good morning and welcome to the national government ethics virtual summit i'm patrick shepard and i'm ryan siegrist

0:14

and we're very pleased to be uh giving you a presentation today on widely attended gatherings yes and in the

0:20

spirit of our uh virtual only sessions this is mirroring the new ethics official tracks this is an introduction

0:26

to the regulation itself right ryan it's really not going to cover in great detail exactly how you apply that if i

0:32

were a new ethics official and i wanted some more guidance on how to apply the widely attended gathering exception what

0:37

would you recommend i do i think the first thing that i would recommend that people do is to go to oge's advisories page and just do a

0:43

search for widely attended gatherings uh we have uh an opinion from 2006 yes

0:48

which is very comprehensive uh covering g2 and we also have a recent opinion

0:53

that we issued uh covering g1 yeah so those are both excellent opinions uh we also delivered a class in august uh

1:00

concerning widely attended gatherings could you tell us a little bit about that sure so uh if you're wanting to have a

1:06

more practical application based learning experience with widely attended gatherings go ahead and go to

1:12

our google plus or youtube page where you will find a three hour long course where we go into great detail with the

1:19

regulation and also uh do some practical application yeah and that that course is organized into two parts i believe

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so we have a one hour presentation that provides some basic training and then you have a break a time period

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that you can uh try your hand at some practical application and then finally we have a two hour debrief that will

1:39

allow you to get some feedback on how you did right and uh to find the materials for that you'll need to go to uh the

1:46

institute for ethics and government max.gov community and you will find the the materials there yeah there's a

1:51

wealth of resources really at the ieg max community so if you've not found that i'd encourage you to look that up

1:57

you can find the link in education advisory 13-1 so before we get started uh let's go

2:03

ahead and take a minute just to run through all of the different virtual offerings that we're having for the rest of the virtual summit yeah

2:10

we're roughly at the midpoint of the national government ethics virtual summit uh so what do we have coming up in the next few days well so uh just to

2:17

remind everyone that this afternoon at 1 pm eastern daylight time uh we're going to be covering the rest of the gif's

2:24

gift exceptions as well as uh running through the exclusions if we have enough time yeah so that should be very

2:30

interesting and i do hope you join us this afternoon for that final uh that final session in our introduction to the

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gifts regulation and then on friday is the next time that we'll be doing something virtually we'll be live at the

2:42

national institutes of health uh live streaming an entire day's worth of content we're going to be covering uh

2:49

9 to 5 30 actually that we're going to have all of the all of the main plenary sessions for the day will be live stream

2:56

for you and we'll be here providing commentary and interviews with uh speakers and

3:03

some uh sessions there uh anna galindo maroon will be joining us from the office of special counsel to talk about

3:09

some hatch act issues and an old friend of oge's lenny lohan trip from gsa will be giving

3:15

a presentation on travel regulations we've put him at the end of the day so he might finally get through that presentation so if you've seen him

3:21

before and you've always wondered what happens at the end of the presentation yeah it seems he always runs out of time

3:26

we hope to bring you the entirety of that presentation so we look forward to that as well yeah uh also next monday we

3:33

have uh two more virtual only sessions uh then we'll be closing out the virtual

3:38

only sessions the uh the last two sessions are gonna be a lot more advanced uh than the ones

3:44

that we've been doing so far og's own monica asher is going to be covering

3:49

the uh regulations that that cover non-career employees that's right and that should be a really valuable

3:56

resource because there are a number of regulations that are specific to those non-career folks and if you're at an

4:01

agency where you don't have a lot of non-career officials you can go a long time between having to look at those so having a resource you can go back to

4:07

will be very helpful right not having to re-teach yourself every time is a is a valuable asset the other virtual only

4:15

session that we're going to be covering is uh how to brief uh senior leaders at your agency about ethics yeah and that

4:22

should be very exciting uh cheryl uh kim paiseki ryan and i will be delivering that session we'll be talking about some

4:27

things we've picked up over the years about briefing leaders and how you can help them help you in your agency and

4:33

your ethics program so you know please do look for that and we look forward to concluding the new ethics official

4:38

version or portion of the virtual events later this afternoon right and the uh the the final thing we

4:44

will be closing out the national government government ethics uh virtual summit on tuesday next week at uh live

4:51

at the federal housing finance agency that's right uh we'll be live streaming the entire day and uh we hope very much

4:57

to see you there and and close out close out the uh summit with us so we have some exciting things planned for next tuesday we have a number of stakeholders

5:04

from outside of the government so people we don't hear from very often uh but who have uh a great interest in the work

5:11

that we do as ethics officials and they'll be sharing some of those views and i'm really looking forward to seeing that and having an opportunity to

5:17

interview some of those people for you our virtual viewers me too so with that shall we get into

