open good afternoon and welcome to a

0:07

seasonal look at the regulations concerning gifts from outside sources my name is Patrick Sheppard and I'm very

0:13

pleased to be joined today by kim kaplan and suzanne meyer who are both best desk officers here at OU GE so welcome thanks

0:20

it's really good to have you here uh as we know this is the time of year when we like to talk about gifts and this

0:26

presentation is also timely because we published just this morning a new legal advisory concerning gifts of farewell

0:33

parties so today we're going to be taking a broader look sort of a full scope look at the rules concerning gifts

0:41

from outside sources and I know you both have a lot to cover and we want to make

0:46

sure we get that in and make sure that we're considered of all of your time our few person listeners so if it's all

0:52

right with you I'd like to pull up your slides excellent okay oh well thank you

**Resources**

1:04

Patrick so today we're going to look at subpart B of the standards gifts from outside

1:11

sources and we also know that around this time of year employees do sometimes

1:17

exchange gifts with each other and wonder about whether they can give a gift to a colleague and we're not

1:22

covering that today but there is a link to a video titled gifts between employees an overview of subpart C in

1:30

the resources handout we provided for you which you can see below this video and if you take a look below this video

1:36

you'll see the resources we provide for you include a copy of subpart B of the gifts from outside sources covering all

1:44

gifts from outside sources executive order 13 7 70 ethics commitments by

1:50

executive branch appointees and a copy of the ethics pledge that they sign we've also included a document on the

1:57

vti a analysis process which you'll soon learn about and finally we've provided

2:03

you with a one-page document of active links to the gifts advisories the gifts between employees training Kim mentioned

2:09

and linked to the ethics research blog and other gifts training other gifts from

2:14

outside sources training so if you've printed these out great but if you haven't you'll still be able to follow

2:20

the presentation this is a good time to remind folks that this presentation along with all of the other broadcasts

2:26

are available for on-demand viewing immediately upon their conclusion and you can find those all in the Institute

2:33

for ethics and government education library right so this afternoon we'll

**Overview**

2:39

take you through the advice and counsel process and emphasize the relatively new standard for gifts analysis located in

2:46

section 2635 point 201 of the standards the consideration for declining

2:52

otherwise permissible gifts we'll discuss why we now analyze for appearances and integrity first and

2:59

apply the reasonable person standard before we even ask the question can the

3:04

gift be accepted and will reinforce for you throughout that sometimes it's prudent to decline an otherwise

3:11

permissible gift right right and then we'll look at the gift rules prohibitions on certain gifts from

3:18

outside sources and then discuss the exceptions to the gifts rule and then finally we'll take you through from some

3:25

gifts from outside sources scenarios variations of which you're likely to come across this holiday season so the

**Advice Counsel**

3:34

graphic here shows that the advice and counsel process is often but not always circular so let's say we've got an

3:42

employee on the phone with an ethics question it's good to know the rules or at least where they and any relevant

3:48

statutes or OGE legal advisories are located so know what resources you need

3:53

to assist an employee right right oh geez legal advisories provide further

3:58

clarity to the regulations mm-hmm so gather your resources and make sure you've got all the relevant facts you

4:05

don't want to give hasty guidance before you've had a chance to consider all the facts and fill in any gaps in the

4:10

information the employee presented as Patrick has said in earlier trainings rarely is a perfectly formed fact

4:17

pattern presented by employees when they come to you with an ethics question I've been doing this for a long time and I

4:23

found that to be a very unusual in since when you don't have at least one or two follow-up questions exactly

4:29

definitely definitely so you're gonna get some more facts and then you're gonna apply the rules to

4:35

those facts and you might find that other rules come into play it's a gifts question but does it

4:42

implicate the primary statute or maybe the gift is reportable on a financial disclosure report right on the surface

4:50

the scenario an employee presents may appear to be a straightforward gifts question but then as new details emerge

4:57

other laws or regulations may be implicated so I bet many of you listening and watching today have

5:03

received an ethics question from an employee only to later learned there are additional facts which significantly

5:09

changed the outcome of your guidance and I certainly know that Patrick Kim and I have definitely many many times so the

**Gift Analysis Process**

5:18

gift analysis process shown here is the analytical framework for analyzing a

5:24

gift from an outside source this first step is new and it asks the employee to

5:31

consider whether accepting the gift would lead a reasonable person to question the employees impartiality or

5:38

integrity and if the employee answers yes then the analysis is complete and

5:43

the employee should consider either not accepting the gift or if the employee has already accepted it properly

5:50

disposing of the gift it's only after this that the employee should ask is it

5:56

a gift is it prohibited and if so is there an exception available but I think

6:03

this is really important because it really emphasizes the reason we have gift rules we're concerned that gifts will affect the integrity of people's

6:09

government service so asking that upfront make sense to me exactly exactly it doesn't does make a

6:15

lot of sense to ask that a friend and for you as an ethics official out there what this first step means is that when

6:23

employees come to you for ethics advice you shouldn't give your guidance until the employee has done this analysis

6:30

either on their own or with support from you on how to walk through the process and what to consider and also you should

6:38

do your own so that you can provide Prudential guidance to the employee and then

6:44

finally if you're providing your guidance in written form we really want you to consider including the employees

6:49

analysis of these factors in that guidance to help again to emphasize for

6:55

employees that this is a formal part of the analysis and we know if you're if

7:00

you've been in ethics for a while you know that this way of thinking it may still feel new to you even though the

