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LEGAL ADVISORY

TO: Designated Agency Ethics Officials

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SUBJECT: Answers to Frequently Asked Questions About Widely Attended Gatherings

The U.S. Office of Government Ethics (OGE) is issuing this Legal Advisory to address several recurring questions concerning the gift exception for widely attended gatherings (WAG) found at 5 C.F.R. § 2635.204(g). The questions and answers presented here build on OGE guidance provided in prior Legal Advisories¹ and are informed by OGE and agency ethics officials' practical experience in implementing the gift regulations. Part I of the Legal Advisory provides background on the WAG exception. Part II sets forth the topics addressed in the Legal Advisory and provides frequently asked questions and answers concerning the WAG exception.²

I. Introduction to the Widely Attended Gatherings Exception

Executive branch employees are generally prohibited from accepting any gift that is from a "prohibited source"³ or that is given because of the employee's official position.⁴ Because of

¹ See, e.g., OGE DAEogram DO-07-047 (Dec. 5, 2007); OGE Inf. Adv. Op. 93x15 (June 28, 1993); OGE Inf. Adv. Op. 94x2 (Jan. 13, 1994); OGE Inf. Adv. Op. 07x2 (Feb. 9, 2007); OGE Legal Advisory LA-15-05 (May 5, 2015). For guidance on how to analyze and value virtual events, refer to OGE Legal Advisory LA-20-10 (Dec. 7, 2020).

² Additional training resources on the WAG exception can be found on OGE's Institute for Ethics in Government webpage, including a template decision tree that can be used by agency designees to streamline and standardize the process of reviewing whether an event can be accepted under the WAG exception. *On Demand Library*, INST. FOR ETHICS IN GOV'T, <https://extapps2.oge.gov/Training/OGETraining.nsf/CourseList.xsp> (last visited Nov. 7, 2024).

³ A prohibited source includes any person who:

- (1) Is seeking official action by the employee's agency;
- (2) Does business or seeks to do business with the employee's agency;
- (3) Conducts activities regulated by the employee's agency;
- (4) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duties; or
- (5) Is an organization a majority of whose members are described in (1)-(4) above.

5 C.F.R. § 2635.203(d).

⁴ 5 U.S.C. § 7353(a); Exec. Order No. 12,674, § 101(d), 54 Fed. Reg. 15,159, 15,159 (Apr. 12, 1989); 5 C.F.R. § 2635.202.



the breadth of this prohibition, Congress authorized OGE to establish reasonable exceptions permitting employees to accept gifts when the risk of undue influence or abuse of office is limited.⁵

Among other exceptions, OGE promulgated the WAG exception to permit employees to personally⁶ accept free attendance at certain large group events when it is in the Government's interest that the employee attend.⁷ An event qualifies as a WAG only if it meets the criteria specified in 5 C.F.R. § 2635.204(g), and an agency designee has independently reviewed and authorized the employee's attendance in writing prior to the event.⁸ Note that statements by outside organizations that their events qualify as WAGs cannot be taken at face value. Agency designees must make their own determination as to whether an event qualifies as a WAG.

Most importantly, the agency designee's determination must conclude that the agency has an interest in an employee's attendance because it furthers agency programs or operations and that interest outweighs the actual or apparent risk of improper influence.⁹ This Legal Advisory, among other things, provides several relevant factors for agency designees to consider when making this determination.

Finally, ethics officials should be mindful that the WAG exception is not the only, and in many cases not the most appropriate, legal authority allowing an employee to accept free attendance at an event. Other exceptions and exclusions may be available to permit an employee (or the employee's agency) to accept an offer of free attendance for an employee to attend an event.

II. Frequently Asked Questions and Answers

This Legal Advisory will address the following questions¹⁰ that often arise while advising employees on whether an event qualifies for the WAG exception:

⁵ 5 U.S.C. § 7353(b).

⁶ The WAG exception is available only when an employee is personally accepting a gift of free attendance. *See infra* Part II.E. If the employee is accepting a gift on behalf of their agency, then the offer of free attendance should be evaluated as a gift to the agency.

⁷ 5 C.F.R. § 2635.204(g).

⁸ *Id.* § 2635.204(g). An "agency designee" is an employee who has been delegated authority via agency regulation, instruction, or issuance to approve another employee's acceptance of free attendance under the WAG exception. *Id.* § 2635.102(b). If the agency designee is not an ethics official, agencies should take steps to ensure that the agency designee is aware of all necessary determinations to be made and consults with agency ethics officials as appropriate.