5:22

the slides let's do that ryan okay

**Overview**

5:32

so this is the third part of our understanding gift exceptions presentation and if you joined us yesterday for the first two parts

5:39

uh you know that we're talking about the exceptions primarily but that it might be useful to discuss a little bit the

5:45

advice and counsel process in general and the gift micro process in particular

5:50

we've been through this twice so we're going to do this very briefly we want to leave enough time to talk about the wag exception but we do want to provide you

5:57

some context of our broader discussion today so let's take a look at the advice and

6:03

council what have we decided is ryan the advice and council spheroid uh spheroid i also like to call it the advice and

**Advice and Counsel**

6:09

counsel apple because you have to take lots of bites out of it or the wheel uh the advice encounter wheel

6:15

is also uh apt and we say all this not just to be funny but also because um there's a reason

6:22

that we don't number this process and that's because uh the advice accounting process is not a linear process is it

6:28

it's not there is no teleology to this at all it's you often have to uh

6:33

as you do your analysis after you've spotted the issues and you've gathered facts for it and you've applied the

6:38

rules to the facts oftentimes your employee that you're providing advice and counsel to will come back and say oh wait i forgot to tell you this

6:44

and then you have to go back and ask some more questions uh get some more facts apply the rules a little differently based on that new

6:51

information so it's it's something that you often have to spin around several times yeah that's exactly right and i

6:56

think you know with experience comes the ability to spot issues and to know which facts you really need but when you're

7:02

learning uh it's it's good to keep this process in mind and keep in mind the fact that it is not a linear

7:07

process even for the most experienced among us and that sometimes you are going to need to go back in the process right what

7:13

we're hoping to do today is to help you know a little bit more about the rules but as we go through that we will be

7:19

pointing out some issues that represent traps for the unweary and we'll also be going through some

7:25

frequently asked questions uh that come up and particularly with uh g1 and g2

7:31

there are many so we're going to try and get through a few of those at least to make sure that you know

7:38

that when you're looking at these and you think that something applies differently we'll see what we can do to make sure

7:44

that you know how it actually applies yeah i think there are a lot of misconceptions surrounding the widely attended gathering exception i i also

7:50

think there's some misunderstanding about the function that the exception is supposed to uh play in the ethics laws and regulations

7:56

and another place that i would encourage you to look if you're looking to learn more about the widely attended gathering uh exception is the preamble to the

8:03

final rule when og issued the standard of conduct we had quite a significant discussion about the widely attended

8:08

gathering exception in the preamble and i think reading that is really illuminating and before i read that i didn't really understand wag

8:15

after reading that it became much clearer to me right the the uh the reasons why it is the way it is are are

8:21

made much much more clear than just reading the rule itself and

8:26

we'll be very we'll give you to point out some of those nuances as we go through today's presentation right so

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the next thing that we want to talk about not just briefly is our gifts analysis micro process for

**Gifts Analysis Microprocess**

8:38

those of you who are joining us for the first time if this is your first virtual session uh that you've attended on gifts

8:45

uh just very briefly we're gonna walk through this process and this process is sort of

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micro process is nested within that advice and counsel process yeah it's a kind of advice encounter it helps us to

8:57

navigate the gift rule as a whole um when we're providing advice and counsel

9:02

and it's it's a microprocess because it's a subset of the broader advice and counsel process but also because it's a

9:08

fairly straightforward process um so what are the parts here ryan well so the first part is uh

9:14

as we go through the process the first thing that we need to know is whether or not the thing that is being offered is

9:19

in fact a gift uh so we don't mean just a gift in the in the vernacular sense but a gift in the technical sense for

9:26

this exception right right the the the definition of a gift uh which you can

9:31

find at 5 cfr 2635 uh

9:37

some part b yes the uh the definition of a gift is delimited to

9:42

the regulation so they're we're only talking about gifts four purposes of the regulations some part b of the standards

9:49

that makes a lot of sense to me and i think this afternoon we should have some time to take a look at that definition so if you're not clear about uh the

9:56

definition of a gift or you're unsure about some of the exclusions from the definition of a gift please join us this

10:01

afternoon we'll take some time to talk about those and they're common sense things they're things that um you know are customarily

10:07

offered that don't uh present risks of you know undue influence or public office for private game the people

10:14

should just be able to accept right um so those are things that are excluded from the definition they're in fact not

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gifts but what about all those other things in this case we're going to be talking about invitations and generally speaking

10:24

invitations are not going to be excluded from the definition of a gift invitations entertainment food

10:31

things like that are are going to qualify as gifts in the main

10:36

so where do we go next so the next thing that we need to find out if we have determined that it is in fact a gift uh

10:43

then the next thing we're going to have to determine is whether or not it is a prohibited gift and we have we have two prohibitions in the gift rules that

10:49

right ryan that's right there's there's two horns to it the first one is uh is uh you're prohibited from accepting a