7:06

changes became effective January 1st 2017 and I think it's because the way we

7:11

analyzed gifts from outside sources hadn't changed at all since the standards were first issued in 1993 but

7:20

OGE intentionally made changes to this framework for reasons we're gonna get more into as we go along so this new

**Standards of Conduct**

7:29

step is set out as a formal part of the analysis process in the standards of

7:34

conduct at 5 CFR 2635 point 201 B it is

7:40

and it's rooted in the basic obligation of public service at section 25 35 point

7:46

101 of the standards right it is and it's based on the responsibility each

7:51

employee has to place loyalty to the United States its citizens the

7:57

Constitution laws and ethical principles above private gain mmm-hmm right and

8:03

this new step in the gifts analysis process is designed to promote the public's confidence that employees are

8:09

meeting this responsibility so the

8:14

regulation highlights four factors that employees should consider and those

8:20

factors are value timing identity of the donor and access that the gift provides

8:27

and if the employee is aware of any other factor outside of those listed

8:32

here that could cause their impartiality to be questioned the employees should consider those as well right just as

8:40

with a general impartiality analysis that were already familiar with in section 2635 point 502 the employee

8:48

should consider other circumstances even if they aren't among the four

8:53

highlighted here right what we're doing is we're putting a spotlight on these particular factors here so that

9:00

employees and ethics officials can use them as guideposts and make a habit of considering them in their gifts analysis

9:06

I guess this is familiar to anyone who's used subpart e of the standards to make an impartial t determination we have

9:13

some guideposts in the regulation but that doesn't mean we should ignore other relevant factors exactly exactly exactly

9:19

definitely consider other circumstances so now we're going to look at these

9:24

factors in greater detail with value what are we asking well here we're

9:31

asking employees to consider the market value of the gift is it relatively

9:36

expensive or is it relatively cheap uh and truthfully no matter what the cost

9:42

of the gift even if it has little intrinsic value we still want employees to consider all of the factors the full

9:49

context matters right right and then with timing here what we're looking at

9:55

is whether there's some sensitivity around the timing of the gift is the

10:00

giver of the gift currently seeking business with the agency or does the giver currently have business with the

10:06

agency mm-hmm those are two separate considerations to do they have business

10:11

currently and separately are they currently seeking business an entity

10:16

that has long-standing business with the agency might be treated less sensitively than an entity trying to woo the agency

10:23

to select them for a contract or to make some other decision in their favor right

10:29

definitely that certainly could make a difference and then with the next factor

10:35

identity what we're asking here is whether there's a nexus between the employees duties and the gift giver

10:43

because if there is then this could increase concerns that the gift might appear to influence the employee mm-hmm

10:51

and in contrast if you have nothing to do with the work at your agency affecting this outside source because

10:57

it's handled by a completely different department there may be fewer concerns right if it's held by a completely

11:03

different department then the appearance concerns might be reduced even if some of the other factors could

11:10

otherwise indicate a problem so what an example of that be something like say I work in the ethics office and I'm

11:17

invited to an event that's being hosted by a technology company and maybe our our agency does have a contract with the

11:23

technology company but I I have nothing to do with procuring technology I don't oversee it I don't deploy it I have kind

11:29

of nothing to do with that arena that's a factor that maybe might agitate in the

11:35

direction of my impartiality not being questioned because I just couldn't take any action that would affect them right

11:41

exactly that's a factor that might weigh then in that in that direction and then

11:46

finally with access what we're looking at here is especially connected with the

11:51

identity factor in that if you can't affect the giver through your job or at

11:57

least if there would be a perception that you could then what we want you to

12:02

consider here is whether the appearance concerns potentially go beyond just the

12:08

gift itself right that by giving the gift the giver is getting the opportunity to spend time with you and

12:14

influence you that others wouldn't get not all gifts are tangible um it could

12:20

be an offer of attendance at a reception I think this is this is starting to make sense to me so we have to take these all

12:28

together so for example if I was invited to coffee by a potential contractor and

12:33

we were on the way to a source selection or a bidding process even though that's a you know the thing I might receive

12:39

might only be worth a few dollars the ability to access me at a very sensitive

12:44

time in the government's business by someone who's a principal from the organization seeking business might

12:50

agitate in me saying no because even though I'm just getting a few dollars worth of items those may produce a

12:57

result that that reflects poorly on the integrity of a process right right and exactly as I mentioned earlier and I

13:05

think that goes to that point that even if the gift is relatively cheap we say

13:10

still consider all of the factors for the exact reason that you mentioned Patrick okay I think that's that's

13:16

that's starting to get clear for me yeah yeah yeah and and even with those little

13:22

gifts like that you know there is that concern kind of cumulatively is it just

13:28

adding something to the regular practice of business that it then seems like buying you a cup of coffee is that price

13:35

of entry for your time and attention so we want to be mindful of that as well so

13:44

all of these the vti and a that Kim mentioned the market value timing

13:50

identity and the donor and access are really important considerations but one

13:55

concern is how to employees remember these factors so that they can reflexively apply them in the moment

14:01

when they're offered a gift great great so as an ethics official you need to be

14:07

able to explain these factors to employees so that employees can use and

14:13

apply them to carry out their part of the process and then you also need to be familiar with them yourself to provide

14:19

Prudential guidance to employees who come to you with questions so yeah both you and the employees need to remember

14:26

them so that you can put them into action it's a great point Suzanne um and so here's one way this is a mnemonic