⁹ *Id.* § 2635.204(g)(4). Note that political appointees who are subject to Executive Order 13989 may not accept most gifts, including free attendance under the WAG exception, from registered lobbyists and lobbying organizations. Exec. Order No. 13,989, § 1, para. 1, 86 Fed. Reg. 7,029, 7,029 (Jan. 20, 2021).

¹⁰ Note that while some events that qualify as WAGs may also be fundraisers, this Legal Advisory does not focus on additional considerations that can arise for fundraising events beyond mere attendance, including whether and under what circumstances it is appropriate to actively participate in fundraising. Employee fundraising activities are subject to the limitations set forth in 5 C.F.R. § 2635.808, and agency ethics officials can find additional guidance on that provision in several previously issued legal advisories. *See, e.g.*, OGE Inf. Adv. Op. 93x19 (Aug. 25, 1993) (discussing frequently asked questions concerning fundraising activities).

- A. [How do agency designees determine that the agency's interest outweighs the risk of improper influence or the appearance of improper influence?](#)
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A. How do agency designees determine that the agency's interest outweighs the risk of improper influence or the appearance of improper influence?

An employee may use the WAG exception to attend an event if, and only if, the employee's attendance "is in the agency's interest because it will further agency programs and operations."¹¹ Additionally, that interest must outweigh the appearance that the employee may be, or appear to be, improperly influenced in their Government activities.¹²

Because these determinations are fact dependent, OGE's regulations identify several considerations relevant to determining whether an employee may be, or may appear to be, improperly influenced in the performance of their official duties as a result of accepting free attendance to an event. These include:

- the importance of the event to the agency;
- the nature and sensitivity of any pending matter affecting the interests of the person who extended the invitation, and the significance of the employee's role in any such matter;
- the purpose of the event;
- the identity of other expected participants;
- whether acceptance would reasonably create the appearance that the donor is receiving preferential treatment;
- whether the Government is also providing persons with views or interests that differ from those of the donor with access to the Government; and
- the market value of the gift of free attendance.¹³

Moreover, agencies should consider the nature of the event itself. For example, OGE has previously noted that it may be more difficult for events that are predominantly social in nature

¹¹ 5 C.F.R. § 2635.204(g)(3)(ii).

¹² *Id.* § 2635.204(g)(3)(ii), (iii).

¹³ *Id.* § 2635.204(g)(4). Agency designees who are looking for additional guidance on whether a gift may cause a reasonable person to question the employee's integrity or impartiality as a result of accepting the gift of free attendance may look to the factors set forth in 5 C.F.R. § 2635.201(b).

to qualify as WAGs.¹⁴ Similarly, additional scrutiny should be given to any event that includes expensive or lavish food, beverages, or entertainment.¹⁵

1. How can agency designees determine the agency's interest in attending an event?

Prior to authorizing an employee's acceptance of an offer of free attendance to a WAG an agency designee must determine that the employee's attendance "will further agency programs and operations."¹⁶ Whether an employee's attendance will further agency programs and operations is a fact-specific analysis and may require information not immediately available to the agency designee. Agency designees should consult with the requesting employee's supervisor to determine whether an employee's attendance is in the agency's interest because it will further agency programs and operations. Agency designees should, at a minimum, request that the employee provide a description of how their attendance will benefit the agency. Because the nature and purpose of the event is also important, agency designees may need to collect information concerning the event beyond what is provided by the employee. When needed, agency designees can often collect such information from the sponsor of the event or through publicly available information.

2. How do the agency designees assess the possibility that the employee may be, or may appear to be, improperly influenced in the performance of official duties?

Because gifts of free attendance can be used to cultivate familiarity and secure preferential access and benefits,¹⁷ agency designees must consider whether the employee may be, or may appear to be, improperly influenced in the performance of their official duties by accepting the gift of free attendance. As listed above, OGE has set out several factors in the WAG exception that can be considered when making this determination.¹⁸ Additionally, the factors set out at 5 C.F.R. § 2635.201(b) may help determine when it may be appropriate to decline a gift.

In practice, OGE has found that the risk that an employee may be improperly influenced, or may appear to be improperly influenced, in the performance of official duties is more likely to arise when the employee currently has, or is likely to have in the future, matters pending before them that could affect the donor. Agency designees should therefore identify whether an employee is in a position to work on matters that could affect the donor, and the nature and sensitivity of that matter.¹⁹ If an employee is working on a matter that could affect the donor, agency designees should carefully consider both the risk that the free attendance could be used to

¹⁴ OGE DAEOgram DO-07-047, at 6-7 (Dec. 5, 2007); OGE Inf. Adv. Op. 93x15 (June 28, 1993); OGE Inf. Adv. Op. 94x2, at 2 (Jan. 13, 1994).

