thank you good afternoon and welcome to part 2 of our widely attended gathering

0:07

massive open online course I'm Patrick Sheppard and I'm here again with Cheryl came piasecki yeah we're really pleased to be back with you for

0:14

part two of the widely attended gathering massive open online course we hope you had an opportunity to watch part one if you missed it you can view

0:23

it on our youtube channel at youtube.com slash uge Institute it will be there

0:28

probably in perpetuity yes so if you missed it I don't worry about it it's it's available but today we're gonna go over the exercise and

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talk about some of the questions you guys who sent us between the two sessions and hopefully you've had an opportunity to look at the exercise and

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kind of think it through and maybe make some notes on your widely attended gathering analysis worksheet if you haven't that's okay we're going to talk

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through it and hopefully this will give you an opportunity to practice it kind of make sure that you understand the framework of the rule and have some

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practice applying it and we are gonna have we're going to allow for Q&A throughout the session today we have some discreet sort of like sections to

1:06

today's presentation as patrick said we're going to start with some of the questions that we actually got after the broadcast on Tuesday we're gonna begin

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with those and then we'll probably open it up to see if anybody has any questions about the questions then we're going to talk briefly about the exercise

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that we gave you we're gonna start with that 201 B analysis which is the new provision the impartiality integrity provision is the

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shorthand that right our integrity provision that that's in 201 B which the

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employee ostensibly undertakes or should be encouraged to undertake so we'll do that first with respect to the exercise and then we will actually sort of like

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march through that wily tender gathering worksheet but you know page by page so that you can see how to utilize that worksheet and we'll be having a very

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open discussion about that so at the end of each of those sort of discrete pieces we'll be opening up the phone lines for folks if you have questions about

2:02

anything that we've discussed or or anything that that's on your mind absolutely and uh you know we're really grateful for the folks who sent us

2:09

questions between the two sessions you know it's really helpful to see what you're still interested in learning more about or what wasn't clear from the

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first session right and have the opportunity to sort of address again or address for the first time some of those issues so for those who so many

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questions thank you very much yes indeed so if we can pull up the slide deck we

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have a slide deck that we sent you which includes the questions that we received yesterday so the first question we got I've summarized sort of like what the

**Question**

2:42

bottom line was to the question and I'm gonna I'm gonna embellish elay or I'm going to share with you sort of like more of the details of the actual

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question after we discuss sort of the bottom line question the the bottom line

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question was effectively if you accept if an employee accepts gifts under other

3:01

gift exceptions besides the 20/50 de minimis exception do those dollar values

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of those gifts have to be counted toward or aggregated for purposes of the $50.00

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per year per source cap into a for a right and the answer to that is no any

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holiday if you celebrate that provide gift-giving occasions right so I mean the simple answer is that each of the exceptions is a discrete exception and

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that the 20/50 exception is its own exception so the you only have to

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aggregate dollar values if that's the exception you're availing yourself up so

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if you are using other exceptions to accept gifts those do not have to be counted toward that $50.00 per year per source cap now the actual question that

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I got gave me for instance and the question was so let's say you attend it

4:04

and this isn't verbatim but the essence of the question was you know so let's say that the employee attends like a widely attended gathering the dollar

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value of the widely Tony Gathering is thirty five dollars from XYZ company and

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then you know a couple months later XYZ company wants to take the employee out

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for lunch and the lunch is like a $19 lunch you have to aggregate the value of the widely attended gathering free

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attendance with the $19 lunch for purposes the $50 cap and the answer that

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that is no because if you accepted some of it under the widely attended gatherings exception that would not count towards the 2050 exception if

4:41

that's what you were using to accept the $19 lunch right now what I do want to

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raise about the way the original question came in is an issue of frequency right and so Patrick I think this is one of the things that we've

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been increasingly trying to get at with respect to not treating the exceptions as sort of like rights for the employee to be able to take whatever is available

5:05

provided there's an exception than would provide would allow for it that we still

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have issues of frequency of gift-giving and whether or not that's any kind of

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indicia of undue influence or access right so I mean I don't know what I

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don't know what your thoughts are on it but my response to the person who sent the question in was precisely that that frequency issues are something that you

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should be considering if you have an employee who's getting repetitive gifts from the same source and if we think about sort of the broader principles

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that underlie the gifts from outside sources regulation what we're talking about here is one not accepting prohibit gratuities but also not using public

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office for private gain or using the authority of your office to benefit yourself materially uh-huh so in that regard I think it's helpful to think of

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the exceptions not as rights but to think of them as avenues that allow people to accept gifts when the gifts don't pose a problem under the

6:05

provisions the integrity and partiality provisions and where there's maybe a

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good reason to accept the gift so I think one of the things we were trying to do with the revision to subpart B is change the default so the first thing we

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should be asking is you know is this appropriate does it would it hinder my

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integrity and partiality in my official work would it look like I'm using my public office for private gain and where you can answer those questions and the

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negative to provide some limited avenues to accept things rather than theirs

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exception so therefore it's mine that's not really the viewpoint that we want to start from well I think that and I've said this many times before in in

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various gift classes that we've that we've conducted an exception is just

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that it's an exception which means that it should be for exceptional circumstances so I think we sometimes sort of gloss over what the overarching

6:59

prohibition is the overarching prohibition is no gifts from prohibited sources and no gifts given because of your official position and that's the

7:07

predicate that's what we start with and then we look at the totality of the circumstances and then we say is this a circumstance where one of the exceptions

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can appropriately be used to accept what would otherwise be a prohibited gift

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because that let's not lose sight of that these are otherwise prohibited gifts and I think that's most true or especially true when we're talking about

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widely attended gatherings yeah because an explicit element here is that it's in the agency's interest which means in the government's interest for the employee

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to attend the event so there's sort of an even higher sensitivity about accepting these kinds of gifts and there needs to be a determination made that

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it's in the interest of the government under in the interests of the agency specifically and I think that's something to keep in mind because often

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times were approached by an employee they say I've been invited this thing I don't want to go to this thing tell me how I can get there and the answer

8:00

should begin from the question is it in really in the agency's interest and I think we talked yesterday about what you do here at OGE which is and find out

8:09

from the person's supervisor or the person who directs that person's work whether you know what what is the business need here and that's really the

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role of the widely attended gathering exception is to fill in those gaps to allow agencies to allow employees to attend events that they don't have other

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authorities to allow them to attend those events using so thank you for for

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this question mm-hmm so let's move on to the second question the second question we got was does the phrase present information refer just to giving a

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speech does it also refer to participating on a panel does it include Manning a booth and an expo to answer questions etc and this was with direct

8:49

reference obviously to the what used to be the g1 provision which

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is the free attendance on the day that the employee is assigned to present information on behalf of the agency how its exclusion yeah now it's exclusion

9:03

it's it's 203 b8 I think is is the is the exclusion I sense that though the

9:12

person who sent this question and I sent them a reference to a legal advisory that og issued back in 2012 we've given you just a little snapshot of it here

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this legal advisory goes into quite a bit of discussion about what we mean by

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when someone is you know speaking or otherwise assigned to present information on behalf of the agency and I think if you're not familiar with this

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legal advisory I would encourage you to become familiar with it I wanted to read

9:48

just sort of in relevant part one of the clarifying things that o GE included in this advisory and for those of you who when you go to reference that it's on

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page 2 in that like the third paragraph it says under then under Section G 1

10:04

which would now be 2 or 3 b8 the employment accept an unsolicited gift of

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free attendance only so long as the events host has agreed in advance that the employee will make informal remarks on behalf of the agency to those

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attendees an employee's presentation in quotes at an event need not come from a

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dais or from the stage but the employee must nonetheless communicate the agency's message in a deliberate substantive presentation for example

