

# Personalization

HOW TO GIVE THEM WHAT **THEY** WANT  
AND GET WHAT **YOU** NEED



# Muffingate



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## Capitol Hill broke out in hysteria...



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## Can't un-ring the bell once rung...



## ...Or can you?

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## Proposed amendments to the Federal ethics regulations

- Released in the wake of Muffingate – though not related, they led to backlash from the business community
  - “Orwellian measures...”
  - “We must come together to reject this absurd and potentially harmful set of rules...”
  - “There are tremendous benefits in allowing agency officials and other government employees to attend programs and other events that have a clear nexus to the governments interest ... Banning government employees from these types of events does not promote informed policymaking or rulemaking.”

UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**

  
Preventing Conflicts of Interest  
in the Executive Branch



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## So, where are we now?

- Muffingate to Muffinmyth
- OGE proposed amendments to the ethics regulations
  - Public comment period ended November 14 (**extended to Dec 14**)
  - Now waiting for final version to be released
- Primary focus – lobbyists and gift exceptions
- Secondary impact – events and social interactions with Federal employees



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## What rules are we talking about?

- Standards of Ethical Conduct for Employees of the Executive Branch – specifically the gift rules
  - Goal of proposed amendments is to impose limits on the use of gift exceptions by all Federal employees to accept gifts from registered lobbyists and lobbying organizations
  - Previously these applied only to political appointees per the Administration's 2009 Executive Order (Ethics Pledge)
  
- What are the gift rules?
  - Short Version - Cannot take a gift from a prohibited source OR if given because of official position



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## Let's Be Clear - Definitions

### Definition of "Prohibited Source"

- A prohibited source is a person (or an organization made up of such persons) who either:
  - Is seeking official action by, is doing business or seeking to do business with, or is regulated by the employee's agency
  - Has interests that may be substantially affected by performance or nonperformance of the employee's official duties

### Definition of a Lobbyist

- Any individual or "organization filing a registration" under the LDA, not just lobbying firms.
- The ban also includes, therefore, organizations that register because they employ "at least one in-house lobbyist" to lobby on their own behalf, such as a corporation that employs its own governmental affairs officer who meets the LDA definition of lobbyist

More info: <http://lobbyingdisclosure.house.gov/>



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## Exceptions to the exceptions

- OGE proposes creating exemptions from the definition of “lobbyist” for several categories of gift givers:
  - 501(c)(3) organizations
  - Institutions of higher education (which are likely to be 501(c)(3) organizations)
  - Media organizations
  - Professional/Learned societies (not trade associations)
  - Scientific societies



➤ OGE has stated that it:

*“does not believe that employees, including political appointees subject to the Pledge, should be precluded categorically from accepting offers of free attendance at substantive events that would provide a legitimate educational or professional development benefit that furthers the interests of an agency.”*

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## So, what are the gift exceptions?

### For now...

- Modest food items
- Items with little intrinsic value
- Rewards and prizes (Open to all/public, i.e. Merit Awards)
- Anything paid for by the government
- Anything for which market value was paid
- **Anything worth \$20 or less**
- Awards and honorary degrees
- **Widely attended gatherings (WAGs)**



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## New proposed rules

➤ Now the gift rules and exceptions previously applied to only political appointees will apply to all Federal employees

➤ OGE has also proposed adding a new step to the process. If the **prohibited source** is a lobbyist, then certain exceptions are taken away/limited:

- \$20 de minimis exception
- The WAG exception
- The social invitation exception
- Meals and refreshments in foreign areas



➤ All the above will no longer be applicable if in connection with a **registered lobbying organization or prohibited source** (THIS MAY BE YOU!)