10:55

gift from a prohibited source okay so a prohibited source i think i remember this from yesterday

11:01

this is someone who basically does business or seeks to do business with their agency someone we regulate

11:06

uh someone may be seeking official agency action someone who can be affected by the performance or non-performance of an

11:13

employee's official duties right and and just as a part of uh the the parlance that we use when we're

11:20

talking about gifts and ethics uh in particular uh one of those outside

11:25

entities that's offering the gift that can be directly affected by the performance or non performance of

11:31

an employee's duties we refer to that as a bad prohibited source yeah so we may be seeing that a little bit later in the

11:36

presentation right and now the other horn of the prohibition is uh you you also cannot accept gifts that are given

11:42

because of your official position so in the first case the motivation for the gift is not important it's just the

11:48

source of the gift and the source is dispositive if it's from a private source it's prohibited under the general prohibition right

11:54

uh and in the other case the source of the gift is not important the only thing that's important is the motivation is the gift being given because of your

12:00

official position that's right and we only have to satisfy one of those right it's it's an or it is a disjunct okay

12:06

very good um well that leaves a lot of prohibited gifts and i can see a lot of cases where

12:12

that would you know create some kind of absurd results oh yes definitely and and because of that uh oge is his

12:19

built in uh a bunch of exceptions uh to the uh to accepting prohibited gifts so

12:25

so that's the third part of our process and we find that something qualifies as a gift for purpose of subpar b

12:30

and it meets one of one or both of those prohibitions then we have to look to see if an exception could be used to accept

12:36

the gift if we think it's appropriate to accept that gift right and one thing i i would like to like to highlight that you

12:42

just said is could be used right there's no requirement that we use an exception if it might

12:48

apply and in fact these are all discretionary and the regulation itself indicates that

12:53

it is uh always appropriate and frequently prudent uh to decline a gift

12:59

notwithstanding the applicability of an exception that's right these uh for those of you who are familiar with uh

13:05

the 208 exemptions at 2640. these do not apply automatically so unlike the

13:11

exemptions for certain kinds of financial holdings these do not apply automatically and uh they

13:16

should be considered carefully and in fact today as we discuss the widely attended gathering exception

13:23

this is one where the criteria of judgment the criteria of prudence is actually built into the exception itself

13:30

so it requires a judgment of prudence on behalf of the agency before it may be exercised so not only does this not

13:37

apply automatically it also requires affirmative activity by an agency ethics official or other

13:43

designee when the exception is going to be utilized so that's what we're going to be talking about today right

13:49

so shall we move into the regulation uh yes let's let's go ahead and get into the regulation that sounds great

**Reference Material**

13:55

well before we do that we always want to point out the reference material right and you can find this on the watch now page on oge's website uh this uh handout

14:03

is useful it's got the gifts process uh gifts microprocess on it and it's also got some advice and counsel tips uh

14:09

among other things there are some other good uh resources on there that will that are available for you to use as

14:15

part of your practice when i was starting out uh you know as a desk officer heard og almost 10 years ago i found tools like

14:21

this to be an excellent supplement to the regulation i i caution you against using these in place of the regulation we always want

14:27

to go to the text of the rule but there's a supplement to the regulation as a guide to navigating the regulation

14:33

a fantastic tool and i'd encourage you to keep it on your desk yes

**Rule 2635204**

14:40

okay so the first uh the first part of the regulation that we're going to look at is it 2635.204

14:46

g1 this isn't even about what we attend together instead of ryan it's not it's sort of the the prelude uh to the widely

14:53

attended gathering it's the place you should look before you uh commit yourself to a wag analysis because it could save you some time

14:59

well the uh the relationship of wags to uh to other things maybe we should note that briefly

15:06

here uh if you're in a situation where uh your uh that

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where uh 1353 will apply yeah then you have to use 1353 you cannot use wag in

15:20

place of 1353. and if you join us on friday lenny lowen trip from uh from gsa is very likely to emphasize that very

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point and there are a number of other authorities that might apply uh that you might consider before getting to the

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widely attended gathering exception uh one that i always encourage agency ethics officials to look at is whether

15:37

or not they have agency gift acceptance because what we're doing with the widely attended gathering is offering employees

15:43

the ability to attend events where it's in the agency interest for them to do so right and a question that we often get

15:49

is well why do they have to be why does it have to be in their personal capacity why do they have to be on their own time

15:55

to do it it's it's so it's a strange hybrid of uh you know personal participation personal gift acceptance

16:00

and agency interest but there is a way to do this if you have agency gift acceptance uh without

16:07

um uh going to the wag exception right because the wag exception was built specifically the way it was for

16:13

those agencies that don't have agency gift acceptance authority og recognized that employees um

16:20

sometimes needed to attend events to further the goals of the agency and their own professional development and

16:26

that requires the acceptance of gifts and agencies that have agency gift acceptance authority have routinely used