**The Sillier the Better**

14:33

that you can use valiant Tigers I ski awkwardly and the first letter of each

14:40

word helps you to recall a factor in the analysis value timing identity and

14:45

access because when it comes to remembering information the sillier the better so um I know it could sometimes

14:53

feel like we shouldn't use humor and ethics training because we don't want to make light of the subject but used

14:58

appropriately in like this example it can help us to learn so that's a good

15:03

thing I've already been using this and I have to thank him for that because she came up with this in a monic and it's a

15:09

useful tool for remembering the factors and how to apply them to every gift situation that's especially with uh when

15:16

we have four factors so you know I have trouble when you get much more than three so I'm grateful for anything that

15:22

helps me remember yeah we can especially use that around this time of year when people tend to be busy with other things

15:27

and we just need all the help we can get I think with that and the purpose of this mnemonic

15:32

is to serve as a trigger to bring up information so it is critical that we as ethics officials and our agency

15:39

employees know the key questions in the VT IA analysis that we discussed on the

15:44

previous slide and how to apply them prior to using this but once you're at

15:50

that point and know those factors and questions then again the sillier the better and it will help you remember to

15:56

apply them note there is nothing wrong with your computer screen and you won't

**Visual Learning**

16:03

be able to unsee what you're seeing but that's the point hopefully this image will be imprinted

16:08

in your mind to help you recall what we've just covered exactly a lot of us have a preference for visual learning so

16:15

we can add on to the mnemonic as a learning aid by putting this visual

16:20

image associated with it and once you remember this and associate it with in mnemonic you're more likely to remember

16:27

it and be able to have that as a trigger to help you remember the underlying questions that you need to ask to do of

16:34

each EIA analysis so now let's put this

**Applying the Standard**

16:40

together and walk through the mechanics of applying the standard of not accepting a gift if it creates

16:45

appearance concerns so first employees are to apply the standard justice is

16:51

also the case with 26:30 5.50 to the consideration of appearances by the

16:56

employee and second this isn't meant to be punitive employees may not be

17:04

punished if they do not apply the standard or if the employees application of the standard and say your application

17:11

lead to different conclusions I want to specifically note that this standard is

17:17

unlike in this respect it's unlike the standard in section 2635 point 502 in

17:24

that the ethics official may not direct the employee to decline an otherwise permissible gift so if the employee

17:30

thinks that based on the application of the standard and factors he can accept the gift but you as an ethics official

17:37

think it's advisable based on this standard and the factors to decline the

17:43

gift and the employee accepts anyway what the regulation says is that the agency cannot punish him for that right

17:51

the standard is here to help employees to learn and to grow in their ethical

17:57

decision-making it's not about playing gotcha after the fact and of course we

18:02

want ethics officials to train the employees on the standard and factors but the employees should also feel free

18:08

to come to you as an ethics official for their analysis of the situation I think

18:14

those are both really important points because often when we're offered a gift it's not convenient to seek ethics advice immediately we may have to make a

18:21

determination about whether we're going to accept or not accept something of value in the moment mm-hmm so practicing

18:27

this practicing this process with your employees can really give them the tools to make that decision for themselves

18:33

when the opportunity arises right right yeah we definitely want to stress that even when employees do come to you for

18:41

ethics advice not to bypass this process really to use that as an opportunity to

18:48

work with the employee and support them in also thinking through the factors on their own because they may then in the

18:53

future encounter a situation when you're not readily available and they need to apply it themselves and that's really

18:59

the objective of what we're focusing on here so that it it comes to the employee

19:04

and the ethics official reflexively to consider declining otherwise permissible

19:10

gifts if they've done the analysis and and it looks like that's the best option exactly so now that we've reinforced the

**What is a Gift**

19:18

standard for declining otherwise permissible gifts and always always

19:24

applying a reasonable person standard to any ethic scenario our next step in the

19:30

gifts analysis process is for the employee to ask is this a gift so the

19:39

standards of conduct provides a definition at 5 CFR section 2635 point

19:44

203 which is on your screen right now and it basically states that a gift is anything having monetary value whether

19:51

tangible or intangible so a gift can be a favor like giving an employee a ride

19:57

to work or covering the cost of a see ride it could also be a box of chocolates an invitation to a reception

20:05

at an embassy or an invitation to a contractors holiday party or the

20:10

forbearance of a debt that you owed that you owe and these are just some examples

20:15

and for this immediate exercise let's say that a fertilizer company is

20:21

offering an employee a commercially sold book of new horticultural discoveries and the employee is a government

20:28

botanist okay does greens and things the book

20:33

charting the horticultural bestseller list meet the definition of a gift and

20:39

pretty much any tangible item as we just said will meet that definition and since

20:44

Kim just said this is a book with commercial value that just adds to our deduction that yes this is a gift so

20:55

while we're looking to determine if an item meets the definition of a gift and we have to determine if an item is

21:01

excluded from the definition of a gift the standards provides exclusions and

21:06

the exclusions include items which you can see on the slide before you and

21:12

these these exclusions would likely not call into question an employee's impartiality or cause an

21:18

appearance issue so please take a few moments to glance over these general

21:24

categories of exclusions we're gonna revisit them in a little bit okay so

21:35

modest items offered for consumption would not be a gift that would be a gift exclusion so if you're offered a cup of

21:42

coffee and a croissant at a meeting you can go ahead and partake of these snacks and note that these are snacks not a

21:50

full meal items of little intrinsic value like a greeting card and we'll

21:55

probably see a lot of those these holidays this holiday season a certificate for being the guest speaker