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when an employee is serving as an agency liaison to a particular outside organization participation at periodic meetings or ongoing working groups would

10:44

qualify as presenting information on behalf of the agency because the employee has been assigned to communicate a specific agency message so

10:51

I think the takeaways from this and which can be applied to the to the exclusion are in effect it doesn't have to be a speech right it doesn't have to

11:00

be a formal delivery of a presentation as would occur if you were on a pan

11:05

or off euro at stand you know sitting at our standing behind a podium it can be

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less formal than that I think one of the one of the important factors is that we

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we anticipate that the employees should know in advance that they are being asked to present information on behalf of the agency and the agency should be

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clear that that is the purpose of the employees attendance yes that there is a sort of specific message or a specific need that the agency's fulfilling by

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sending the employee to share information and that there will be a real opportunity to do so I guess you could contrast this to the

11:43

sort of situation where someone's in attendance at a presentation being delivered by someone else and they happen to ask a question right right

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that that simply the fact that they happen to speak during the course of a presentation isn't the same thing as being sent to present a particular

11:59

information on behalf of the agency right and I think that when you have like informal informal events where the employee may very well be mingling you

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know and I don't want to say that they're exclusively social but you know an event where the employee is going to be mingling among other people and while

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it's understood that that is part of the mingling and the and the the conversations that they're having they will be talking about agency business

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and maybe conveying information about the agency that is not the type of thing that a GE a GE does see it as being something more structured where the

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intent of the agency of sending the person is for them to present information and while it doesn't have to formally be a speech it should be

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understood that their reason for them being there is to present information on behalf of the agency and that we anticipate that there will be an

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opportunity to do so yes right so you're listed on the schedule or there's gonna

12:55

be a roundtable yeah and it can be a roundtable discussion it could be something that's not really formal where you just are giving an address but it

13:04

but likewise it can't be something that's incidental or you know right casual that way okay question question number three was this what did what does

13:17

this mean for an employee who is subject to a system attendance at the event will be on the employees own time or if

13:23

authorized by the employees agency on excused absence pursuant to applicable guidelines for granting such absence or otherwise without charge to the

13:30

employees leave account and this is right from the regulation at 204 G 1 this is reaching to what what Patrick and I were discussing yesterday at the

13:40

its would have been is the preamble to would the discussion about the widely tenant gathering exception when we were talking about the purpose of it the

13:48

bottom line is this is that OGE was trying to create sort of like fill of what we saw was a sort of like a a hole in among authorities in terms of

13:57

agencies having the ability to send their folks to events and be able to accept free attendance at those events where the agency clearly one of the

14:04

employees who attend for those people who don't have statutory gift acceptance Authority OGE created an employee gift acceptance Authority that allows the

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employee to accept free attendance at events where the agency is established

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that there's an agency interest in their attendance the only way that that free

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attendance can be a gift to the employee and not to the agency is if the employee

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is not there on the clock so the employee the gift can only be to the

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employee if the employee is there not in an official you know duty performance

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official duty activity so this is what 204 G 1 is stipulating is that in order

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to use the widely tennant gathering exception because it has to be clear that it is a gift to the employee and not to the agency because og has no

15:00

authority to create an agency gift acceptance Authority the employee has to be there other than on official duty time so they can either take leave or

15:11

you can give them an excused absence or or a grant administrative leave but one

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way or the other the employees attendance has to be other than during official duty time I think I think that makes sense and I think this is all the

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more reason to think of why as an authority that you look to after you've

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exhausted the other part up to including exclusion 8 I know

15:36

people so to struggle with the interrelation between what used to be G 1 exclusion 8 and widely attended gatherings and I

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think that's important to keep in mind if you've assigned someone to go deliver a speech or otherwise present information they may do that on official

15:50

duty time and there's no gift to the agency and there's no gift to the employee if they're not doing that at similar events well you either have to

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use agency gift acceptance Authority one of the other authorities like 31 USC 13 53 or if you do a wagon alysus that person has to be in some kind of leave

16:08

status because they're accepting that gift personally so that's I think

16:13

another reason to look elsewhere before coming back to Wagga and saying you know so that this is the way we get the person to the event where the agency has

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an interest in them attending ok ok so those are the questions that we got yesterday that we got we received another question late yesterday

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afternoon but we're going to we're going to discuss that one more in the context of the of the actual analysis that we're going to

16:33

do on the wag so if we could open up the phone lines for any questions that anyone has about anything we've spoken about so far once we've had an

17:04

opportunity to answer any questions that have that have been asked in this phase we're going to move on to our exercise and and and patrick has posted it up

17:12

there for you so we're going to the next thing we're going to do is briefly walk through that and talk about what the facts are that we have and then we're

17:18

going to move on to our 201 B analysis the impartiality integrity analysis but

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if folks have questions we want to answer those before we move on

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and I show no questions at this time but again as a reminder star one to ask a question okay very good okay so we're gonna move on then to

17:45

their exercise and hopefully everybody's had a chance to take a look at this with

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so let's just walk through literally the fact pattern that we have here Jane kyudo who is clearly who is the vice president for governmental affairs

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at advocacy now has sent an email to our employee Jamie Smith and inviting her to

18:08

him or her to a dinner on July 18th and it appears that it says in conjunction

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with the National Polly policy summit being held here in Washington DC from July 17th through the 20th advocacy now is sponsoring a dinner on July 18th at 7

18:22

p.m. at chic haute cuisine for a small group of thought leaders policymakers and members of industry to discuss matters of mutual concern being

18:29

addressed at the summit we hope you and your colleagues are able to join us for the evening dresses business casual cocktails will be served at 6:30

18:37

followed by dinner and brief remarks from three leaders of Industry please RSVP we look forward to seeing you Julie eighteenth so kind of in a nutshell here

18:48

it looks like we have an advocacy organization there governmental affairs folks are inviting our employee to a dinner all that we know about the dinner

18:59

is that it's evidently at least topic wise subject matter wise it seems to be touching on whatever topics are being covered at this national policy summit

19:09

we it says it's going to be a small group we don't know how large we don't

19:15

know how large or small vaguely refers to thought leaders policy makers and

19:20

members of industry to discuss matters of mutual concern so we don't know

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necessarily what matters of mutual concern and we don't necessarily know who these folks are there's going to be a cocktail reception evidently at 6:30

19:35

followed by dinner it's evidently it looks like it's a kind of sense wanky swanky locations nice yeah and and then evidently there are also going to be

19:46

remarks from three leaders of Industry and we also don't know these are anonymous years of Industry so we clearly have

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some holes in our fact pattern here but we have at least a broad Sensibility I

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think about about what what's going on here I think you know that's uh it's not

20:04

really that unusual when you receive these invitations to have less than a complete set of facts yes and I find that to be pretty pretty typical of

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these kinds of invitations well I hope you can join us here's the time and day having organized events part of that may be that they haven't decided these

20:22

things yet either but yeah so you know I think it's not uncommon that we have to find out more information or think a little more deeply than just what's on

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the face of an invitation exactly exactly so if we can go back to the to

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the deck right now the first thing we want to do with this particular fact pattern is I think we want to take a moment to talk about so you talk about

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the impartiality integrity tests this is the thing that we would ideally like the

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employee to consider when the employee receives this invitation so we would want Jamie actually to be kind of asking him or herself these questions or

21:00

looking at these things before they even come to us we certainly are going to have to entertain these same questions when it comes to making a determination

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of agency interest and then also doing that balancing test between agency interests and any appearance concerns but if you can get the employee to be

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thinking about these things hey in order to answer these questions they're gonna have to be in possession of more information which means it makes

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it more likely that when they come back to you they can have more information to provide you and you aren't going to have to do that legwork so let's start with