16:32

it to accept gifts of free attendance to events that are in the agency's interest so an employee would accept the

16:37

attendance on behalf of the government attend personally or attend in their official capacity represent the agency's

16:43

interest and further the interests but then what do we do about agencies that don't have gift acceptance

16:48

authority the ones that don't have gifts acceptance authority uh will have to look to wag so 1353 does not apply so if

16:55

we don't have another authority that might apply if we've exhausted other opportunities to send someone in their official capacity but we still think

17:01

their attendance will be in the agency's interest right then and only then do we want to look to the widely attended gathering exception

17:09

yeah and the the amount of work that goes into a typical wag analysis is uh it is enough to make sure that you've

17:15

exhausted all of the other potential possibilities before you get to wag yeah exactly and those possibilities uh in

17:20

some ways are tidier if you can send someone using your agency gift acceptance uh it's very clear as to whether or not they're attending in

17:26

their personal or official capacities right we know they're attending officially uh there's a great clarity about when they

17:33

can use government resources whether they can use uh government travel funds those kinds of things uh so it kind of

17:38

simplifies matters to send someone officially but in in the case that you can't do that i you don't have that

17:44

option available at your agency then the widely attended gathering exception can be very helpful yes

17:49

so let's go ahead and talk about another another prelude to the wag which is uh gy right and

17:55

i had to sneak this one in here so uh let's go ahead and talk about

18:00

speaking in similar engagements uh wha what are we trying to do here patrick

18:06

well i think what oge is doing here and this is in some ways not even an exception to

18:11

the gift rule basically this is an exclusion that we put over next to the lag the wag rule because they are so often

18:18

analyzed together so what g1 says is that if an employee is assigned to speak in his or her

18:24

official capacity at an event attendance at the event on the day that they speak

18:32

is not a gift it's not a gift to the employee it's not a gift to the agency it's something that's customary and

18:37

necessary for someone to fulfill a speaking engagement so what we're saying here is that if you don't have agency gift acceptance that's

18:43

okay if your employee is speaking on that day uh their attendance at the event is customary and does not constitute a gift

18:50

to the employee or to the agency right now what about uh what about the other days though what if it's a multi-day

18:56

event uh well if they're only speaking on one day that's the only day that you can use g1 ah okay so you might have to

19:02

do a separate gifts analysis or exercise your agency gift acceptance to allow participation on those other days

19:08

okay so actually i have another question for you okay uh let's say that uh

19:13

uh let's say there's a chance that i might present on behalf of the agency let's

19:19

say that i'm not i'm not a speaker per se right but uh i could still go to the event and maybe

19:25

uh talk about what the agency does uh informally i think that's a place where we want to be very very careful about

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how we counsel employees and i think one of the opinions you referenced before dealt with this explicitly it didn't uh

19:35

and what did we say in that opinion said you can't do that that merely uh having potentially having

19:40

the opportunity to speak isn't sufficient to exercise g1 right right you have to be assigned to speak there

19:46

has to be a speaking role for you uh you can't be sent sort of provisionally looking for a speaking role or with the

19:53

intention of maybe sharing some ideas right that what we're really looking at here is official speaking assignments

19:58

also one of the things we could do in that case is we could either use our agency gift acceptance authority we could pay for the employee to attend

20:05

uh or we could look for the widely attended gathering uh the exception right okay so g1 is is fairly

20:11

straightforward it makes sense it's a good place to look before you get to g2 and lag because it can save you a lot of a lot

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of difficulty yes it can so uh so let's do that let's look at g2

20:24

okay so this is uh this is a pretty gnarly long

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portion of regulation that has definitions built into it and also some processes built into it yeah this is

20:35

almost like a rule unto itself it has its own little ecosystem of definitions and moving pieces

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and i'd encourage you to think about it that way it's sort of a hybrid monster of an exception that we have to be very

20:48

careful when we're reading because there are some there's some critical parts uh hiding in that big block of text and

20:53

keeping those straight is one of the big challenges of wag so let me go ahead and just uh read the basic part of this to

21:00

you so when there has been a determination that his attendance is in the interest of the agency because it

21:06

will further agency programs and operations an employee may accept an unsolicited gift of free attendance at

21:12

all or appropriate parts of a widely attended gathering of mutual interest to a number of parties from the sponsor of

21:17

the event stop okay so that sounds like the first piece of the lag right

21:24

okay so that let's actually talk about just that first piece of the of the wag so what

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we're going to do we have some things that probably need to be

21:37

need to be defined in here and we do have some definitions

21:43

what is free attendance for example yeah i think that's uh that's an important part and it's important to note that

21:48

paragraph g4 is a definition of free attendance right it is not a stand-alone exception to the

21:55

rule it is not and that there you cannot g4 anything yes yeah the the g4 is not a

