Contributing to the Presidential Inauguration Committee, the Transition, and Gift Rule Restrictions in Post-Election Washington

Now that America has chosen a new president, the next ninety days in Washington will be a mix of policy, politics and parties as individuals vie for jobs in the new administration, the President-elect defines his early policy agenda, and his supporters seek tickets to inaugural balls and bandstand seating along the parade route. Individuals and companies interested in politics and policy in Washington may be asked to donate to the official inaugural committee, the transition or to attend or host policy and social events. This year’s transition may be especially important if Congress convenes a lame duck session to further address the economic crisis, with the President-elect and his team playing an important but as of yet undefined role.

While far less regulated than political activity prior to the election, there are restrictions on the kinds of funds that can be contributed to some events and the amounts that can be given. There are also disclosure rules that may apply. To give you a head start, we have covered some of the issues in the guidelines below.

Donations to the Official Inaugural Committee

The Presidential Inaugural Committee (PIC) plans and finances most inaugural events other than the swearing in ceremony, including opening ceremonies, the parade, galas, and balls. Historically, access to parade seating and the more important inaugural balls have been coveted tickets in Washington. As a matter of law, individuals and corporations can contribute to the PIC and participate in official inaugural events, including the inaugural balls. FEC Advisory Opinion No. 1980-144. There are no limits in the law on the amount that can be contributed, though only United States citizens, lawfully admitted permanent resident aliens (“green card” holders), and U.S. corporations can contribute to a PIC. 36 U.S.C. § 510(c). The Obama PIC may, as a matter of policy, refuse contributions from corporations and lobbyists as the Obama Transition Project has, or it may choose to cap contributions, though the law does not require it to. Even if it does, there is no legal barrier to corporations paying for the cost of travel, accommodations and meals for executives who attend inaugural events. Contributions to a PIC are not deductible by corporations or individuals as business expenses. The tax deductibility of other inauguration related expenses would depend on the nature of the expense and you should consult counsel regarding specific expenditures.

If your organization employs a lobbyist and is registered under the federal Lobbying Disclosure Act, then it must report any donation to the inaugural committee on its semi-annual LD-203 report, which is due January 30, 2009 (covering contributions made in the last half of 2008) and July 30, 2009 (covering contributions made in the first half of 2009). 2 U.S.C. § 1604(d)(1)(F). In addition, once a donor gives $200 or more, the inaugural
committee must disclose the donor’s name, address and the aggregate sum they gave. The report is due within 90 days after the inauguration. 36 U.S.C. § 510; 11 C.F.R. § 104.21(c).

**Donations to a Presidential Transition Organization**

Federal campaign finance laws do not regulate the president-elect’s transition. FEC Advisory Opinion 1980-97 (Presidential transition organization is not a political committee). Instead, the new administration is entitled to public funding to assist in its transition work and with those funds, come certain restrictions. See the Presidential Transition Act of 1963, as amended, 3 U.S.C. § 102 note. That statute limits contributions to a transition committee to $5,000, and as a matter of policy, the Obama Transition Project has been refusing contributions from corporations and from individuals who are registered lobbyists.

Under the Presidential Transition Act, the president-elect agrees to disclose the date, source, and amount of all contributions. *Id.* at § 5(a)(1). If an organization that was required to register under the Lobbying Disclosure Act (LDA) contributes to the Transition Project, it may have to report that contribution on its LD-203 form. While contributions to PICs are specifically required to be reported in HLOGA, the statute does not make specific reference to transition committees. The Transition Project’s restrictions on corporate and lobbyist contributions make it unlikely this situation will arise very often. 2 U.S.C. § 1604(d)(1)(E)(iii).

**Gift Rules**

To the extent that your organization intends to invite Members of Congress, congressional staff members, Executive Branch officials, or state and local officials to an inaugural event, or to host an event or otherwise offer inaugural-related benefits to any of these people, it should be mindful of applicable gift rules. The Rules of the Senate and of the House of Representatives generally prohibit (subject to a number of exceptions) legislators and their staff members from knowingly soliciting or accepting gifts. Both broadly define “gift” as any “gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.” Senate Rule 35(1)(b)(1); House Rule 25(5)(a)(2)(A). Similar gift rules would apply to free attendance offered to an Executive Branch employee. Thus, most inauguration-related benefits would likely be considered a gift. State and local gift rules, which vary widely, may apply as well.

Several exceptions to the gift rules, however, may be applicable to inaugural events. These might include, for example, exceptions for “widely attended events” (under congressional gift rules), “widely attended gatherings” (under executive branch gift rules), or gifts worth up to $20 (executive branch rules only). You will need to review the specific arrangements for the events to determine whether these or other exceptions apply. You should be aware that under the Honest Leadership and Open Government Act of 2007, if your organization employs lobbyists and is required to register under the Lobbying Disclosure Act, the organization and its lobbyists must certify semi-annually that they have complied with the congressional gift rules, potentially requiring self-disclosure of violations of the congressional gift rules.

The transition team may consist of government employees, including existing executive branch employees and congressional staff detailed to working on the transition. It will also include non-government employees who are temporarily placed on the government payroll. 3 U.S.C. § 102(3)(a)(2). Lastly, it will include individuals employed in the private sector who are volunteering their time to the transition. This will present a confusing
constellation of ethics rules for those dealing with transition team members. In addition, the Obama Transition Project will ask some of its members to agree to the Project’s own ethics code. This will present some confusion as to what, if any, benefit you can provide to a transition team member. The best practice may be to assume the more stringent Congressional gift rules apply, and to seek legal advice when it is clear who you wish to provide the potential benefit to, who they work for and which set of gift rules apply.

Privately Sponsored Events

Your organization may also want to either host or attend events in addition to those put on by the inaugural committee. Some of these events may be policy based, some social and some political.

If you are asked to contribute to an event hosted by a political party, joint fundraising committee or candidate committee, the federal campaign finance laws apply. Only an individual’s personal funds or a PAC’s funds can be used to make the contribution and the campaign contribution limits will apply.

If you are asked to contribute to an event hosted by a 501(c)(3) organization (i.e., a charity or educational organization), a 501(c)(4) organization (i.e., a social welfare organization) or a 501(c)(6) organization (i.e., a trade association), such as a policy conference or fundraising benefit, corporate funds can be used and the law does not set a contribution limit.

This overview is intended as a summary of the most significant issues relating to inaugural events. It is not intended to be comprehensive, nor is it intended as legal advice, which often turns upon specific facts. Readers should seek legal advice before acting with regard to any of the subjects addressed above.

| 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 group: |
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