21:29

the first the first question Patrick the value is the gift expensive or

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relatively cheap um this seems like a pretty nice dinner it sounds like we're

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gonna have a cocktail reception my TC it's a cocktail go for by the ten bucks

21:45

nowadays and then followed by a dinner at what sounds like a pretty fancy

21:50

restaurant mm-hmm so this I've you know I think you could easily see this go into the kind of hundreds of dollars range and the in terms of value so you

22:02

know I think for sitting around listening to people talk the things being provided seem pretty nice you know this isn't a brown bag

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lunch for you get a you know a stale sandwich and a bag of chips yeah right it seems a little better than that mm-hmm

22:16

and so I mean I think that and this is one of those areas where if all of you've got all that you've gotten from the employee is this invitation I do

22:24

think that it's entirely you know acceptable for you to go back to the employee and say I need more information about like the value of this dinner and

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if they're unwilling or unable to do it then you certainly can contact you certainly can contact the whoever's in charge of this event to ascertain what

22:43

the actual dollar value of the event is because I do think it's important to have some sensibility about the per head cost of these even even if even if we

22:52

don't need it for technically for purposes of oh it's a non sponsor invitation and so we have to know exactly the dollar value or for

23:00

reporting require or for reporting requirements I think it's always useful to have an idea of exactly how right you know how valuable this experience is

23:11

going to be is I think you know from what we have here it doesn't seem like we're gonna graze the $390 platform unless CEO something's a little bit

23:20

silly mm-hmm but all the same I think you know in this Prudential step which applies for all of the gifts right isn't just for

23:28

wag this is for all of the gift exceptions it's important to think about because it factors into our Prudential decision-making mm-hmm yeah so I think

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this sounds like a pretty nice dinner yes I think so too okay so then the question becomes the timing is the gift given at a time when

23:45

the donor is seeking or has business before the agency I've no idea exactly I

23:52

think I'd have to find out mm-hmm find out who advocacy now is find out if they

23:58

have business before the agency and the employee might be able to assist us in that area mm-hmm and I think it would be interesting to know - exactly what

24:07

advocacy now's role is sort of visa vie some of the other people who are going to be at in attendance at this event you know and what

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they're sort of policy interests are in the national policy summit because it

24:21

seems that the subject matter of this dinner is supposedly linked or intimately related to whatever the policy discussions that are being held

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at this national policy summit and I think we have to be really careful here we see this a lot where you have an advocacy group or a trade organization

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that is really sort of an organizer for a class of industry participants and

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when you look at really the totality of the circumstances this is an event that's being being underwritten or being financed by industry participants as a

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way to convey their views to important officials and then other other other

25:03

members of the industry so kind of looking behind that first layer from a

25:09

prudential perspective can be very important because you say well what is advocacy now it's a go it turns out that it's a nonprofit organization that's

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funded by one or two companies and what do they do or they hold dinners and parties so that those one or two companies can make their case to whoever

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right and that's important information to have because I think part of the goal

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with the impartiality integrity determination is to give us a framework

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for thinking about situations that look like rule beating mm-hmm right where

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someone sort of set up an organization is their front so that it's under the

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law looks less troubling and that's not really the purpose right we're trying to make a Prudential determination so we should find out who's who's behind

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advocacy now exactly and that gets into this identity is the donor someone who

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has interests affected by the employees official duties because particularly when you're dealing with lobbying type of types of organizations they

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themselves may not be the entity with the policy interest or the procurement

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interest or they're representing and working on behalf of other entities that

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have that interest and so in like in this particular case you know you would

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want the the employee to be able to sort of identify you know why is it that the

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they were being invited like what what is the interest that not just the donor but anybody that the donor is working on behalf of might have in having our you

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know our employee attend their event right and then similarly access is the

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gift going to provide the donor with significantly disproportionate access to the employee and the agency what are the things in this invitation Patrick that

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give you pause with respect to this last question you know I think some of the two factors in here that really stood out to me is one this is a small group

27:04

right this isn't a huge auditorium full of people so there's a suggestion that

27:11

this invitation is targeted specifically to those people who are for you to sort of high-value recipients of information and there's also these unnamed three

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business leaders or industry leaders who are going to address those folks mm-hm if all three of those folks worked for the same company for example and that

27:29

company had business before the agency mm-hmm that would raise some significant concerns for me because of this access issue this is really just a sort of

27:39

financed opportunity to put some interested government officials in a room and make sure that they understand our arguments and enjoy our champagne

27:48

yeah those were the things that's that that sort of jumped out at me too was that one and that it's a small dinner and I'm we don't know what they mean by

27:56

small so that is clearly something that once we get into our widely tenant gathering analysis itself we're gonna have to find out but that just sort of

28:03

like I think it's a matter of not only you as the ethics official getting into the habit of like having certain things ring bells for you or various red flags

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but also sort of like training up your employees particularly those who tend

28:18

attend these kind of events to kind of be doing that piece of it for you as well and the and this step point impartiality integrity analysis is

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really a good place to sort of sort of get people in the habit of asking these

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more Prudential questions and like probing a little bit more and you know getting beyond I'm flattered that I've been invited to an event and more to the

28:38

yeah I've been invited to an event but it's incumbent upon me to know sort of like have a better sensibility about the motivation for

28:46

inviting me who's going to be there and you know making them own a little bit of that right oh that you know analysis piece and of that sort of understanding

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that the the concerns the the appearance concerns that ad that are attending to that now we're going to get into this more and we're going to have an

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opportunity to talk about this more once we get into your part of the analysis which is the determination of agency interest and the balancing act between

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agency interest and appearance concerns but does anyone have a question at this point about this step one sort of employee analysis piece okay well okay

29:35

great

29:56

there are no questions okay thank you okay so I think we're gonna go ahead and we're gonna we're gonna move on to the

**Gifts Analysis**

30:03

wagon alysus worksheet Patrick if we can pull that up and we'll just start doing our widely attended gathering analysis on these these facts that we have now

30:12

understanding yes of course that we have limited facts but I think we can still have a discussion about what we do know and it's important it's almost as

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important to know what how much we don't know we don't know exactly okay so beginning at the beginning we start with our gifts analysis which is we have

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to start by figuring out what the heck our employee is being offered so that we know whether or not we're in widely tended gathering whether we're in some

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other aspect of the rule or where where we need to locate ourselves and this is important because widely attended gatherings are for attendance yes a

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threshold consideration it allows you to accept attendance so that's our first

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question right yes our first question is is there a gift of free attendance as that is defined in the Reg and so when you look at the checklist we're looking

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at is there a waiver of all or a part of a conference or other fee this doesn't appear to be like relevant because it doesn't appear that this is a conference

31:06

that would have a fee although it's a dinner which it would be a matter I think of this does everybody pay for their dinner or is everybody being

31:13

comped dinner right but this is it seems like it's happening near a conference or around the conference or after a conference but the thing itself doesn't

31:21

seem like a conference no no it doesn't but if it were I mean if this were like some sort of like mini side conference or something and they were waiving the

31:28

fee I mean obviously that would be something that is eligible to be accepted under the definition of free attendance so waivers of conference and

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other fees is certainly an eligible expense okay provision of any of the following to all attendees is integral part of the event

31:43

food and refreshments entertainment instruction and materials we there what

31:50

do we know that they're going to be providing at least to our employees they're certainly going to be food and refreshments they're certainly gonna be

31:56

promised us dinner and drinks yes I don't know if if if having three leaders

32:02

of industries speak be considered entertainment I don't know but in any event so we know at the very least is food and

32:11

refreshments now there is a question though whether all attendees are being calm but there's a question yeah whether this is a for fee event for everyone

32:21

except for the government regulators we invited to attend for free uh-huh so that that may be a question we want to ask uh-huh