22:01

at a conference these sorts of things are not considered gifts right now if

22:06

that certificate and who came in a sterling silver frame we've traveled beyond the realm of gift exclusions and

22:13

yes exactly and when a telephone company offers a class consisting of all

22:19

government employees a discount not a special subgroup but the entire class of government employees then employees may

22:26

accept and the list goes on we're not going to review them all with you today

22:31

but for a refresher please take a look at section 2635 point 203 B where you'll

22:37

see fuller coverage of the exclusions and some good examples and that's in one of your handouts that we provided for

22:43

you below your slides today the botany book we're looking at today does not

22:50

meet one of the gift exclusions okay so to recap where we are look let's look

**Gifts Analysis Diagram**

22:58

again at our gifts analysis diagram so an analysis was conducted whereby first

23:04

the employee and/or the employee with the help of an ethics official went through the VTA steps to determine if a

23:10

reasonable person with knowledge of the facts would question the employees impartiality or integrity in accepting

23:16

the gift being offered and if the answer to that was yes then the employee should consider declining the gift here we're

23:23

blending values and rules based ethics and this is the new default for approaching gifts from outside sources

23:29

and if after conducting this analysis the answer is no then the employees and

23:36

party the employees impartiality and integrity would not be questioned the next step is determining if the item

23:43

offered meets the regulatory definition of a gift or if the item is excluded from the definition of a gift

23:49

so we've now named the item which is the horticultural book and determined that it does indeed meet the definition of a

23:56

gift there's no gift exclusion that applies right right so now we have to

24:01

ask is the gift prohibited meaning is it from a prohibited source or was it

24:08

offered based on the employees official position so we've determined that the

**Is it prohibited**

24:16

item was a gift and we asked is it prohibited so please take a moment to

24:22

look at the slide on your screen this is a summary of the general prohibition on gifts outside sources and the general rule is

24:30

an employee may not accept a gift from a prohibited source or based on their

24:36

official position unless an exception applies and those are two separate

24:41

standards am i correct so it only has to be one of those so it could be from a prohibited source given for a reason

24:47

other than the official position advantage prohibited or it could be given from any one because of my

24:52

official position and that would also be prohibited exactly that that is the general rule current excellent so I'd

24:59

like to think of those are sort of two separate items I consider one and then the other and I find that helps me avoid

25:04

mistakes yeah yeah and I think that's why why it's broken out here so we know

25:09

you're likely familiar with the definition of a prohibited source but we're covering it here this is also on

25:15

your screen right now and we're covering it since it's an important step in the

25:20

in the gifts analysis process right so here are some examples of what would be

25:26

appropriate source it could be the provider of software upgrades for your agency's computer system it could be

25:33

companies who must abide by your agency's regulations it could be a contractor who works side by side with

25:40

you on a regular basis or maybe it's a trade association made up of members who are themselves prohibited sources or a

25:47

drug manufacturer whose drug application is pending for your approval all of

25:53

those would be prohibited sources so going back to our government botanist

25:58

who has offered the horticultural book I think we need to know more about what our botanist does like where he works

26:05

and if there's any nexus with the fertilizer company that offered him the book right so for example do they have

26:13

any business before the agency does the agency regulate their products does our botanist have duties which could impact

26:20

the fertilizer company those are some of the questions that we would want to be asking so in this case let's say the

26:26

company is a prohibited source because the company has products that are regulated by the agency okay so we've

26:35

already gone through the vti a analysis determined that the item in question is gift because it does not meet one of the

26:43

gift exclusions and it is from a prohibited source because the company produces products regulated by the

26:49

agency so from our graph here we can now

26:54

see that we're the at the point in our analysis process where we're asking is there an exception does an exception

27:01

apply and the exceptions to the prohibit

27:08

prohibition for acceptance of certain gas gifts are found at 5 CFR section 2635 point 204

27:16

if you've printed out subpart B which we provided for you you can take a look at

27:21

the exceptions therein if not we'll come back later in the presentation to talk

27:26

more about them so don't worry if you don't have up your list before you exactly exactly um and we've been

**Appearance Concerns**

27:34

stressing that the first question employees and ethics officials should be

27:39

asking is are their appearance concerns and that the way to do that is the vti a

27:44

analysis so we're gonna come back to that before we go back and looking further depth at the exceptions and if

27:51

you take one thing away from this training we hope it'll be that you should analyze for appearance's first

27:58

and I know some of you are probably wondering why does it need to happen for us why do we need to analyze appearances

28:05

first and why do we train employees to do it exactly exactly so we're going to step back and spend some time together

28:11

looking at those two questions ok so

**A Busy Slide**

28:17

this is a busy slide which exaggerated some of the exceptions to the prohibition on accepting gifts from

28:23

outside sources using an old framework of looking at gifts let's take a closer

28:29

look at what's happening in this image right well well they do say December is

28:35

the season of giving and so here we have various exhortation --zz that employees

28:41

can freely accept certain items they might be offered around the holiday season because there's an exception

28:47

we've got gifts from vendors worth $20 or less at trade associations holiday

28:53

gala at an embassy and it ends by saying hoping you have a very exceptional

29:01

holiday season and in reality we want you to have a good holiday season season

29:07

but maybe not an exceptional one which is why we've put these red flags on the side because we don't want you to use

29:14

anything like this messaging for your training with employees right yeah don't

29:19

use this type of messaging in your employee training but it is important sometimes to turn a mirror on ourselves

