

## **Ethics Guidance for Inviting Members of Congress and Senior Executive Branch Officials as Commencement Speakers and Presenting Honorary Degrees**

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The passage of the Honest Leadership and Open Government Act (HLOGA) in 2007 and the enhanced emphasis on ethics and transparency by the Obama Administration make it essential for higher education institutions to review federal ethics and disclosure requirements before inviting a Member of Congress or senior Executive Branch official as a commencement speaker, particularly if an honorary degree will be presented to such an official. This paper summarizes the rules that ACE members should understand to ensure compliance with existing federal ethics and reporting requirements.

### **Who May be Invited?**

Members of Congress and their staff, and senior officials in the federal Executive Branch are often invited by higher education institutions to deliver a commencement address. There are no restrictions on who may be invited to speak at such an event. Varying rules do apply, however, in regard to the disclosure and reimbursement of travel and entertainment expenses associated with participation in commencement events, depending on the type of institution hosting the campus visit, whether the institution is a registrant under the Lobbying Disclosure Act and whether the invitee is a Congressional Member or staff or a senior Executive Branch official. The rules are frequently complicated and sometimes may even seem illogical. If an institution has any doubt about the propriety of providing travel reimbursement, or providing meals or entertainment in conjunction with commencement events, then it is always wise to seek specific legal advice in advance. Institutions should take great care to ensure that those representing the institution in its dealings with federal officials understand federal ethics rules to avoid any inadvertent violations.

### **Rules Applicable to Public Institutions**

#### **A. Gifts, Travel Reimbursement and Honorary Degrees to Members of Congress**

Congressional gift rules provide a specific exemption from the gift restrictions for gifts provided by local and state government entities including public higher education institutions. Thus, any gifts, meals, entertainment, or honorary degrees, offered by a public higher education institution to a Members of Congress and staff are excluded from the gift restrictions. There is no restriction on the type of travel provided by a public higher education institution and no clearance or disclosure of travel costs required by the Congressional ethics committees. An in-house lobbyist for a public institution may be involved in the trip planning for a Member of Congress invited to deliver a commencement speech.

#### **B. Gifts, Travel Reimbursement and Honorary Degrees to Executive Branch Employees**

Part 2635 of Title 5 of the Code of Federal Regulations sets forth the Standards of Ethical Conduct for Employees of the Executive Branch. While there is no broad exemption under these

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guidelines for gifts from public institutions, travel or reimbursement for travel expenses may be accepted by an Executive Branch commencement speaker since such travel is not considered a gift under Executive Branch rules. An Executive Branch employee may accept an honorary degree from a public higher education institution based on a written determination of the ethics officer of the agency “that the timing of the award would not cause a reasonable person to question the employee’s impartiality in a matter affecting the institution.” An Executive Branch official may also accept meals and entertainment given to him and to members of his family at the event at which the presentation takes place. If a gift or award (other than an honorary degree) is provided during the commencement events, then an employee could accept the gift (such as a plaque or crystal bowl) if its value is less than \$200 and is “a bona fide award or incident to a bona fide award that is given for meritorious public service”. Soon after his election, President Obama issued an Executive Order that significantly restricts gifts from lobbyists to federal “appointees. While the Office of Government Ethics has indicated that this Order does not apply to public and private universities, the interpretation does make clear that an “appointee” may not accept a gift if the gift is offered personally by a university employee who is a registered lobbyist.