32:28

because I think it's worth knowing whether or not everybody's being offered the the free attendants or if they're only some people who are being offered

32:34

free attendants and are there that and then the next question becomes so we

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know that we we at least have some things that are that are eligible for the for the free attendants exception under widely attended gatherings

32:47

it doesn't appear that there are any other gifts being offered it doesn't look like they're getting lodging or anything else that's associated and you

32:53

know no swag bag listed here or travel any of that kind of thing right right so

33:01

we don't have to do any other analysis it doesn't appear under any of the other authorities but again it is a reminder that you know as Patrick and I talked

33:11

about before always if you have agency gift acceptance Authority and it would

33:16

reach to allowing your employee tend events like this and receive the and be

33:21

able to take advantage of the like the free meal right that is something that

33:26

you could consider is accepting and under agency gift acceptance Authority likewise if this is away from the duty station mm-hmm we may be able to use 31

33:35

USC 1353 true to accept the these travel expenses because food and refreshment

33:41

there's that to remember also which I think is another reason to think first about those other authorities and then when they don't apply come to whack it

33:50

seems like this is probably what's it says it's downtown it's so presumably our employee Jamie Smith works here so it's not away from duty station but if

33:58

it were that's something to consider mm-hmm so I think that that it's just

34:03

fair to say this first page is basically just to locate you within widely ten of gathering exception and I think that what is being offered our employee is

34:10

clearly falls within the ambit of free attendance under the weather to the gathering exception so now we have to kind of move on - all right well is now

34:19

can we that were in that provision is this provision kind of gonna hold up basically really important thing to

34:27

remember is just because we've crossed the threshold yeah this is something that may be accepted under wag doesn't mean we should accept it under wag we're

34:34

we're certainly not done at this juncture we're sort of just able to get started yes exactly so it's not like you know all you know we just have to push

34:43

forward to get to yes at this point we went not at all we've really only started our analysis okay so I'm page two we're doing we're this is where we

34:51

have to look at the type of gathering and we this is where we're going to get into actually what is the more important and relevant question with agency

34:58

interest yes absolutely so the first question is really kind of a mechanical one if you will does does this event appear to actually meet the definition

35:07

of what we have described in a limited way right in the regulation as qualifying as a widely attended gather right because we have we've given some

35:15

guidelines here in the regulation to help agencies understand the kinds of

35:20

events we have in mind and how those events might be structured and looking at these indicia is is important let's see if if we're using this in the way

35:29

that it's intended exactly so so let's let's walk down through the litany of things that we say are things that need to be considered to be determinative of

35:37

whether or not you can answer yes to the question of whether or not it's a widely attended gathering of mutual interest to a number of parties so the first

35:44

question is do they expect a large number of persons to attend and this is always the hardest yeah if this is it we don't give it at the as you've seen in

35:54

the regulation there is no hard number the OGE gives with respect to at least

35:59

when there's a when it's the sponsor of the event who's offering the free attendant right and here what they indicate that it's a small gathering yes

36:07

which also itself isn't dispositive yes so I think we're gonna have to one find

36:13

out you get a better sense of how large this event is but maybe also lean a

36:18

little more on the other elements to kind of help us make a holistic evaluation yeah and this is something that I've told agencies often in the

**Relevance of Size**

36:26

past is that the number is relevant but but the number is ax

36:34

predicated that the the appropriateness of the number or the the relevance of

36:39

the size is really going to be more predicated upon establishing you know

36:45

the other things which is to say that it that it is clearly of the agency's interest that it's important for the person to be that there are sufficient

36:52

number of other people there with diverse whether the diverse views that it doesn't look like your employee is being you know you're giving exclusive

37:01

access to to a limited universe of people so while I know that there's

37:07

probably a number no I don't want to say that I just think that I think we don't want to get too hung up on the number right and I think there are really good

37:15

reasons that og is not given a number mm-hmm I know it frustrates folks but we

37:21

had an opportunity to work with a colleague of ours who's an ethics official and a regulatory agency that regulates on the industry with a very

37:29

small number of industry participants and at a large dinner table they could have a representative from every company that they regulate right and I don't

37:38

think o GE wants to be in the position to say that just because that's fewer than 20 or fewer than a dozen people in a sort of an absolute sense that that

37:49

doesn't represent a large and diverse group for purposes of the industry I think this is relative to the size of the group of interested parties as a

37:58

whole mm-hmm so if there's a broad representation from all corners of an industry and that happens to be fewer than a hundred people or fewer than 50

38:07

people well that's why we want agencies to have that flexibility so that they can determine relative to the number of interested parties is there broad

38:16

representation right and that kind of gets to the the second criterion here

38:22

which is expect persons with a diversity of views or interests will be present eg

38:27

if the event is open to members from throughout the interested industry or profession or if those in attendance represent a range of persons interested

38:34

in a given matter so it's kind of reaching to what you were saying is that you can have a relatively speaking small group but it is made up of you know a

38:43

really good representative sample the universe of viewpoints on a

38:50

particular matter that's right and I you know I think this is a place where remembering what we're doing here is really important mm-hmm right

38:58

the widely attended gathering exception provides agencies an opportunity to

39:04

allow their employees to attend events they're in the agency's interest right this is a tool for the agencies to use so that we give you flexibility to use

39:14

it shouldn't really come as a great surprise and so the final the final

**Exchange of Ideas and Views**

39:19

piece is will there be opportunities for the exchange of ideas and views among invited persons now as some of you may may may know it was it it was that this

39:33

language could only be found in that expansive widely attended gathering legal advisory that OGE issued but it was but that this language was not

39:42

actually in the regulation in the revisions to the white light and gathering exception among the other gifts revisions we actually have

39:50

included this language in the regulation so then that is now part of sort of like the regulatory definition of what constitutes a widely attended gathering

39:59

so so let's talk a little bit Patrick for those who are unfamiliar or maybe

40:04

are not familiar with oh geez legal advisory in particular what it is that we're trying to get at or like what's the relevance of this opportunity for

40:14

the exchange of ideas and views among I think this really derives from the overall purpose of the exception right which is to allow for agencies to

40:24

present and receive information mm-hm right and if you're going to allow someone to attend an event in the personal capacity because it's in the

40:32

interest of the agency to receive and exchange information there has to be an opportunity to receive an exchange information Thanks

40:38

so we treat this I think we'd Richard the seriously that that has to be that

40:45

has to be available mm-hm and the event has to be structured as an exchange of ideas mm-hmm and where the event isn't so structured we shouldn't be using the

40:55

why'd they attend the gathering exception because it undermines the very purpose of the exception and I think one of the

41:00

that we and we began to emphasize this to was because clearly there are social

**Social Gatherings**

41:07

types of gatherings that qualify as widely attended gatherings because even

41:13

though the event itself appears and is in its essence a social type of event

41:19

dinners being among them right there is still an opportunity notwithstanding that the sort of the the feel of the event or the the sort of spirit of the

41:28

event is a SOTA is social in nature there's still an opportunity for people to actually mingle and have conversations and to engage in

41:36

information exchange but because the wag contemplates social

41:41

types of events we were finding increasingly that agencies were allowing

41:47

their employees to attend events that clearly had as its primary and almost

41:54

singular purpose an entertainment or social aspect things like baseball games

42:00

and things like theater performances and things where the opportunity to have any

42:05

conversation with anyone about anything were very mitigated and or that we're

42:10

not we're simply the opportunities were not there or people were having to manufacture a kind of opportunity she's sort of transformed what was otherwise a

42:19

purely social event into something that provided for the opportunity for an exchange you have sitting in the and a balcony at an opera performance just

42:27

because you might exchange words before and after the performance doesn't magically transform the Opera into discursive event right right so I think