22:00

gift uh an exception to the gift rule uh g4 is a definition of free attendance for purposes of

22:06

g2 versions and g1 and g2 right all right ryan so tell me what does free attendance include so it can include uh

22:14

the comp a waiver of the conference fee all of it are part of it very good uh you can talk about the provision of food

22:19

refreshments entertainment instruction and materials that everybody gets when they get there very good

22:24

um but it does here's the thing that's important it does not include travel expenses

22:30

okay lodgings entertainment uh that is collateral to the event okay uh or meals

22:35

taken other than in group settings okay so let's start with the travel and lodgings

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i i think i understand the relationship here between uh between the definition of g4 and the y the wag exception and 31

22:47

usc 1353 which is the government-wide statutory authority for non-sponsor travel right and that

22:54

has a reporting requirement if you're exercising 1353 uh to accept travel you

23:00

must report that to oge uh you have to tell us uh twice a year

23:05

where you exercise that and then those reports are made publicly available yeah

23:10

and because of that use of 1353 is mandatory when the agency intends to accept gifts of travel paid

23:17

by non-federal sources so i think that's why we excluded that from the definition of free attendance

23:23

here but the net result is that we cannot use g2 to accept travel right

23:28

okay so that makes sense for the first part what about you said something about collateral uh collateral meals

23:35

collateral entertainment could you talk a little about that yeah so so what we're what we're trying to get at with this is uh uh preventing

23:42

situations where you have someone who goes out to a conference uh for example and you know maybe it's like a one day

23:49

thing and then there's a baseball game afterwards that is not actually part of the event yes but they do advertise for

23:55

it which is like obviously the baseball game is the big thing uh and we're trying to prevent uh employees from

24:01

looking like they're using their public office for private gain in situations like that okay and when we talk about meals and smaller groups i think we're

24:07

also uh you know we're trying to limit any undue influence that can come from attendance you know sometimes you'll have all these

24:14

large plenary events at conference or other widely attended gathering and at the conference there will be uh you know

24:20

stakeholders or other interested parties who want to gain access to um

24:25

to federal employees and if they were to host say private dinners or smaller events collateral to that event uh meals

24:31

taking another than a group setting the concern is that uh you know that may be uh using the gift of of the meal to get

24:39

uh you know extra influence upon government processes you know you don't want people getting buttonholed at these things

**Sponsors**

24:45

right so i think that those are some of the reasons we exclude those from the definition of free attendance

24:51

and i see you've just uh changed the slide to the sponsor problem and i think when we get to g2 where you left off you

24:56

said we could accept those things gifts of free attendance from the sponsor of the event right and then we're going to

25:02

talk about the next part which is going to talk about gifts from non-sponsors and this is the part

25:07

that uh makes my head hurt yes this is the part that most people uh get confused the the uh they will conflate

25:15

you may remember when i was reading that um when provided by the sponsor of the uh

25:22

of the event of the event full stop full stop there's an ore that happens after that there so there's

25:27

actually two parts to g2 uh one of them deals with the sponsor of the event

25:32

right and the other one deals with uh for with non-sponsors yes so gifts of free attendance from non-sponsors

25:38

there's some additional limitations on gifts from non-sponsors is that right right and this is where people will get

25:43

start to get things confused so let's take a look at the definition of a sponsor which we can find at g5 okay

25:49

which is a cost provided by the sponsor of the event which this is this is why we call it the

25:56

sponsor problem uh so what it says is the cost of the employee's attendance will not be considered to be provided by

26:02

the sponsor and the invitation is not considered to be from the sponsor of the event where a person other than the

26:07

sponsor designates the employee to be invited and bears the cost of the employee's attendance through a contribution or other payment intended

26:14

to facilitate that employee's attendance a payment of dues or similar assessment

26:19

to a sponsoring organization does not constitute a payment intended to facilitate a particular employee's attendance yeah that does not clear it

26:25

up very well it doesn't uh the the the definition of g5 uh the the language we

26:31

have at g5 does not do a very good job of telling us what is meant by sponsor of the event and og is opined upon this

26:38

over the years a number of times and the result is somewhat counterintuitive this is a place where

26:45

reliance upon your vernacular understanding of the word sponsor

26:50

can lead you very far straight um you know it's it's very very problematic if you

26:55

use the vernacular understanding of the word sponsor and the reason for that is because when

27:01

we say sponsor we actually mean host we mean the person or organization that is putting on the event

27:08

we don't mean people who are providing monetary support only for the event and in the vernacular we normally

27:14

understand someone who is a sponsor of an event or a team or you know any other

27:19

sort of entity as someone who's providing finance uh but in this case a sponsor doesn't

27:24

doesn't mean someone who's providing finance right so so there's a difference between a financial contributor and a

27:30

host right for example so that would have been a cleaner way of articulating that in the regulation yes i think for