29:26

as a community to take stock and to assess where we are what message does

29:32

this send out to employees about ethics and with the outcomes of that line up

29:37

with what our intentions are for the ethics program I think that's that's

29:43

interesting because I think we're all sort of guilty of this treating some part BS the gift acceptance regulation

29:50

exactly rather than the prohibition on accepting gifts from prohibited sources and you know perhaps that's the result

29:56

of the volume of words in the regulation being mostly focused on exceptions but

30:01

really we should not forget that initial purpose and I think the new rake does a good job of bringing us back to that

30:08

purpose exactly brings us back into that purpose and perhaps catches us where you

30:14

know sometimes at this time of the year even in the Amit in in the midst of the exuberance for the holiday season there

30:21

can be that that kind of reflexive response to focus on focus on the

30:26

exceptions more than the overall purpose right and we don't want to send a message that this is all about giving

30:32

license to employees to go out and accept gifts reflexively without considering the reasons behind the

30:38

ethical standards we have in the federal government right exactly because too much focus on the exceptions can affect

30:46

an employee's ethical decision-making and we're going to look at that decision-making part from an employee's

30:52

perspective how the messaging or how the framing can affect the employees ethical

30:57

decision making and here we're gonna start looking at that so here's a

**Employee Perspective**

31:03

situation an employee might experience and let's put ourselves and this employees

31:08

and try to get a sense of how the employee might experience this situation

31:13

so where the scenario says you think of yourself as being the employee right so

31:20

you're at a procurement outreach event hosted by your agency's IT department where you work as a program manager and

31:27

then in just a couple hours you talk with the representatives for 35 companies interested in bidding on parts

31:33

of an upcoming computer contract and then your lunch time you strike up a conversation with their representative

31:40

for remote works and it turns out well hey you went to the same college and both of you continued to avidly follow

31:47

the sports program there and then he asks you if you if you let him buy you lunch at the sandwich shop down the

31:54

street you've been there before and you know that they have a great eight dollar lunch meal deal special so okay so what

32:02

we're facing here as this employee is an on-the-spot decision about this lunch

32:07

invitation from a potential vendor and also maybe things are seeming a little

32:12

bit blurry because we have struck up a little bit of a personal conversation as well right and there might be a pastrami

32:19

sandwich involved and it's right before lunch your stomach may be starting to

32:24

growl too so so that could be another factor at play also and I want to know where you can get this eight dollar

32:30

lunch that that's what I wouldn't know but pick any small city outside of the

32:36

DC but hopefully we at least see that there's some kind of an ethics issue

32:42

here and hopefully we work at an agency where ethics is salient meaning it stands out and meaning we're likely to

32:49

see the situation has an ethical dimension that a potential vendor inviting to you you to lunch has an

32:57

ethical dimension and you see that right right yeah and so for the sake of this example

33:03

we are going to assume that we're going to assume that the possibility of an ethical dimension into a lunch of

33:08

mateship from a potential vendor is at the front of your mind and and so then what happens next well

33:15

remember you have to make a quick decision here so this question can I accept the lunch

33:23

might pop into your mind and a question like this focuses on one aspect of the

33:28

decision is it technically legal for you to accept this lunch right you may have

33:34

had past ethics training that approached the offer of a gift as a question of is it permissible under the rules is there

33:40

an exception how can I get this lunch great right and with the changes o GE mage of the gift rules starting in 2017

33:47

we intentionally we're wanting to shift employees and ethics officials away from

33:53

this question because can I accept the lunch is a very specific way of framing the decision that the employee has to

34:01

make and the frame that you put around that decision also impacts what you see and what you don't see about the ethical

34:08

dimensions of the situation so your decision is framed in a particular way and you're under this time pressure to

34:15

decide what to do about this lunch what next so your mind is probably going to gravitate to a quick rule of thumb maybe

34:23

your first thought is the twenty fifty rule whereby an employee may accept an unsolicited gift worth twenty dollars or

**The Twenty Fifty Rule**

34:29

less right and well you know you've been to this lunch place before you know your

34:34

lunch will only cost eight dollars so you know what to do right every time yes

34:40

a straw meet I wish for eight dollars so

**The Big Picture**

34:47

just to emphasize is what we've been saying about can I accept this lunch as a particular kind of framing question I

34:54

think a lot of us want to think that ideally when faced with an ethical dilemma that we would see the full

35:00

picture that we would see all of the potential ethical dimensions but the

35:05

research says that really our ethical decision-making is bounded and what that means is that it fails in particular in

35:13

in predictable ways right we think we see the big picture right right but

35:19

actually what we're seeing is something more like this and framing is one factor

**Framing**

35:29

it's a very important factor that can affect the bounds of what we see so if our framing question

35:36

is focused only on the yes or no legal or not dimensions of the question then

35:42

we may only see something like this so

35:48

we may not see the warning signals what were the other vendors at the conference think if we accept this lunch

35:54

will accepting the lunch undermine the purpose of the outreach event how's it

35:59

gonna look to others if I'm friends with one of the bidders right right yeah we may not see the warning signals that by

36:06

accepting the lunch we are giving this one vendor a lot more of our time than

36:11

we're giving to any of the other vendors or let's say we just keep things personal we might not see how developing

36:17

a friendship now with this vendor could have an ethical dimension down the road when the vendor submits a bid for the

36:24

contract and the framing might affect our decision-making in other ways as well right maybe we get these warning

36:32

signals but we've been taught that if an exception applies that means the lunch is mine the regulation entitles me to

36:39

that lunch at this point if you're getting the warning signals after considering the exceptions that can set