42:36

it was true we were it was an attempt to try to eliminate any confusion that folks had about you know when and under what circumstances are social types of

42:45

events X you know sort of legitimate under the guise of the widely attended gathering exception and so we we we just we just wanted to emphasize that the

42:55

purpose of the exception is for the agency to be able to exchange in the

43:01

idea idea exchange and and and information exchange and so even if an event is social it still has to have as its primary function right this kind of

43:10

exchange yeah I think that's that's right and - in that opinion we don't slam the door on any particular kind of event but we

43:19

ask agencies to think about this is that is the purpose of this thing to create

43:26

these kinds of opportunities for exchange and where there is an opportunity for for exchange it may be appropriate to move on with the wagon

43:33

Alice's so I think for purposes of this determination I don't know that we can say yes yet I mean I think that because we don't know how many people are going

43:41

so we don't know if it really is a large number of persons diversity of views we can't even say with any you know degree of certainty that that's in fact the

43:50

case and I produced for the exchange of ideas it appears is that there probably

43:55

would be between a cocktail reception and a dinner right you know typically there are places opportunities for yeah so I think on the on the last point I

44:03

think you know we would say this is the kind of event it sounds like the kind of event that's structured appropriately mm-hmm but I'd be concerned about who's

44:10

gonna be there right are all these people gonna be from one or two companies within the industry that we regulate mm-hm and if that's the case

44:16

well that's probably not gonna take the diversity threshold right so yeah so we

44:22

want to think kind of broadly about is this an opportunity really for one set of interested parties who share the same view to sort of button the whole a

44:29

number of government officials and and make sure they hear the view mm-hmm that's not what we're trying to do mm-hmm so we've got our word we've we've

44:37

got a question mark by by the the question at two point one but let's go in and talk about two point two and two point three because I think this is kind

**Agency Interest**

44:46

of where the rubber meets the road for me is that if you can't establish these things first then you don't really even know need to go into what the nature of

44:55

the event is because I mean like in terms of like the specificity about whether or not it meets the definition of why the attended gathering because if

45:01

you can't meet the threshold consideration of that it's in the ages engine interest for this person to attend and then additionally be able to

45:10

talk you know to be able to answer yeah yes to the fact that the agency's interest actually is going to outweigh concern that the acceptance of the gift

45:20

may or may appear to improperly influenced the employee in the performance of his official duties I mean these are the most important calculations that you can make and in many respects the

45:27

we should be made first you know right except in some case we need this information in order to write there's a balancing act here between the two

45:36

writes true but it but but this is really this is where we exercise our judgment as an agency right right so let's talk a little bit about agency

45:47

interest as a general proposition if we look I mean if we look at our at our

45:52

invitation Patrick we've got an advocacy group it's a dinner that's going to be

45:58

in conjunction with a national policy summit it's not clear to me at all who our employee is who's being invited but I think that's a material consideration

46:06

absolutely you know who is the person who's being invited why are they being invited and I think that we have to we have to ask ourselves you know is this

46:15

the right person to attend this event is this the right event for this person to

46:21

be attending right you know and your thoughts on that yeah I think those

46:26

those are really important considerations and I think that's something to keep in mind that a wag determination especially when you're

46:35

talking about the agency's interest is going to be very tightly tied up with

46:40

the role the person plays at the agency mm-hm so in in this case we could find that for certain members of our organization

46:51

it would be appropriate in the agency's interest for them to attend and for others maybe not mm-hmm so we'd have to ask what what is this particular

46:58

employees what what kind of value is the the agency going to gain from their

47:04

attendance mm-hm and this may be one of a limited number of opportunities to hear from important stakeholders folks at the agency really wants to hear from

47:13

and if that's the case well that I think would agitate for a greater level of agency interest if this is someone who's just been invited for who knows why and

47:23

there's not really the agency doesn't care if this person receive this information or has a relationship with these these industry stakeholders you

47:31

know maybe we said there's not an agency interest here right this is just a dinner for someone to go to mm-hmm but it is it's a bit of a balancing act

47:38

and I think the interesting thing too is that if you notice in the invitation it says we hope you and your colleagues are able to join us for the evening

47:46

and that was a little ambiguous for me and I you know so it sort of set off alarms for me as is is Jamie the only person who's been invited to this or

47:54

have other of our agency employees also been invited and I think that that I

47:59

know that this happens where you get sometimes get multiple employees invited to the same event and I do think that you have to do this analysis for each

48:10

and every one of those employees making a determination for one that the event

48:15

meets the widely tended gathering exception and then just kind of blowing through the rest of the analysis is really not I mean just because it's a

48:22

widely attended gathering doesn't mean that each individual who's been invited to this event that it's equally suitable or it's equally in the agency's interest

48:30

for each of the people who've been invited to attend the event right so again just cautionary on that one just make sure that if you've got multiple

48:38

people that you are actually doing individual determinations for you for each of those folks right and I think you know some of the ways an agency can

48:46

have an interest in sending someone to an event like this is if we have information we're trying to get out or information we're trying to receive in a

48:55

particular eyes duay that the events like this can provide those kinds of opportunities but then I think it's important for us to consider the the

49:03

steps in to point three and make sure that we're we're engaged in a balancing mm-hmm so let's do that let's go let's start walking through some of the steps

49:10

at two point three so we can we can be thinking about like all of these things

49:16

and how they how they should factor into our determination of agency interest the

49:21

first thing is the importance of the events the agency and we've kind of touched on that I think a little bit that's kind of a threshold issue of is

49:27

this an event that we think that agency participation is worthwhile because if

49:32

we don't you know right then you know we probably shouldn't be accepting you know

49:37

free attendance at at an event that we're not really sure the agency has any compelling interest in attending the nature and sensitivity of any pending

49:46

matter affecting the interests of the person who extended the invitation yeah and I think this is a tricky one yeah and it kind

49:52

cuts both ways because sometimes when we're thinking about and making a decision as an agency we want to get input mm-hmm but we want to make sure we

50:00

get input in a fair way right and that we don't sort of succumb to only listening to those people that offer us steaks and champagne so it can kind of

50:09

cut both ways I think there's a little easier after we've made a decision and we want to explain how that decision was made or why we've made it or what the

50:17

implications are because there's no longer a pending matter but when there is a pending matter sometimes I can both be a reason for the agency to have an

50:24

interest and also a reason for caution when doing this balancing test mm-hmm yeah and I think and again I don't I don't want to I want to focus on the

**Nature and Sensitivity**

50:35

particular era T's of number two for a couple of reasons one because I don't want you to focus too narrowly on what the number two says the number two says

50:43

nature and sensitivity of any pending matter affecting the interests of the person who extended the invitation so if we look in our case the person who

50:50

extended the invitation again is this advocacy group and we don't quite know who they are and what they do but let's say for argument's sake that they aren't

50:58

really the interested party here that the interested party is one of the other people who's going to be attending this event and they may even be underwriting

51:04

the this employees attendance of the event right and that's something that to the extent that we can try to ascertain that and sometimes you just can't know

51:11

it's like just they're not it's not information that you're gonna get ready access to but it's something that you want to be concerned about which is not

51:19

just the nature and sensitivity of any matters that would affect the person who extend the invitation but the nature and sensitivity of any matters that could

51:26

affect anybody who's going to be in attendance at this event right and I think we try and and maybe we should have put these closer together - and

51:33

five work together mm-hmm the identity of all the participants is important both for the diversity but also any lack of diversity right right

51:42

if we have this is really a lobbying dinner where one or two industry players have gotten together to sponsor an event so that they can make sure that the

51:50

regulator's hear exactly what they have to say mm-hmm even if it's important for

51:56

you to understand their view this may not be the best forum to receive that information exactly exactly so that so the nature of the conversation at the