27:36

the rest of the day as we're talking about wag where we see the word sponsor we should mentally

27:42

substitute the word host right so this is the person that's providing or the organization's providing

27:47

for the logistics for the planning uh for uh you know the purchasing of supplies and

27:53

services and all of that kind of stuff the host of the events the things that we do that usually fall under our

27:59

vernacular understanding of host right and for the word non-sponsor i think contributor is a contributor is a good

28:05

way to think it's a good way of thinking about it so these people who these are people who are you know maybe buying a table

28:10

uh at a larger event uh buying a number of tickets that they can hand out uh contributing some sum of money which

28:16

allows them to designate certain persons to be added to the guest list right uh those people would be non-sponsors in

28:22

the parlance of g2 right uh or contributors in english as we understand

28:27

it yes so hopefully that clears up the the sponsor problem a little bit

28:33

i i sure hope so uh the uh and this is again where we start to run

28:38

into uh well we'd actually just talked about g2 and sponsors uh instead of

28:45

so hosting contributors or the way we want to talk about it so let me so so if if uh if a gift of free attendance is

28:51

being offered by the host or sponsor for purposes of g2 right we don't really have uh limitations we

28:58

have to make a determination of agency interest which we'll talk about in a second but there's that list of limitations

29:04

there's a dollar threshold that changes uh year over year that's not applicable when we're looking

29:09

at gifts from the host or sponsors of an event right that's right we're also not talking uh there's not a specific number

29:16

of persons required to attend although we have uh opined in the past that a dinner party is probably too small yeah

29:22

and i think you know this is an interesting point to make about the wag exception is that in the case of gifts

29:27

from sponsors we do not put a lower limit on what constitutes widely attended and we said explicitly in the preamble

29:34

that's because uh the stakeholder groups for certain agencies vary wildly in size

29:39

right and in fact you and i were teaching a class in lag recently and we had a student whose agency regulates a very small

29:46

industry not a very small industry a rather large industry with a very small number of players yeah

29:52

and is saying that it is a agency they could have a representative from basically every major company that they

29:58

regulate and fit around a conference from table right and they said they really appreciate the flexibility that we built

30:03

into the wag uh invitations from sponsors for that reason um so you know

30:08

that's a flexibility that we've left for you for that very reason uh and if you're in that boat you know please

30:14

please take take advantage of where it's in your agency's interest omg isn't usually in the business coming around

30:19

behind you saying well we know we didn't say that it had to be at least a dozen but what we really meant was it was a

30:25

dozen so when you went to that event with 11 that's not enough um you know we really want you to make a

30:30

factual determination right so hopefully that that makes a little bit more sense before the or yeah

30:38

and the or um i think by confusing these two provisions people

30:43

uh make this harder than it needs to be right if you have your regulations open in front of you i recommend circling

30:50

that ore and putting a star next to it so you know to stop first to confirm whether or not there is that the

30:55

invitation is being offered by the sponsor or by the host of the event right we mentioned a little bit earlier

31:01

ryan that this is kind of a rule unto itself if i were redrafting this portion of the

31:06

regulation i think i'd make these separate paragraphs oh i definitely would too okay so what what what happens after the or what what is this distinct

31:13

problem so this is distinct from uh and i've gotten in scare quotes here non-sponsors

**Nonsponsor**

31:18

which we're referring to as contributors non-hosts so after the or uh

31:25

or if more uh hang on for a second we have a number of provisions here

31:31

right right or if more than 100 persons are expected uh expected to attend the event and the gift of free attendance

31:37

has a market value of 350 or less from a person other than the

31:42

sponsor of the event okay so we have two additional criteria that we have to meet when we're accepting a gift from a

31:47

non-sponsor and one of those is that we have to have 100 people there 100 persons have to be in attendance right

31:54

the other one is that the the market value has to be less than 350 correct and that's a

32:00

number that changes all the time uh uj will issue a legal advisory updating you when that number does change right but

32:06

for the for the time being we're talking about 350 so these are just a couple of extra criteria that we need to apply when

32:13

we're uh we're considering gifts from people other than the host of the event or non-sponsors in the parlance of the of

32:19

the exception right and why would we do that i think there's a concern that you have

32:25

a greater ability to uh exert maybe undue influence there's a greater risk

32:30

of undue influence when you're getting a gift from a non-sponsor well not only that the the the the contributors also

32:38

have the ability to specifically target you right uh and and and i think you know the scenario that

32:44

we were thinking about when we authored this part of the provision is you know you have some of these larger events in dc where you have a big ballroom set

32:50

with a number of tables a lot of people are invited they enjoy some speeches some entertainment a meal

32:56

they have an opportunity to talk to one another but within these events they're really sort of sub events that are

33:01

funded by the contributors or non-sponsors or they might purchase a table uh and at that table they may have you

33:07

know a greater ability to exert influence or to control the experience of the federal employee so we want to

33:13

use just a little bit extra care when that's the case so so

33:18

just to reiterate we've got two different uh exceptions within the exception we've got the one first four

33:24

hosts yes and we've got the ones for sponsors and we've got the one for non-sponsors or contributors yes

**Agency Determination**

33:31

so let's take a minute and talk about agency determinations now so we're just moving moving through the regulation and

33:36

this is really where the rubber hits the road right uh and i think this is also where we get the confusion about uh you

33:42

know is this an exception to the gift rule that applies to employees or is this an official capacity kind of thing

33:47

and the answer this is a this is a case where an employee can accept a gift personally where the acceptance the

33:53

employee's acceptance of that gift is in the interest of the agency and here we get some criteria to help us

33:59

determine what kinds of gifts are in the interest of the agency so what are those so so the criteria is we need to we need

34:05

to look uh look at the situation and make an oral or written determination uh

34:11

so the first one is to take a look and see if the the person who's extended the invitation has interests that may be

34:16

substantially affected by the performance or non-performance of the employee's official duties those words are familiar to me ryan i think when we

34:23

were talking about prohibited sources a little bit earlier we described that as a quote-unquote bad

34:29

prohibited source that's right so if this person is in addition to being a privilege or someone who is potentially

34:35

affected by the performance or non-performance of the employee's official duties we have a greater duty of care here that's right okay

34:43

okay um

34:48

and when we're talking about a bad prohibited source yes uh we need to have a written determination it has to be

34:53

written down and i think uh as a general matter it's a good practice to write down your wac determinations i know a

34:59

lot of agencies have a form or other data gathering tool that allows them to

35:05

make routine the processing of widely attended gathering invitations so if if you're not in the habit of of

35:12

making written determinations it's really a good thing to do because these are areas where agencies are sometimes criticized and being able to produce

35:18

your analysis readily can save you a lot of headache right and and what you are going to be making the deter the

35:24

determination of is that the employees participation in the event outweighs the concern the acceptance of

35:30

the gift might unduly affect that employee's impartiality or uh make it look like they're misusing their

35:36

position so we we have a balancing test here right we're determining that the agency's interest in employees

35:42

attendance outweighs really appearance concerns or the possibility of criticism to the agency or the employee uh for

35:48

their attendance yeah so that's why we have the specif the specific provision about the quote-unquote bad prohibited

35:54

source because there's a there's a higher likelihood of an impartiality problem

36:00

when an organization or person would be affected by the performance or non-performance of an employee's duty yeah but generally what we're doing is

36:07

we're providing agencies the flexibility to determine when it is in their interest for an employee to accept a

36:12

gift of free attendance and the way they do that is by balancing potential appearance concerns or

36:18

impartiality concerns against the interest of the agency what are some ways that an agency could

36:24

be interested in having an employee attend uh it could be it so i'm not sure i

36:30

understand that question sure um so you know for example uh if i'm an ethics official and i'm just sitting in my office and employees said i think i've

36:37

been invited to this and uh i have a pretty good handle on what the potential appearance concerns

36:43

are where criticism might be leveled against the employee or the agency and now i'm trying to measure the agency's

36:49

interest uh what kinds of things might an employee do at an event that would further agency

36:54

operations okay i understand so let's say that at this uh at this event you're uh the chair of your appropriations

37:01

committee okay uh so so maybe a member of congress who's important to our agency or other external stakeholder

37:07

it might be something as simple as having the opportunity to share some agency information with that person

37:12

right uh it might involve just strengthening that relationship it might be important to you that that

37:18

person has frequent contacts or numerous contacts with uh external stakeholders

37:23

right and i'm also thinking a community of practice for example it would be a good

37:28

idea to uh send employees out to learn more information to network with other people

37:33

and find out what they're doing right that is similar to what the employee does sort of taking the temperature of maybe a regulated agency or regulated

37:40

industry you know trying to see what the industry perspective is on a set of matters uh you know stay abreast of uh current

37:47

events uh in in matters that are of interest to the agency so there are all sorts of things and they're going to

37:53

vary across the government they're going to be particular to your agency and its mission but if you can if uh if your mission is

38:00

advanced by an employee's attendance and you think that uh that particular uh that particular uh attendance or that

38:07

particular piece of work outweighs any appearance concerns or a possibility of uh criticism

38:13

it's okay to authorize the employee to to attend provided you meet the other provisions of g2 right the the

38:18

discretion to use g2 is built into this use it yeah and i think you know this is another place where it's important to

38:24

understand the history of g2 which is that this is designed for agencies that aren't able to for whatever reason to

38:30

use their gift acceptance authorities or other authorities to send an employee in their official capacity

38:35

that employee can still get the benefits of the receipt of that gift if the agency determines that their attendance

38:41

would be in the agency's interest so you know again it's not oge's place to tell you