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Figure 2

## Confusing? Nah.....

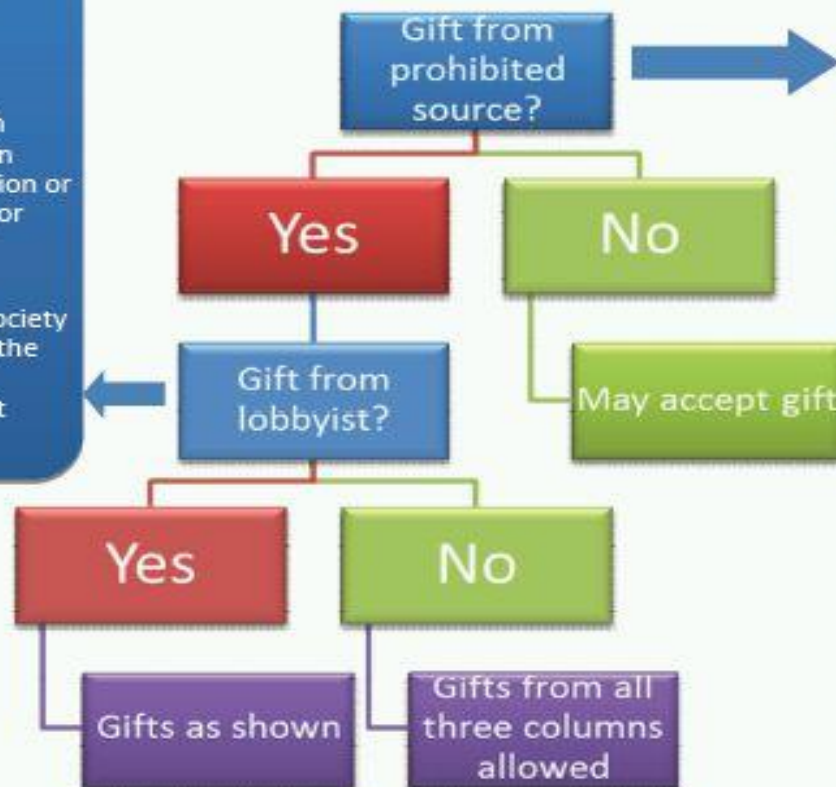
**Lobbyist:** a person registered under the LDA or listed as a lobbyist in the registration, or found in the database of lobbyists.

Does not include:

- 501(c)(3) organizations;
- Institutions of higher education;
- Media organizations (with respect to any gift made in connection with information or dissemination activities); or
- Nonprofit professional associations, scientific organization or learned society made in connection with the entity's educational or professional development activities.

### Prohibited Sources:

- (1) Is seeking official action by the employee's agency;
- (2) Does business or seeks to do business with the employee's agency;
- (3) Conducts activities regulated by the employee's agency;
- (4) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or
- (5) Is an organization, a majority of whose members are described above.



From: Venable LLP

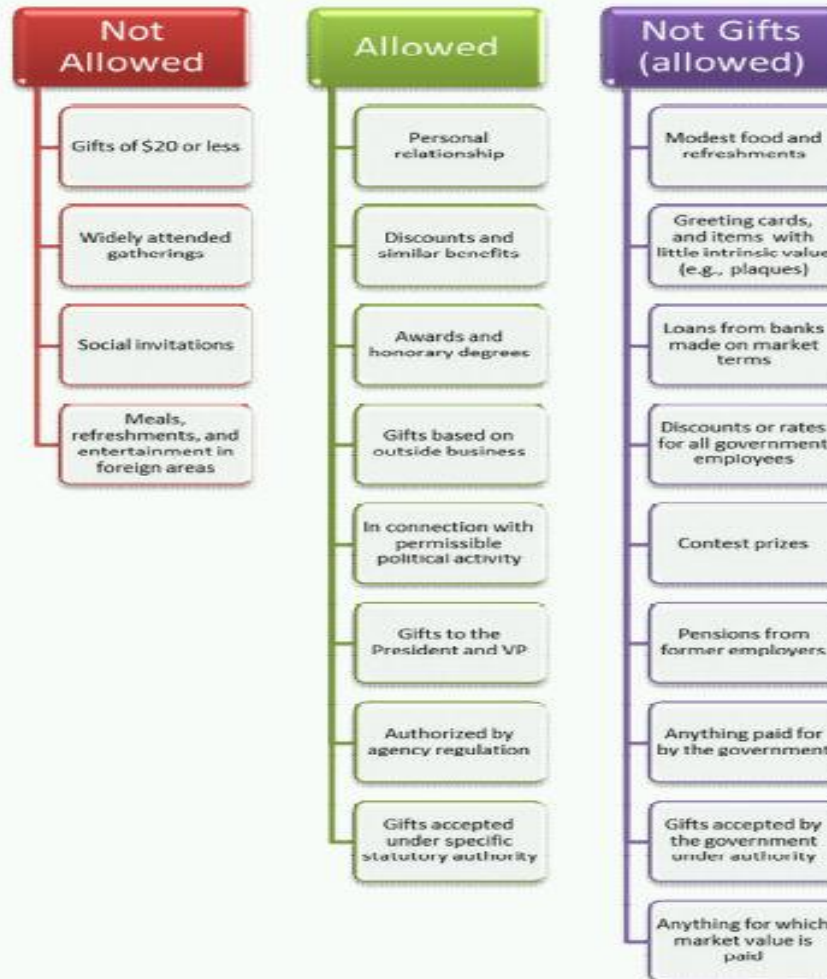
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## So What Can We Give?