52:05

event might be great but the the composition of the people who are going to be there is such that you're really allowing you're

52:14

allowing a very small select group to have disproportionate access to your person to influence to potentially influence a decision making point number

**Employees Role**

52:26

three is the significance of the employees role in any such matter so this is kind of getting back to what we were talking about before like who is

52:31

the person who's being invited and what is there what is there you know what is

52:36

their role in the organization what sort of duties do they have that are relevant to the topics that are going to be discussed at this event

52:43

are they the appropriate person if you're gonna have agency representation at this event are they the appropriate person to be

52:49

sending or is there someone who would be more appropriate if you're trying to extend sort of an agency presence there and you want to make sure it's the right

52:57

agency person who's going there but but likewise you know if the employee is really critical and there's a critical decision that's coming down the pike or

53:05

the people who are going to be at this event or at least even some of the people are gonna be at this event are people who this employee is in the

53:13

throes of making some decisions or working on certain things which clearly they are they have a dog in that fight again you may want to consider whether

53:22

or not you want to expose your employee to that environment under those circumstances you know in that given moment right yeah oh so I think that's

53:30

it this is another one that kind of cuts both ways we could have a situation where someone's contemplating a regulatory change that would affect the

53:38

industry participants and this is an opportunity for some limited segments of that industry to share their views with that person about the pending regulation

53:46

well certainly when we're in the rulemaking process there are opportunities for effective parties to make their views known mm-hmm and we

53:53

want to use those formal processes and we maybe wouldn't want to augment them with a fancy dinner right where is sometimes you have an employee whose

54:03

role is to act as a liaison to maintain relationships with with interested

54:08

parties or our stakeholders of your agency and this is an opportunity to strengthen those relationships and maybe you know sort of share information from

54:15

the agency and kind of understand trends where there isn't a pending that's sort of imminent and that that may agitate in the other direction

54:23

exactly that's you know there's there's not a direct sensitivity there's not an

54:29

immediate matter pending mm-hmm so number five I think we sort of touched on is the identity of other expected participants so that we get a

54:37

sensibility about like who else is in the room and who else is likely going to try you know that are that who are we gonna be talking to number six is

54:46

whether acceptance would create the appearance of preferential treatment to the donor and I think this is this is a really this is part of what we've been

54:54

talking about like if you have if you have facts that would indicate that

54:59

someone to is similarly situated would view your employees participation as

55:07

providing somehow to some sort of preferential access or some sort of preferential treatment to to to another interested party that's and it's

55:18

something I would just love note here when you're making these determinations and when you're talking to leaders and program personnel and your agency about

55:27

this part of the determination sometimes we have a tendency to view those people

55:33

who agree with our current thinking as sort of differently than people who disagree with us said well they agree

55:42

with us so of course we can go hear from them right exactly and that's a kind of viewpoint bias that we want to avoid so if we you don't want to create the habit

55:51

where those people whose you know parent policy preference is aligned with the administration of the agency are given unquestioning access and those who

56:01

disagree are not that's just as bad as the alternative where you know those

56:07

people who disagree with us are provided access and those people who agree with us because we really want to maintain the fairness of our processes right

56:14

that's really what this is about is maintaining the integrity and impartiality of the government's decision-making mmm-hmm and it's

56:19

interesting because that kind of gets into a little bit with what we have at seven which is if the government is providing people with views or interests

56:27

that differ from the donor with access to the government right so it's kind of again sort of like the like you know are you we don't want a

56:35

situation where we only hear from people who buy us dinner right right that's not a good thing right so if there are a plurality of ways to

56:44

receive this information and then people are being provided lots of opportunity that can be helpful in making this determination mm-hmm and then finally we

56:52

come back to this piece that is also with in the impartiality integrity analysis that the employee does or which is what is the market value of the gift

57:01

of free attendance now we obviously need to know that specifically we need to know that if if we're dealing with a non sponsor which we're going to talk about

57:09

that in a second here but I do want to take a minute Patrick to talk a little bit about this whole notion of the relative importance of the value of the

57:19

gift to the overall determination of agency interest or the balancing

57:24

determination and this ties into another question that we'd gotten yesterday afternoon which had to do with you know does the nature of sort of like the

57:34

value that the employee derives from the event material to the dollar value and

57:42

and the example that they gave was what if the what if the dinner is just a straight-up dinner that's gonna be like 500 bucks a pop so you're getting a $500

57:51

dinner as opposed to going to some sort of a fundraising event where yeah that's cost of the tenants is $500 but a goodly portion of that as being is being

58:01

siphoned off were a charitable donation yeah I guess no I think that you know

58:10

the the value I think is listed last year for a good reason because in a in a

58:18

sort of sort of an objective sense there is an iron from when we're talking about

58:26

gift for non sponsors there are $20 gifts that with the right set of

58:35

circumstances can be absolutely problematic under the widely attended gathering exception and there are gifts that are probably worth thousands of

58:42

dollars which given the right set of circumstances not problematic all I'm thinking about a circumstance when you have a pending matter before an

58:51

agency an agency player invite someone to a $20.00 lunch to make sure that they

58:57

hear the industry participants we use on something well yes so what it's only 20 dollars the opportunity that they're getting for their twenty dollars appears

59:07

to be you know aimed at distorting the decision-making process and that that you know there's no way we definitely would never get there

59:14

whereas if someone's waving a conference fee for a five-day event in the conference of five thousand dollar conference but really everyone under the

59:21

Sun is gonna be there the employees can have a choice of places to go and maybe they're speaking on a day delivering information on behalf of the agency

59:28

you know certainly you could you could get there so I think the you know the value is important but only as one sort of subordinate indicia of the distorting

59:41

effect that their attendance might have on on the government's work yeah I mean I I agree I mean I think that what you have to look at is you know is this you

59:50

have to look at the totality of the circumstances like is this an event where clearly the agency has a bonafide interest in this employees attendance

1:00:00

that we think the likelihood that you know there's any sort of appearance that the employee is going to be in appropriately or the agency is going to

1:00:07

be any appropriately affected by virtue of the person's attendance at the event that the dollar value while not completely immaterial is certainly

1:00:17

secondary or tertiary to the larger picture of is this an appropriate event

1:00:22

I mean is the event in and of itself an appropriate event is it something that we feel comfortable having our employee attend and I think sometimes we get into

1:00:31

the minutiae of this determination and we forget to kind of zoom out right and really the purpose of the exception is to allow agencies to have employees

1:00:41

attend events where the agency needs them to attend and it's in the agency's interest and things that agitate against the agency's interest are are you going

1:00:49

to be criticized our other industry participants or other stakeholders going

1:00:55

to feel that they're being treated unfairly if this person attends you should look at all of those sort of external potential consequences when

1:01:03

making this decision and we give you some specific things to think about to help you with that process but I don't think we mean to supplant your ability

1:01:10

to think strategically about the advisability of attendance yes and and to get and to sort of like now to sort of move to a more pedantic discussion of

1:01:21

market value of the gift an attendant question was when someone is invited to

1:01:27

to an event like a dinner or to something where there are tickets that are being and particularly this occurs with fundraising events in particular it

1:01:35

seems to be where there is a ticket for admission to the event and the ticket

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states a certain cost but clearly that cost isn't what the value of the meal or

1:01:45

whatever it is that the employees are actually going to be benefiting from whether or not you can back that out you know back the contribution or whatever

1:01:53

out of the price of admission to get in and use that as the market value well we have a definition of market value and when it comes to ticketed events the

1:02:01

market value is the ticket that's let's put you know this printed on the face of the ticket so if the ticket says $500 then that's the market value of the

