
<b><u>Bob Lenhard</u></b>	+1 202 662 5940	<a href="mailto:rlnhard@cov.com">rlnhard@cov.com</a>
<b><u>Zack Parks</u></b>	+1 202 662 5208	<a href="mailto:zparks@cov.com">zparks@cov.com</a>
<b><u>Derek Lawlor</u></b>	+1 202 662 5091	<a href="mailto:dlawlor@cov.com">dlawlor@cov.com</a>
<b><u>Angelle Baugh</u></b>	+1 202 662 5211	<a href="mailto:abaugh@cov.com">abaugh@cov.com</a>

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