¹⁵ 5 C.F.R. § 2635.201(b)(2)(i).

¹⁶ *Id.* § 2635.204(g)(3)(ii); *see also* OGE DAEOgram DO-07-047, at 2.

¹⁷ Amendments to the Standards of Conduct, 76 Fed. Reg. 56,300, 56,333 (proposed Sept. 13, 2011).

¹⁸ 5 C.F.R. § 2635.204(g)(4).

¹⁹ *Id.*

influence the employee and the way the employee's attendance would appear to a reasonable person.

3. *How to balance an agency's interest in an employee's attendance against the potential risk of undue influence?*

Agency designees are required to determine that their agency's interest in an employee attending an event outweighs the concern that the employee may be, or may appear to be, improperly influenced in the performance of official duties.²⁰ Agency designees should make this determination from the perspective of a reasonable person with knowledge of all relevant facts.²¹ Only when an agency designee has objectively determined that the agency interest outweighs the concern of improper influence may they authorize acceptance of the gift of free attendance to a WAG. Agency designees should remember that an employee can never accept free attendance to a WAG if it appears that the offer is being made in exchange for the employee being influenced in the performance of an official act or acceptance is otherwise prohibited by the limitations set forth in 5 C.F.R. § 2635.205.

B. *Who is the source of the gift?*

Whether a gift of free attendance may be accepted under the WAG exception depends in part on who is giving the gift. As set forth in OGE's regulations, "[i]f a person other than the sponsor of the event invites or designates the employee as the recipient of the gift of free attendance and bears the cost of that gift," the event must be attended by more than 100 persons and the value of the gift may not exceed the regulatory threshold²² for it to be accepted under the WAG exception.²³ As a result, when the value of the gift is over the regulatory threshold (currently \$480), agency designees must determine whether the gift is solely from the sponsor of the event or is partially or solely from another person.

1. *Who is a sponsor of an event?*

OGE has previously advised that, "[a]n individual or organization that takes responsibility for actively organizing, planning, and conducting an event [is] a sponsor for purposes of applying the [WAG] gift exception."²⁴ So long as the individual or organization is actively involved in the event, it is immaterial whether they are "identified in written materials by a title other than 'sponsor,' such as 'host' or 'underwriter,' because the titles used are not dispositive."²⁵ However, a person or organization is not a sponsor merely because they are providing financial support for the event or portions of the event, are attending as a vendor, or

²⁰ *Id.* § 2635.204(g)(3)(iii).

²¹ *Cf.* 5 C.F.R. § 2635.201(b)(2) (stating that "employees should consider declining otherwise permissible gifts if they believe that a reasonable person with knowledge of the facts would question the employee's integrity or impartiality as a result of accepting the gift").

²² The regulatory threshold is occasionally updated. The last update occurred in 2023. *See* Increase of Certain Gift and Reporting Thresholds, 88 Fed. Reg. 37,753 (June 9, 2023). As of the publication of this Legal Advisory that amount was \$480. For more information see OGE Legal Advisory LA-23-08 (Jun. 22, 2023).

²³ 5 C.F.R. § 2635.204(g)(3)(iv).

²⁴ OGE Legal Advisory LA-17-04, at 2 n.5 (Apr. 18, 2017).

²⁵ *Id.*

are participating as a presenter at the event.²⁶ Even if a financial contributor to an event is not a “sponsor” for purposes of the WAG exception, the identity of financial contributors may be a relevant factor when balancing an agency’s interest in an employee’s attendance against the potential risk of undue influence or appearance of undue influence.

2. *How can agency designees determine who is a sponsor?*

In determining the sponsor, it may be helpful for agency designees to begin by reviewing the invitation. If it is not clear that the donor is a sponsor based on a review of the invitation, the agency designee or employee may need to contact the hosting organization to gather information about who is actively organizing, planning, funding, and conducting the event.