Figure 3



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## Events – what you need to know today

- Generally, Federal employees must seek approval **from** their agency ethics office to attend free events (free attendance **can be** considered a gift if offered by a prohibited source or lobbyist org)
  
- Widely attended gatherings (WAGs)
  - A “widely attended gathering” is a meeting, conference, or other event which is attended by either a large number of people from throughout an industry or profession, or by those representing a wide range of interests
    - Keep your events diverse and open



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## Events – what you need to know today

- Speaking engagements as part of an official capacity are okay  
BUT beware speaker dinners
- When attending but not speaking:
  - May attend in personal capacity OR need agency approval for attendance
  - Written approval needed if event sponsor is a **prohibited source**
  - Modest food and beverage is considered okay
    - Giveaways of little intrinsic value, under \$20 are okay, but this would change with new rules



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## Contests and drawings – what can industry do?

- Rewards or prizes are not considered gifts if:
  - The contest is open to the public
  - No fee is charged
  - Attendance is not otherwise restricted
  
- Merit Awards for 2012 – these are OK!
  
- Awards are okay with agency ethics office approval, but:
  - No cash, no gift cards, no investments, nothing over \$200 value



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## So, how to be ethical... for now:

### ➤ Events:

- Steer clear of single-vendor-sponsored events – don't be exclusive
- Partner with organizations that are neutral sources (i.e. MeriTalk, Telework Exchange)
- No swag or giveaways more than \$20
- Build programs with lots of variety in order to draw a diverse audience
- Watch your spending – look at minimums and remain “modest”
  - Stay away from very fancy venues – Willard is out, J.W. Marriott and Newseum in for smaller events



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## So, how to be ethical... for now:

### ➤ Events, continued:

- Food and beverage are okay, but stay modest
- Prizes or contests – must keep open to all
- Don't limit attendance – i.e. open to all, not just government
- Content, content, content – strong programs with educational purpose are a must
- Offer training credits! Both Telework Exchange and MeriTalk have been approved to offer training credits
  - Encourage program development by government, for government – engage early in your program development process



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## So, how to be ethical... for now:

- Other items of note:
  - November 9, 2011 EO on reducing government waste and fraud includes travel expense restrictions and encourages increase of online and virtual education – i.e. don't physically go to a conference if there is a travel cost; rather, take courses online, participate in webinars, etc. (may affect attendance at out-of-town conferences such as ELC)
  - Each agency has its own ethics office that will have slightly different interpretations and MAY impose more stringent rules (i.e. ATF)
  - Finally, remember that it is not all up to you. Each Federal employee receives ethics training and should know what they can/cannot accept



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## Remember

- Not sure about something and wondering if any of the ethics regulations apply? Check with your in-house counsel for an interpretation applicable to your company

## Resources

<http://www.oge.gov/Laws-and-Regulations/OGE-Regulations/OGE-Regulations/>

<http://www.oge.gov/Laws-and-Regulations/Executive-Orders/>