1:02:09

ticket and I don't care if you're getting $50 worth of nasty chicken or whatever the value the value to you the market value to you the employee of

1:02:17

admission to that event is $500 because it costs someone five hundred dollars to hand you that ticket and get your seat at the table right so that's just

1:02:26

there's no question about that that's the market value and we're not getting into games of trying to assess you know the the actual value of the meal that's

1:02:36

being consumed okay before we move on to the sponsor of the event just I know

1:02:43

that people have been able to sort of call in with questions if they have them as we're going but I'd like to pause just a minute so that if anyone has any

1:02:51

questions about anything we've discussed so far I want us to just pause a minute and give people a chance to ask

1:03:21

okay okay

1:03:35

a free event especially something like training my recollection from looking at

1:03:43

the material was that you know if you purchase the item how much would it cost uh-huh but then when you look at a training and you say well the trainees

1:03:53

can have widely varied varied prices so I'm always when that comes up and then I

1:04:00

also have a question about how do you value that for the agency cuz I go well if the agency wants you to go to a training make this Nu that make sense

1:04:11

that wasn't very sure I think so your first question is how do we determine

1:04:18

what the market value of a training presentation is correct and then the

1:04:24

second question is how do we determine the agency's interest in sending an employee to a training event correct okay well I think we could sort of we

1:04:35

could take those together uh-huh I think with your first question how do we

1:04:40

determine the market value if there's an advertised price I think you'd want to use the advertised price of the training as the value if there's not an

1:04:50

advertised value you could look at sort of similar opportunities or look at the cost being borne by other attendees but this might be another case where we may

1:05:01

want to think about another another Authority before jumping directly to wag oh yeah I mean I think it's a matter of whether or not there's you know a fee

1:05:11

charged to anybody in attendance if this is free to everyone then that's a you

1:05:20

know I think it's a matter of deciding what it is they're receiving so sometimes when you're offered free training and there's no charge to

1:05:28

anybody you're still getting things of value you're getting materials you're getting oftentimes they have like you get

1:05:34

like food so it might be a matter of disaggregating the training and what the

1:05:41

individual is actually receiving like what are the things of value that the person is receiving and I know the training in and of itself is not without

1:05:47

value that's always kind of a tricky one you know when they're not charging a

1:05:54

PITA any like right just quickly what you just said is my issue the training itself can generally have value especially if they're going

1:06:02

to offer a credit for something maybe take CL ease for it B right is a part of

1:06:10

my question you just crystallized it for me you consider the fact that training itself has a value uh-huh yeah I think another question that I'd be interested

1:06:20

in is is this something the agency wants to send the employee and do they have a mechanism for sending the employee in their official capacity rather than

1:06:29

using the widely attended gathering exception you know it may be possible to use agency gift acceptance Authority or the government employee training act to

1:06:40

accept attendance at the event yeah because I you know it's without knowing

1:06:47

like the totality of the circumstances or that I mean it's kind of hard to answer that in the abstract because it's it seems to me that I would want to I

1:06:53

would want to know like who's sponsoring the training is everybody being comped

1:06:58

what's the nature of the training is it something that they always offer for free are they only offering it you know like you know I think I would need I

1:07:08

mean I think we would it's hard to answer that just kind of is in a blanket kind of way because I think that it's going to depend on you know again like

1:07:19

what is what is it that the employees actually receiving and who all's receiving it and as anybody yeah is everybody being comped it or as ours

1:07:27

only some people being Compton you know because and we run up we run up against

1:07:32

this a lot in the context of like I know that a lot of our IT folks are routinely being offered opportunities to attend these one day or two day sort of like

1:07:42

trainings and the that's it's supposedly free to all government employee

1:07:48

well the fact of the matter is it's not free to all government employees because these are IT types of training so they're being targeted to IT personnel

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so so you know and and oftentimes it's only the government folks who aren't

1:08:00

being charged and other folks in attendance are being charged and so we kind of use that as the baseline for what the value of the training is and

1:08:09

usually they're being offered something other than just the training - they're being offered food they're being offered materials which also you go into the

1:08:16

calculus of what the value of what the value is and I think we don't really need to get to subpart B on a lot of these unless the employee so intends to

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attend the training in their personal capacity or we're thinking about granting them administrative leave to attend and if this is something where

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we're trying to contemplate whether they should be attending in their official capacity we have management considerations there as well

1:08:42

that's more available to us mm-hmm so and I think these these determinations

1:08:49

get sort of complicated and starting in the context of the widely attended gathering exception that's probably the last place you want to go yeah and yeah

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because the other thing too is we cuz I had this question come up just recently from a department where the folks were going to an inning event and they were

1:09:08

going to get a discount it wasn't free but they were going to get a discount but the question the we got we got into the question of who was sponsoring the

1:09:18

training and because it was clearly training we we said if it's a 501c3

1:09:24

organization you can always look to the government training act which is 5 USC 41 11 so anytime your people are being offered training from a 501 a free

1:09:35

training from a 501 C 3 5 USC 41 11 it's clearly an authority that contemplates

1:09:41

agencies allowing their employees to attend those and accepting and the employee is accepting free attendance so again as patrick said i think that that

1:09:48

there are other authorities to explore in addition to sort of like trying to trying to get a better handle on the circumstances your particular training

1:09:58

circumstances so that's great question thank you I

1:10:06

shall no more questions at this time but again as a reminder if you would like to ask a question press star followed by the number one okay I think we're good

1:10:23

then we're gonna move on to the next part of our wag worksheet which this is

1:10:29

getting to sort of drilling down into who is the sponsor of the event and and

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who's paying for our employee to attend right so the first thing that the

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question that we have here is who is who is the sponsor of the event and it's trying to ascertain like who is largely responsible for this event and OGE

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issued a legal advisory very recently it's LA 1704 where we finally put in

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writing what sponsors but what sponsor means although we have informally had

1:11:01

this as our understanding of what sponsor means for years but we've finally reduced it to writing and we've included those criteria at 3.1 so what

1:11:13

we're looking for what you should be looking for as indicia of sponsorship like what is a bona fide sponsor for purposes of the weather tenant gathering

1:11:20

is you know is the entity responsible for organizing planning or conducting the events are they going to be doing the agenda they are they identifying the

1:11:29

audience the speaker's the date are they serving as the point of contact for the event are they merely or are they merely providing financial supports of the

1:11:37

event right so sponsor organize or host host is probably one of the best sort of

1:11:44

like some combination of those things but merely underwriting merely providing financial support does not make you a sponsor right right intuitively exactly

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exactly so in our case with our example advocacy now is the person who sent the

1:12:00

invitation and what do you think about them as the sponsor of the event

1:12:06

Patrick's with it so they say they're sponsoring a dinner but that could mean that they are merely providing fine support for the dinner mm-hmm so we

1:12:14

might want to ask that question is is advocacy now really organizing this thing or they they organizer they've figured out who's gonna attend they

1:12:22

figure out who gets how many invitations the sort of the flow of the show all that kind of stuff or they are they someone who just bought a table right at

1:12:31

an event being organized by some other organization because when you buy a table the organization who is organizing the event will call you a sponsor right

1:12:40

and then you get to write that on the invitation and confuse ethics officials everywhere yeah I mean I think that I think that we have to go back and we

1:12:49

have to clarify for ourselves that they are in fact a sponsor they've done thirst every there's a Rhian dication that they appear to me and clearly they

1:12:55

are at the point of contact for the RSVP and they've sent out the invitations and

1:13:00

they say that they're sponsoring and they're not showing who i mean you know they're not there's no other indication that there's somebody you know what else

1:13:08

there's someone else but the only the only other thing though i think that and then like i said before i think this is the hard thing to get to because it goes