3. *If the invitation is from the sponsor, but a non-sponsor has covered a portion of the cost of the employee’s attendance, is the gift from the sponsor or from a non-sponsor?*

A gift is not considered to be solely from a sponsor if a non-sponsor “designates the employee to be invited and bears the cost of the employee’s attendance through a contribution or other payment intended to facilitate the employee’s attendance.”²⁷ As a result, agency designees should confirm that a non-sponsor has not provided any payment or contribution to the sponsor for the purposes of defraying or reducing the cost of the employee’s attendance. If a non-sponsor has designated the employee to be invited and contributed to the employee’s attendance, agency designees must confirm that more than 100 people are expected to attend, and that the value of the gift of free attendance is less than \$480.²⁸

C. *What is the market value of the gift of free attendance?*

The general rule is that the market value of free attendance at a ticketed event is the “face value of the ticket.”²⁹ However, sometimes there is no face value on the ticket, while some events are not ticketed, or some attendees may be charged different prices. OGE has received questions concerning how to value such gifts.³⁰

²⁶ *Id.* at 3.

²⁷ 5 C.F.R. § 2635.204(g)(5).

²⁸ *Id.* § 2635.204(g)(3)(iv).

²⁹ *Id.* § 2635.203(c).

³⁰ Determining the market value of a gift of free attendance is important for several reasons. First, agency designees should consider the value of the event when assessing if the agency’s interest in attendance outweighs concern the employee may be or appear to be improperly influenced. 5 C.F.R. § 2635.204(g)(4)(vii). In addition, agency designees will need to know the market value of the employee’s attendance to determine whether the value is below the regulatory cap placed on gifts of free attendance provided in whole or in part by a non-sponsor, and whether the employee must disclose a gift of free attendance on a financial disclosure report. *Id.* §§ 2634.304, 2635.204(g)(3)(iv). Additionally, the market value is the amount the employee must pay the sponsor if they choose to pay rather than accept free attendance. *Id.* § 2635.203(b)(10).

1. *How do agency designees value the gift if entrance is free to all attendees?*

Employees who attend events that are offered at no cost to all attendees generally still receive benefits when attending the event.³¹ These benefits can include food, beverages, and entertainment. If the event is not open to the public or to all Federal employees or uniformed officials,³² agency designees may need to consider what benefits are being provided and the cost of those benefits to determine whether acceptance is appropriate under the WAG exception.

OGE has previously advised that when no attendees are charged to attend an event, the market value of a gift of attendance is calculated by adding the per person market value of food, beverages, entertainment, and other tangible benefits offered to attendees.³³ The market value of these items is based on the cost a member of the general public would pay to obtain similar items at a comparable location or event. Agency designees may also rely on a good faith estimate of the per person benefit provided by the event sponsor.³⁴

Note that not all benefits that might be provided to attendees may be accepted under the WAG exception. For example, travel expenses, lodgings, and entertainment collateral to an event cannot be accepted even if other attendees are offered such benefits.³⁵ Likewise, benefits such as gift bags would need to be separately analyzed under the gift rules.³⁶

2. *How to value the gift of access to restricted areas (e.g. a luxury suite)?*

Agency designees should first look to the face value of the ticket, if there is one, or the amount individuals who have restricted access have paid to attend the event. If the employee is not given a ticket, the market value is “determined by adding the market value of the most expensive publicly available ticket to the event to the market value of the food, parking and other tangible benefits provided in connection with the gift of attendance.”³⁷

3. *How to value the gift if there are multiple prices to attend (i.e., tiered pricing)?*

When there are multiple prices to attend an event, the value of the gift to the employee is what it would cost the employee to purchase the level of access and benefits they are provided. For example, if the sponsor of the event has three levels of tickets—bronze, silver, and gold—an employee who receives the benefits given only to “gold-level” attendees is treated as having received a gold-level ticket.

³¹ Free attendance at such events is not considered to be a gift to the employee. *See id.* § 2635.203(b)(4).

³² Opportunities “available to the public or to a class consisting of all Government employees or all uniformed military personnel” are excluded from the definition of gift. *Id.* § 2635.203(b)(4).

³³ OGE Legal Advisory LA-15-05 (May 5, 2015).

³⁴ *Id.* at 1.

³⁵ 5 C.F.R. § 2635.203(g).

³⁶ The benefits an employee can accept as part of an offer of “free attendance” are set out in 5 C.F.R. § 2635.203(g). Gift bags do not fall within that definition, and thus an employee must have separate authority to accept those gifts.

³⁷ OGE Inf. Adv. Op. 07x2, at 3 (Feb. 9, 2007).