## **Rules Applicable to Private Institutions**

### **A. Gifts, Travel Reimbursement and Honorary Degrees to Members of Congress**

Private higher education institutions may provide travel to Members and staff traveling from Washington D.C. to speak at a commencement event. . Preapproval from the appropriate Congressional ethics committee is required before a Member or staff can accept the travel. An agenda for the trip and estimated costs must be provided 30 days in advance to the Committee.. Reimbursed costs must be considered “reasonable” for both meals and lodging provided as part of the travel agenda. Entertainment such as a golf outing, not a part of the purpose of the trip, is not allowed under the Congressional travel reimbursement rules. An in-house lobbyist for a private institution may be involved in the trip planning for a Member of the House of Representatives invited to deliver a commencement speech and may travel with the Member of the House of Representatives to the event. To the contrary, an in-house lobbyist for a private institution may not be involved in planning the travel of a United States Senator to a commencement speech and may not accompany the Senator to the event if the travel expenses are being paid by the higher education institution. A post trip report including all expenses must be submitted to the appropriate Congressional ethics committee if expenses were paid by the private institution.

If no travel reimbursement is provided to the Member of Congress, then the existing Congressional gift rules would apply to the attendance of the Member of Congress at commencement events sponsored by the higher education institution. Generally, under these guidelines, a meal that is part of a “widely attended event” or attendance at any type of reception that is not a meal would be allowed as exceptions to the Congressional gift rules. An honorary degree and commemorative awards (such as a plaque or crystal vase) are also exempt from Congressional gift restrictions. For private institutions that **do not** retain or employ a lobbyist, any other gifts, including entertainment up to the \$50 are allowed. For institutions that **do** retain or employ a lobbyist, the \$50 gift exception is not available and only nominal gifts up to \$10 (other than commemorative awards) are allowed. .

### **B. Gifts, Travel Reimbursement and Honorary Degrees to Executive Branch Employees**

Pursuant to the Standards of Ethical Conduct for Employees of the Executive Branch, reimbursement for travel expenses may be accepted by an Executive Branch commencement speaker and is not considered a gift under Executive Branch rules. An Executive Branch employee may accept an honorary degree from a private higher education institution based on a written determination of the ethics officer of the agency “that the timing of the award would not cause a reasonable person to question the employee’s impartiality in a matter affecting the institution.” An Executive Branch official may also

accept meals and entertainment given to him and to members of his family at the event at which the presentation takes place. If a gift or award (other than an honorary degree) is provided during the commencement events, then an employee could accept the gift (such as a plaque or crystal bowl) if its value is less than \$200 and is “a bona fide award or incident to a bona fide award that is given for meritorious public service”. President Obama issued an Executive Order in January 2009 that significantly restricts gifts from lobbyists to federal “appointees”. While the Office of Government Ethics has indicated that this Order does not apply to public and private universities, the interpretation does make clear that an “appointee” may not accept a gift if the gift is offered personally by a university employee who is a registered lobbyist.

### **Disclosure of Payments Made in Honoring a Covered Federal Official**

HLOGA established a new report that must be filed twice each year by all entities registered under the Lobbying Disclosure Act, including public and private universities. In this report (LD-203), each registrant must disclose the cost of any event to “honor” a covered federal official. While this new disclosure does not apply to a simple invitation to a “covered federal official” to be the commencement speaker, it does apply if the higher education institution also presents the speaker with a honorary degree as part of the commencement program. The Congressional Lobbying Disclosure Act Guidance manual includes Example 12, on page 23 that discusses the type of costs that should be disclosed and the manner in which such a disclosure should be made. Institutions should note that the guidance contemplates disclosure of all payments made for the event (chair rental, catering costs etc.) to outside vendors but not fixed university overhead costs. The institution is allowed under the Guidance to list “multiple vendors” rather than listing each outside vendor separately. Also, the registrant may add as much description of the “honoring” event as it deems appropriate to give the public a full understanding of the event. See <http://www.senate.gov/legislative/resources/pdf/S1guidance.pdf>

### **Useful Links Regarding Federal Ethics Rules**

House Committee on Standards of Conduct - [www.ethics.house.gov](http://www.ethics.house.gov)

Senate Ethics Committee - [www.ethics.senate.gov](http://www.ethics.senate.gov)

Office of Government Ethics - [www.oge.gov](http://www.oge.gov)

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