1:13:15

to question 3.2 which is is the cost of the employees attendants being provided by the sponsor of the event and this gets to be a tricky question I think in

1:13:24

circumstances where you have you have an organization that is doing all of the

1:13:31

legwork but they may very well only be and I hate to use this word because it

1:13:37

because it taints sort of like it it's indicates nefariousness but like are like the front for you know like the like the people behind the curtain who

1:13:47

are really the ones who were driving the bus like who are really indicating who should come and who are really driving the agenda and who are really saying you

1:13:56

know and you know and I don't know any handy way around that but I do think that it is something that we do see sometimes where in an effort to get

1:14:06

around some of the restrictions like including like the pledge and stuff particularly if you've got you know right you know yes sometimes an

1:14:16

organization will have sort of an attached 501c3 organization that pretty

1:14:21

much just throws parties and they don't actually have a funding stream for the organization they're associated with so sometimes that complicates this

1:14:30

question of who's actually paying for the employees attendance but you know I think you just have to look kind of figure out how it works yeah and it

1:14:38

might be worth a phone call to the organizing you know the the the person who extended the invitation to find out you know you know is advocacy now the

1:14:47

one who's bearing the cost of my employees attendance or is someone else bearing the cost of my employees attendance so that you know for certain

1:14:53

that you know even though the invitation appears to be coming from advocacy now you know it are they really the person who's extending the invitation to the

1:15:01

employee and bearing the cost of the employees attendance so those kind of things I think kind of have to be done sort of hand in hand making sure that

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you know exactly who's responsible for for you know getting your employee through that door right because that's what we want to know we want to know

1:15:15

who's who's the gift from and and I think sometimes we forget as we go through this process that all of these facts all this stuff that you learn

1:15:24

about the event can go into your prudential decision yes absolutely so you know if you find out that this 501c3 basically receives donations from

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one company and they basically hold events to share the particular eyes

1:15:39

interests of that company to others you can take those facts into consideration

1:15:44

when determining if it's in your agency's interest to send someone to the event right and whether you'll be criticized for attending that event and

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whether it might adversely affect the impartiality or integrity of your processes you don't have to pretend just because there's some legal distinction

1:15:57

there that you don't know so you can you can sort of weigh all these factors and

1:16:02

at that during the process where you determine agency interest mm-hm

1:16:07

so I mean so on the face of it it looks as though Leslie looks as though advocacy now is the sponsor of the event and you know we can have we could make

1:16:15

the presumption that they are also bearing the cost of our employees attendance and if so then that the cost of the employees attendance is clearly

1:16:22

coming from the sponsor of the event right okay so let but let's to argue for the sake of for the sake of getting through the rest of this part of the

1:16:29

rest of the form let's say that advocacy now says well we sent out the invitation

1:16:34

but actually it's it's XYZ or that is specifically asked us to to

1:16:43

invite you and they are bearing the cost of your attendance and there they're not

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the sponsor of the event so now that's when we get into the question of our a hundred more persons expected to attend the event and will the market value of

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the gift of free attendance be three hundred ninety dollars or less so clearly once we start getting into it's a non sponsor then you're gonna have to

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really drill down into and get hard numbers for your determination because

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the regulation is very clear about that but there have to be more than a hundred persons and it has to be $300 390 dollars or less that's right so in this

1:17:22

case we probably wouldn't meet the hundred threshold I would suspect not unless I mean well maybe their concept of small is small numbers is entirely

1:17:32

different from from ours so in this instance if it is from the non sponsor

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then it doesn't appear as though they probably would be able to you would probably not be able to get to YES on on those non sponsor questions so then the

1:17:46

final piece that you have to do and this is all part of your written determination too so all of these things are supposed to be included in your your

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written determination is whether or not a spouse or guest is being offered free

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attendance and clearly we only care about this if the employees attendance is going to be permitted because if the employee can't go you're not going to

1:18:06

prove it it's best to go absent the employee so that's why this is the final the final so so the first question under this 14.1 is has the gift of free

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attendance been extended to the employees spouse or a guest now this

1:18:27

again that we and I think we mentioned this on Tuesday and I've had this happen

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where sometimes it isn't clear like even in our invitation it is not clear that it's that the invitation is to Jamie and the guests the invitation is to Jamie

1:18:41

right with a reference to his or her colleagues for colleagues so so you can

1:18:47

either go under the assumption that if it's not mentioned about a guest that that in that means there is no gas yes but I

1:18:54

would suggest that if your employee wants to know or sis or would like to

1:19:00

find out that they not be the one to call and inquire about that we talked about this on Tuesday because we think that would be sort of tantamount to a

1:19:07

solicitation of an invitation right so if you the ethics official want to go back and ask whether or not other people will be accompanied by guests and

1:19:15

whether or not the invitation includes or is anticipates including a spouse or guests you know you can certainly do that tactfully without it being

1:19:23

tantamount to a solicitation right at four point to the next question then is

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is the invitation from the same person who invited the employee because this is imperative it has to be from the same person who invited the employee there

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can't be a separate a different person inviting the employees spouse well

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others in attendance general to be accompanied by a spouse or guests again is this being uniquely offered to your employee or are others also going to

1:19:51

have their spouse and guests in attendance who's providing the cost of

1:19:56

the employees attendance and again this is going to if it's the same person that theme that the employee that's doing the employee you will have already done this

1:20:03

analysis for the employee you will determine if it was a sponsor and then the only thing I want to remind folks with respect to four point five is if

1:20:11

it's a non sponsor and we're up against that hundred person and $390 threshold

1:20:17

the 390 threshold is going to have to include the both the cost of the

1:20:23

employees and the guests attendance so you have to a grenade

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so in this case we might be getting close yeah that's something we have to think about so so in in our case we don't know the answer to these questions

1:20:38

but that would be the analysis that you would undertake if this were a live question and you this would be information that you would have to find

1:20:46

out in order to be able to know whether you could approve the employees spouse or guests to attend with them so we've we've walked through the wag worksheet

1:20:57

and if anyone has any questions about that or anything else we've discussed

1:21:02

today we'd be happy to answer any questions we're going to open the phones for

1:21:08

anybody and likewise if folks who aren't on the phone but are on the hangout if you have questions and want to send them to training registration at OTE gov

1:21:16

we're happy to respond to the questions that you have from today's session again

1:21:25

if you'd like to ask a question over the phone press star followed by the number one unmute your phone and record your name clearly please stand by for

1:21:32

incoming questions very helpful to go through this I in the new framework

1:21:41

since the updates to subpart B I think we should all feel more comfortable that

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not a lot has changed but exactly what we have tried to do is create a greater

1:21:53

emphasis on the on the prudence of accepting all gifts and you know provide another opportunity to think about that in the context of invitations and I

1:22:02

think we have tried also to incorporate into the language of the regulations some things that were previously hit only resided in legal advisory so that

1:22:10

you know things that we have been relying on the either through oral advice or through just legal advisories we tried to take some of that language

1:22:17

and incorporate it into hopefully eventually it becomes a little more convenient to use generally exactly we have any questions Holly and there are

1:22:27

no questions at this time excellent well thanks Cheryl and thank

1:22:35

you to everyone who I joined us we hope you found this to be helpful again this recording as well as part one will be available on the YouTube channel as soon

1:22:42

as we're done here also if you want to go back and refer to it I do this experience again share with colleagues this and all our other

1:22:49

courses are available and we do hope you find them useful and are able to use them and there's always if you have ideas for training that you feel like we

1:22:57

haven't offered recently or haven't done at all we always like to hear your ideas

1:23:02

because it saves us having to come up with our own you know if you have suggestions we do like to hear those when we do our best to act upon them and

1:23:11

we hope you will join us again soon for another presentation very good thanks very much you

English

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