When the sponsor of the event has established a separate pricing tier for all Federal employees,³⁸ the market value of the gift is the amount charged to Federal employees, so long as all Federal employees who wish to attend are eligible for the rate. For example, if donors are charged \$500, Federal employees are charged \$550, and members of the public are charged \$800, the market value of the gift for a Federal employee would be \$550.³⁹

If the sponsor charges for attendance but the employee does not fall within any of the categories of available tickets, e.g., there are only listed prices for “members” and “donors” (and the employee is not a “member” or “donor”), the employee should use the market value for the ticket class that is most consistent with the benefits the employee will receive.

4. *How do agency designees value a gift if more than one person is contributing to the cost of attendance, and does it matter if the contributions are disproportionate?*

For purposes of the gift rules, the market value of a gift of free attendance to an event is the total cost of the employee’s free attendance, regardless of whether several persons or organizations contributed to bear the cost of the employee’s attendance.⁴⁰ The market value of a single gift is not divided between contributors even if the contributions are disproportionate.⁴¹

D. *May an employee be permitted to accept an unsolicited invitation of free attendance for an accompanying guest?*

In some cases, the exception for WAGs permits an employee to also accept free attendance for a guest.⁴² Several criteria must be met, however, before an employee can be properly authorized to accept free attendance for a guest, including that the agency must provide prior written authorization to the employee that they may do so.⁴³

1. *When may an employee accept free attendance on behalf of an accompanying guest?*

When authorized by their agency designee in writing, an employee may accept an offer of free attendance for a guest of their choice when (1) others in attendance will generally be

³⁸ Often, sponsors will provide a “government” price that includes state, local, and Federal officials. So long as Federal officials are eligible for that tier, that is the market value for their attendance. If, however, state and local officials are charged a different price than Federal officials, then the market value of attendance is what would be charged other Federal attendees.

³⁹ Based on the reporting threshold in 2024 of \$480, if the employee is a financial disclosure filer, then this gift would have to be reported.

⁴⁰ 5 C.F.R. § 2635.203(c) (stating that the market value of a gift is the amount a member of the public would expect to pay to purchase the gift); *cf.* 5 C.F.R. § 2635.204(a), ex. 1 (explaining that an employee could not accept a gift with a value of \$120 under the exception for gifts with a market value of \$20 or less simply because each contributor had paid \$20 or less).

⁴¹ The same rule applies to disclosure of gifts on a financial disclosure report. *See FAQs: Gifts and Travel Reimbursements*, OGE PUB. FIN. DISCLOSURE GUIDE, https://www.oge.gov/web/278eGuide.nsf/FAQs#_FAQs:Gifts_Travel_Reimbursements (last visited Nov. 7, 2024).

⁴² *See* 5 C.F.R. § 2635.204(g)(6).

⁴³ *Id.* § 2635.204(g)(3).

accompanied by a guest and (2) the invitation for the guest is from the same person who invited the employee.⁴⁴ Employees are never permitted to solicit free attendance for a guest.⁴⁵

2. *Can an employee invite more than one guest?*

No. The WAG exception permits an employee to accept, at most, free attendance for one guest.⁴⁶ Employees should be mindful, however, that some events may qualify for other exceptions. For example, if the employee is attending an event to receive a public service award or honorary degree, the employee may be permitted to accept free attendance to the event for multiple members of the employee's family (but not other guests).⁴⁷

3. *What if the guest is sent a separate invitation?*

A person who, for completely independent and unrelated reasons, is invited to attend the same event as the employee may attend the event separately from the employee.⁴⁸ If the person was invited due to the employee's attendance, however, then the person will be considered the employee's guest and the cost of their attendance will be allocated to the employee.⁴⁹ Agency designees should be cautious when considering whether a person's invitation is unrelated to an employee's attendance if the person is a family member or close friend, or the employee discussed their plan to ask the person to attend as their guest with the sponsor or donor.⁵⁰

4. *What if the guest is being invited to participate in the event?*

Irrespective of whether an employee's guest is an integral part of the event, if the invitation to the guest is given "with the employee's knowledge or acquiescence . . . because of that person's relationship to the employee," the guest's invitation would be considered an indirect gift to the employee and the total cost of the guest's ticket would be considered part of the value of the gift to the employee.⁵¹

E. *May an employee attend a WAG during working hours?*

Unlike events that employees attend in their official capacity, a WAG is a personal gift to the employee and attendance is in an employee's personal capacity.⁵² For this reason, employees who are subject to a leave system may only attend a WAG on their own time or, if authorized by

⁴⁴ *Id.*

⁴⁵ *See id.* § 2635.202.

⁴⁶ *Id.* § 2635.204(g)(6). A member of an employee's protective security detail who is required to attend an event in their official capacity is not a "guest" of the employee. