

NOTE: All substantive legal interpretations in this Legal Advisory are applicable to Executive Order 13989, sec. 1, par. 1. Additionally, the substantive legal interpretations pertaining to 5 C.F.R. § 2635.204(g)(1) are applicable to § 2635.203(b)(8). See LA-21-03 and LA-21-05. Note that E.O. 13989 was revoked on January 20, 2025.



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

February 18, 2010
DO-10-003

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Robert I. Cusick
Director

SUBJECT: Attendance by Staff Accompanying Official Speakers

In OGE DAEOgram DO-09-007 dated February 11, 2009, the United States Office of Government Ethics (OGE) addressed implementation of the lobbyist gift ban imposed by section 1 of Executive Order 13490.¹ The lobbyist gift ban is one part of the President's efforts to curb undue influence by special interests, but as stated in that DAEOgram, the lobbyist gift ban was not intended to prohibit Executive Branch officials from communicating official views to audiences comprised in part of registered lobbyists or at events that may be sponsored by organizations that employ registered lobbyists. Such events may have a registration fee or include a luncheon. Consequently, DAEOgram DO-09-007 concluded in part:

Appointees still may accept offers of free attendance on the day of an event when they are speaking or presenting information in an official capacity, as described in 5 C.F.R. § 2635.204(g)(1), notwithstanding the lobbyist gift ban. This is not a gift exception, but simply an application of the definition of "gift" in section 2635.203(b).

In short, free attendance for official Executive Branch speakers in such circumstances, consistent with long-standing rules, falls outside the meaning of "gift." It has come to OGE's attention that there may be some inconsistencies in how agency ethics officials are applying these rules with regard to employees who must accompany official agency speakers to such events. The purpose of this memorandum is to provide guidance on such personnel, who have no speaking role themselves but may provide essential support to an official speaker.

The OGE gift rules have always been clear on the treatment of free attendance for official speakers at an outside event. Employees may accept offers of free attendance on the day of an event when they are speaking or presenting information in an official capacity, notwithstanding the gift restrictions in 5 C.F.R. § 2635.202(a). The rationale is that "the employee's participation in the event on that day is viewed as a customary and necessary part of his performance of the assignment and does not involve a gift to him or to the agency." 5 C.F.R. § 2635.204(g)(1).

This guidance also applies to agency personnel whose presence at the event is deemed essential under agency procedures to the speaker's participation at the event. Examples could include members of security details, a representative of the agency's public affairs division, or an aide to assist with a presentation. The number and types of personnel necessary, if any, to the speaker's participation will vary depending upon who the speaker is and the nature of the event. There are obviously different considerations for the Secretary of Defense addressing several thousand people at a convention center as compared to a Federal Communications Commissioner speaking to a luncheon attended by several dozen communications lawyers. OGE does not view having essential personnel either remain outside the room where the event is taking place or refraining from food that is offered with the event as necessary to comply with the gift rules. Such an interpretation would not only be impractical to enforce, but it would ignore the reality that some aspects of attendance may be difficult or impossible to avoid. See 5 C.F.R. § 2635.204(g)(4) (definition of free attendance includes more than food).

It must be emphasized, however, that this is not an expansion of the categories of persons who may attend such events free of charge. Rather, it is recognition that attendance by particular personnel whose presence is truly essential to the performance of the speaker's official duties at a specific event does not violate either OGE's long-standing gift rules or the Executive Order 13490 lobbyist gift ban.

¹ See <https://www.oge.gov/Web/OGEnsf/Resources/DO-09-007:+Lobbyist+Gift+Ban+Guidance>.