36:46

up a different kind of framing called a loss aversion right meaning you thought that lunch was yours and now if you tune

36:55

it back and listen to these warning signals you might have to give it up right you had something and now there's

37:01

a risk of losing that if you listen to the warning signals so at this point we have to make our decision under time

37:07

pressure we're under time constraints are we gonna say you know what I'm just not gonna go I'm just going to decline

37:14

the lunch to climb that pastrami sandwich you know can we are we gonna do

37:20

that well you know I you know there it goes there it goes well maybe but the

**Loss aversion**

37:27

research on loss aversion what it says is actually we're much more likely to take risks to keep from losing something

37:35

that we see as ours than we are to take risks to gain something that we don't

37:41

have yet right even if we do have an inkling of other

**Gifts from between employees**

37:46

potential concerns we're more likely to want to go ahead and accept the lunch and just hope no one notices so make

37:53

sure the table we don't leave any crumbs behind we're gonna have to buy you a

37:59

pastrami sandwich for more on that see gifts from between employees see the

38:04

guidance on gifts between employees yes and the reason this happens is because

38:09

we are we're we're loss averse we're more likely it's more likely that we're gonna have a reaction like that because

38:17

of this natural aversion to loss that we have right and analyzing for

38:23

appearance's first as we've stressed is the first step in the gifts analysis process and it helps to address this

38:29

right right it helps to address it because the ordering of having employees

38:35

first ask whether their impartiality or integrity will be questioned before they

38:41

look at possible exceptions helps to increase the odds that employees will make ethically sound decisions so it's

38:50

not really natural for us to do this which is why we have to practice right exactly exactly we we have to we have to

38:56

practice it we have to get in the hang of it because it isn't the natural reaction that you might otherwise have makes a lot of sense so here's the same

**VT IA analysis**

39:04

scenario that we've been looking at but now the employers have expanded his

39:10

frame of decision-making to include the VT IA analysis process which you could

39:15

see on the right side of your screen mhm and the goal of the new analysis process

39:20

is that employees will take a broader view when faced with an ethical dilemma they'll ask themselves what are they

39:27

going to do rather than focus more narrowly on whether they can technically legally accept the gift or not right

39:34

they're gonna walk through the VT IA analysis before making that decision right right so they're gonna remember

39:41

the image they're gonna say valiant tigers ice skate awkwardly and now if I was this employee on the spot having to

39:49

make a decision about this lunch maybe I think what I might do is try to buy some

39:54

time because it can be really difficult to make a good decision when you're under that quick time

40:00

pressure and once I bought some time then I do my VT ia analysis or you know

40:07

maybe that would just be kind of awkward and I just decide you know what this offer of a lunch isn't really worth that

40:14

effort and I would just go ahead and on the spot maybe I would just decline it and that would be okay too

40:20

absolutely and I think this is an area where it can be helpful to have thought about this before you attend the trade

40:25

show your knowing that you're gonna be in contact with a lot of vendors who might soon have business before your

40:31

agency you may prepare yourself for this situation say you know what if I'm offered anything I'm just not going to

40:37

accept it because that's another strategy that we can take some of the timing pressures off of ourselves and

40:42

you know in the in this example the the fellow in question at the conference he

40:48

went to college with the person but it doesn't he's not necessarily a good friend of his so it raises even further

40:54

concerns appearance concerns mmhmm yeah

40:59

definitely definitely and it couldn't you know a great idea to if you know if

41:04

you know as an ethics official that that's an event like this is gonna be happening at your agency may be working

41:10

with supervisors to to just insert a quick ethics message in the first staff

41:17

meeting before the big event yeah kind of getting it what Patrick was saying is it does help to address that

41:23

time factor if you are anticipating this and have had a few moments to reflect on what you're going to do absolutely sort

41:29

of preparedness is it's better than needing to triage it in the field yes so

**Summary**

41:37

to summarize this is what a GE hopes result from building in an analysis of

41:42

appearances as employed by employees as the first step of the gifts analysis process first it puts the employees

41:51

focus on should I accept this rather than how can I accept this the next it

41:58

requires employees to engage in ethical decision-making so really building up

42:05

employee skill here just through the use of this process and and has the potential to carry over into other areas

42:13

beyond Jessica then third it requires employee ownership of his or her these or her

42:20

actions and finally it also relieves pressure on ethics officials because the

42:26

first question becomes the VTA ia analysis not can I accept this gift so

42:38

we're now going to turn back to talking about the regulatory exceptions and with

**Regulatory Exceptions**

42:46

our gifts analysis process we're now back on the final step is there an

42:52

exception as we mentioned before you can

42:57

find the exceptions in 2635 Point 204 of the standards and I'll give you a few

43:05

moments to take a look at subpart B of the regulations which again reminding you we provided for you in the course

43:11

materials

43:23

right so now that you've had a chance to you know just to skim through those

43:30

materials there are a number of exceptions and we're gonna look at some

43:36

of those in some detail when we do get to the scenarios for purposes of the

43:42

analysis process and our government botanist who we have not forgotten you want to take a look at whether an

43:48

exception applies remember he was offered that commercially sold gift greens and things and you'll need to

43:54

know the market value of the book but should you have this information or you should actually have this information as

44:01

it was the V in the VT ia analysis and if an exception doesn't apply that ends

44:07

the analysis right there and the gift cannot be accepted right great and if an

44:13

exception does apply then you do want to weigh the VT ia analysis before the

44:20

employee makes a decision and we've provided you with a handy job reference

**Job Reference Aid**

44:27

aid again also as part of the course materials available right below the video that provides the gifts from

44:33

outside sources process that we've been using today and it also provides some summaries of the exclusions as from the

44:42

definition of the gift as well as some summaries of the exceptions so while

**Executive Order 1370**

44:49

we're looking at exceptions we have to consider if the employee is coming to us with the gifts question or the employee

44:55

coming to us with the gifts question is covered by executive order 13 7 70 and

45:01

ask is this person a pledge signer is this person a federal appointee if so

45:07

this person will be further restricted regarding the exception of gifts right exactly because the ethics of ethics

45:15

pledge contains a ban on appointees accepting gifts from lobbyists exactly

45:21

so for gifts from lobbyists or lobbying organizations the executive order

45:27

removes the availability of certain gifts exceptions so the exceptions which still apply are the ones shown here on

45:34

your screen and these are gifts based on personal relationships discounts and similar

45:40

benefits gifts resulting from a spouse's business or employment relationship

45:46

customary gifts or gratuities provided by a prospective employer gifts to a

45:52

president or vice president of the United States gifts authorized by noge

45:58

approved agency supplemental regulation and gifts under specific statutory

46:04

authorities mm-hmm I think it's interesting to look at the logic behind

46:09

the lobbyist gift ban because I think is very complementary to the vti a analysis because in both cases we're concerned

46:16

about gifts being used to create access and influence right which is really the industry of lobbying so you can see them

46:23

as sort of complementary and this just being a heightened codification for those more senior officials exactly for

46:30

those more senior officials we have that more heightened codification of it so if

46:36

the person we happen to be advising is a pledge signer then again we have to remember that this specific ban does

46:44

apply and it's going to constrain the availability of our exceptions that we can apply if the gifts from a lobbying

46:50

organization or from a lobbyists right I think especially because a lot of pledge

46:56

signers are more in the public sphere so there's more concern about appearances

47:01

so even if an exception does apply we still want to apply as Patrick mentioned we still want to apply the BTI a

47:08

analysis and maybe especially for political appointees or just government

47:14

appointees who may be subject to more public scrutiny than other employees concerning the decisions they make so at

47:25

this point we've discussed the advice and counseling process remember that certain that wheel that we had at the

47:31

beginning and with an emphasis on consideration for declining otherwise permissible gifts we've used a circular

47:38

diagram that wheel for the advice and counseling process and we've taken a linear approach to the gifts analysis

47:44

process with a look at the definition of a gift the exclusion that might apply and the exceptions that

47:51

might apply so it's now time to apply what we've learned okay so we've got our

48:00

first scenario here and cow is a federal employee and he received an invitation

48:07

to attend a holiday reception from a prohibited source so my first thought is

48:13

the the first thought that comes to me is and maybe because we were just discussing it but is Kal a pledge signer

48:19

is Kal a government appointee yeah exactly if we if we don't know cow that

48:25

well we need to know more about cow and even if we didn't look at whether he is

48:30

a political appointee right here at the start of our analysis we'd certainly need to consider that when we look at

48:36

the exceptions that might apply so in this case let's say that cow is a political appointee okay so we also want

48:44

to know what he does and where he works but first let's go through the vti a

48:49

process and again that's on the right side of the slide the thing about the

48:55

vti a process is that if there's an issue with the timing or the identity of the donor for example you may want to

49:02

stop right there and determine that it's not a good idea to even look further at whether the gift is acceptable or not

49:09

right right if Cal is right on the eve of making a decision on whether to

49:15

subsidize widget production and the imitation is from the widget manufacturers of America and it's to

49:23

their black-tie holiday gala and even if Cowell knows other government people have been invited as well it might be a

49:30

good idea for cow just to stop here that makes sense because the value of the black-tie gala is quite high in that

49:37

presumably the timing at the eve of that that decision is not great and the the

49:46

access and identity also weigh against because this is someone who's seeking a decision from this particular official

49:52

right so it's sort of a tick all four boxes yeah yeah and the appearances

49:58

could be very questionable mm-hmm so let's say we've gone through BIA analysis it is a gift it is from a

50:06

prohibited source and then an exception might apply let's say the exception at 5 CFR 26 35 point 204 G for widely

50:15

attended gatherings and that's an exception so let's say that applies right right and that exception with

50:22

written approval if certain conditions are met it would allow for opportunities

50:27

for employees to meet informally after hours with a variety of different stakeholders and sometimes this can be

50:35

used for holiday events so in this case though we have another factor we know

50:41

that Cal is a political appointee so we also know that the wag exception won't

50:46

be available if the widget Association is a registered lobbying organization or

50:52

if the imitation is from a registered lobbyist right so overall what we're

50:57

saying here is that every factor matters and it should not be just good enough to say oh there's an exception for widely

51:04

attended gatherings even if it turns out that the information that the invitation wasn't from a registered lobbyist that

51:11

it should be okay to just say oh there's an exception because it's the season of giving and good cheer we always want to

51:18

consider appearances always want to consider appearances right exactly it

51:23

should not be enough to say just because it's the holiday season that we don't have to consider these other factors as

51:29

well okay so let's take a look at a

**Second Scenario**

51:35

second scenario so here during an anonymous gift exchange at the agency's IT division

51:42

holiday party Isabella an IT specialist for the agency receives

51:48

a sugar cookie scented candle in several of the agencies IT support contractors

51:53

participated in the exchange so we have a gift exchange and government employees

51:59

and contractors are participating in it and Isabella a government employee

52:05

received a candle it might have been one put up one of the gifts that was put into the exchange by one of the

52:11

contractors or it might have been put into the exchange by a colleague and

52:17

for a moment you may be thinking just as an aside is it okay for a government

52:23

employee to give a gift to a contractor and the short answer is that there's nothing in the standards that prohibits

52:30

it but we can't speak to any other rules a contractor's own code of conduct might

52:35

might detail so the short answer is that the standards doesn't address that

52:42

exactly exactly but the contractor may have their own code of conduct then that

52:48

has something to say about that right and so as to the standards and our

52:53

employee Isabel Isabella first let's look at the VT ia and with

53:00

the value it would be typical at an agency to set a limit of ten dollars or

53:06

less for gift exchange gifts because as you are probably familiar the

53:12

limitations on gifts to official superiors or to employees making more pay that are found in subpart C of the

53:19

standards of conduct on gifts between between employees we might make that

53:25

choice in terms of advising employees at our agency that they set that limit for

53:30

their gift exchanges mm-hmm so um and it certainly seems or let's assume we've

53:36

seen this particular candle and we've deduced it's it's less than ten dollars

53:41

maybe a regifter candle um anyway you need they still need to go through the

53:46

VT ia analysis and one thing we know for sure is that the identity of the donor is unknown so although we know that the

53:54

gift could possibly be from a contractor we don't know for sure that it is from a contractor but because it could be we

54:01

have to assume that it is at least for our analysis right right so we know that

54:06

the candle which is a gift because it doesn't mean one of the gift exclusions

54:12

might be from a permitted source because it might be from an agency contractor and then we can look at possible

54:18

exceptions and so there is an exception for gifts valued at $20 or less as long

54:24

as the employee doesn't accept $50 or more and gifts from that same source in

54:29

a calendar year or so frequently from the same source that a reasonable person would question their impartiality right

54:36

so that exception might be available but I think we should also verify that the employee is not a political appointee

54:43

although it does seem like an IT special specialist would not be but we should

54:49

still consider it because if the employee isn't appointee who signed the ethics pledge the exception for gifts

54:54

worth $20 or less is not available if this contractor is a registered lobbyist

54:59

right great okay so now our third

**Third Scenario**

55:06

scenario a court reporting and transcription services vendor who would

55:11

welcome being hired to provide services to your agency's office of hearings and appeals drops off a box of chocolate

55:18

eclairs for the department's administrative officer Bao for the holidays Dao comes to you for advice

55:26

what advice would you provide to the employee so first again on the

55:33

right-hand side of your screen we're looking at the vti a process and we know from the start that the I the identity

55:40

is a prohibited source because the vendor is seeking business with the AOS agency so do we know the value of the

55:47

gift right right and we're also going to look at the timing to see if the agency

55:56

is actively looking at changes to hire new court reporting services and on the

56:02

value let's say it's two dozen mini eclairs from a nice bakery and then how

56:09

about access well here let's say that the vendor is gone we're just left with this box of perishable eclairs at this

56:18

point after the vti a analysis bao may decide with or without our input that

56:24

the gift should be declined dao might also decide to continue the gifts analysis process and see if a gift

56:31

exception applies right so if the AO wants to continue the analysis again we

56:39

know that this is a big box of a players and we know that it is a gift because it's more than a modest food

56:46

item and we know it's prohibited because it's from a vendor who's seeking business with the agency so the last

56:54

step is to look to see if there's an exception that applies what delicious eclairs action someone is hungry and

57:02

ready for lunch yes so it seems likely that two dozen bakery eclairs would cost

57:10

more than $20 so we could rule out the 2050 gifts exception and I can't see than any

57:17

other exceptions would apply right so either way if this employee ended the

57:24

analysis after doing the vti a analysis and decided not to accept it or if we

57:31

went through the full analysis process with the employee and determined that the employee couldn't accept it because

57:37

there's no exception available there is a standard in the regulation for proper

57:44

disposition of otherwise prohibited gifts right and that's at 5 CFR section

57:50

2635 point 206 this is all in subpart B that we provided for you and it says

57:57

that there are some options that with the approval of your supervisor or agency designee that part is a port is

58:04

important with the approval of your supervisor or agency designee with these

58:10

with their consultation you would have the option to dispose of perishable items that are not practical for you to

58:17

return so other options include giving the eclairs to an appropriate charity

58:23

sharing the eclairs within the office or destroying them such as by throwing them

58:29

out yeah and we want to thank you so

58:37

much for for joining us for this training on gifts from outside sources brought to you by the oh geez Institute

58:43

for ethics and government mm-hmm and if you have questions about this training

58:49

specifically then please do email us at training registration at

58:54

gov or if you have questions about the gift rules themselves then please feel

59:00

free to reach out to your agency's OGE desk officer and we're happy to answer

59:06

further questions that you that you bring to to your desk officer so Suzanne

59:14

and Kim thank you very much for joining us we really appreciate you taking the time to help us think about the new

59:19

regulations especially consider them in the context of the coming holiday season and we'd also like to thank all of you

59:26

for joining us we hope you found this presentation helpful and like with all of our broadcasts if you registered for

59:32

the course you will be receiving a course evaluation we do ask that you complete that if you're able to also if

59:37

you have ideas for future trainings please let us know because we do try and accommodate those to the extent we're able to and we really want to make sure

59:44

that the sessions and topics we're offering are those that are of interest to the community so we look forward to

59:50

seeing you next time and until then I'm Patrick Sheppard

English (auto-generated)