38:46

uh where and how your agency's interests are advanced you know that's an agency prerogative call but what we do

38:52

emphasizes the process right and we've got some factors in that process that you're that you're required to to think

38:58

about as part of your your determinations uh you know and we've got these listed here

39:03

um so we need to know about you know the importance of the event to the agency is this something that uh would be very

39:10

important to have agency personnel at uh the nature and sensitivity of any pending matter affecting the interests

39:17

of the person who's extended the invitation okay so yes if you have pending matters if the if the person extending the invitation is is soon

39:23

going to be affected by an agency action that would weigh in in the column of a potential appearance concern or an

39:30

opportunity for criticism right we would also want to look at uh though there's a caveat there a little bit we would also

39:35

want to look at the significance of the employee's role in any such matter if it's a very so this analysis isn't just

39:40

an agency analysis but it can differ from employee to employee yeah so we might have a situation where the

39:46

attendance of one employee or category of employee at our agency certainly furthers agency operations in

39:53

a way that outweighs any appearance concerns or possibility of criticism whereas you might have another category

39:58

of employee or even an individual employee whose attendance would not do that would not meet the agency

40:03

determination threshold right i can see how that could be complicated to explain to employees who know each

40:09

other and know they've been invited but i think it's good to know that that's a possibility and in fact uh there's many

40:15

cases where it's prudent to make different determinations for different employees absolutely so the next uh the

40:20

next consideration is what the purpose of the event is which i mean you know you could have someone who is invited to

40:27

go to a boxing match yes i don't know how that is in your agency's interests but

40:32

uh and og said generally sporting events aren't organized in such a way as to facilitate the sharing of ideas or to to

40:39

meet this threshold right um but you know the the that would be a determination that each

40:44

agency would have to make the uh and the last two are i seem i feel like are pretty obvious uh you know

40:49

the identity of the other uh entities or organizations other participants in the

40:55

event yes uh and also the uh the market value of the gift okay so we want to look at the value of the gift because

41:01

that's that's that's a contributing factor when we're considering the possibility of criticism or impartiality

41:06

concerns very good so it looks like agencies have a lot of flexibility but it is important for them to go through the process

41:13

properly and make note of those special limitations right okay

41:19

so let's talk about let's talk about guess real quick uh this is a you can find this at g6

41:25

this causes me a lot of confusion for some reason i i think it it's uh it's just a strange provision

41:32

and it's stuck in right at the end here yeah i it confuses me a little bit too i tend to forget about it honestly

41:38

all right so what's going on with the guest so with the guest when when you're talking about an event where uh

41:44

those everyone else in attendance is generally going to be accompanied by their spouse or another guest

41:51

the agency designee can authorize an employee to accept the invitation or free attendance to an

41:59

accompanying spouse or other guest yeah okay so that makes sense so if we're having an event where most people are

42:04

going to be bringing a spouse or other guest it is okay for in some circumstances an agency designate to determine that the

42:11

attendance of an employee's guest is appropriate okay that makes sense yeah and i think

42:17

that's consistent with uh the overall purpose of the widely attended gathering exception right and again we provide

42:23

agencies to discretion to make this determination for themselves okay very good

**Conclusion**

42:31

um so that concludes our brief discussion of the widely attended gathering exception uh we hope you

42:36

enjoyed this if you're interested in learning more we mentioned before we have the massive open online course that we offered in august

42:42

you can take that as an on-demand learning course you can look at part one take a listen i get some more detail

42:48

about the exception another thing you could do is then uh move forward and try the exercises yourself and this will be

42:54

a good thing for everyone to do you can find the exercises from that class and have a crack at it have a go yeah and uh

43:00

then during the debrief uh you can listen to that presentation and see how you did yeah see if you

43:06

were comfortable with the process if you followed all the steps and if you

43:11

considered all the relevant factors when making your agency interest determination so we would like to invite you to join

43:18

us in just over an hour for part four of our understanding gift exception presentation so this will be the

43:24

conclusion of our new ethics official track of the virtual only summit experience that's right we're going to

43:30

cover the rest of the exceptions this afternoon uh some of them that it's good to know about but uh unless you're in

43:36

specific uh unless you're in specific circumstances probably won't apply very often uh to

43:42

you but it's still good to know they're there and also so we're gonna we're gonna figure this out for completeness we want to be able to take these four uh

43:47

presentations and hand them to someone and say look this is the guide to the reg right uh so yeah please do because

43:53

you know there are some cases where you find yourself in a circumstance where uh you know a special circumstance applies

43:58

and it's good to know about them and also going over the exclusions i think will be very helpful for folks who are brand new right

44:05

and so uh with that thank you very much for joining us this morning and we look forward to seeing you this afternoon i'm

44:11

ryan siegrist and i'm patrick shepard

44:50

you

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