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Letter to the Director of a Non-Profit  
Public Interest Organization  
dated January 30, 2008

Thank you for your interest in the issue involving the Motion Picture Association of America (MPAA) and its screening of unreleased movies for Federal officials, including executive branch employees. We have reviewed your analysis of the "widely attended gathering" exception to the gift prohibitions in the Standards of Conduct for Employees of the Executive Branch. We generally agree with your interpretation of that particular exception but want to bring another relevant provision to your attention.

As you note in your letter, executive branch employees may not accept a gift from a "prohibited source" or a gift given because of official position unless an exception applies. One of those exceptions is the "widely attended gathering" exception. To assist agencies in applying this exception, this office issued a DAEOgram in December 2007 that discusses this exception. You can find the DAEOgram at: <https://www.oge.gov/Web/OGE.nsf/Resources/DO-07-047:+Widely+Attended+Gatherings>.

This DAEOgram makes the point that the "widely attended gathering" exception cannot be used to justify free attendance at an event that is not structured to allow interchange among attendees, simply because a reception may precede or follow that main event.

The "widely attended gathering" exception, however, is not the only exception to the gift prohibitions in the executive branch regulations. There is another exception under which an executive branch employee may accept the gift of free attendance at one of these movie screenings, depending on the circumstances. Under 5 C.F.R. § 2635.204(h), an executive branch employee may accept food and entertainment at a social event attended by several persons where the invitation is not from a "prohibited source" and no fee is charged to any person in attendance. This exception would apply to the movie screenings hosted by the MPAA if the MPAA were not a "prohibited source" to the employee invited. In fact,

Example 1 under 5 C.F.R. § 2635.204(h) is almost identical to the situation presented in your letter. In that example, the executive branch employees are allowed to accept the gift of attendance at a movie premiere. Although in that example the producer of the movie rather than the MPAA pays the costs of the event, we reach the same conclusion when the MPAA is the host, assuming the MPAA would not be a "prohibited source."

The assumption in your letter is that the MPAA is a "prohibited source." While there may be some circumstance in which that is the case, the MPAA usually is not a "prohibited source" under the executive branch definition of that term. Unlike in the situation involving other industries, no executive branch agency regulates the entertainment industry. Additionally, the MPAA usually does not have contracts with executive branch agencies. Ordinarily, the MPAA would not be seeking official action from an executive branch agency. If the MPAA were a "prohibited source," then the event would be analyzed under the "widely attended gathering" exception. The social invitation exception in 5 C.F.R. § 2635.204(h) would not be applicable.

Please keep in mind that our standard of conduct regulations for executive branch employees may be very different from the new rules recently issued for members of the legislative branch. Thank you again for your interest in this issue. I hope that this explanation is helpful to you.

Sincerely,

Robert I. Cusick  
Director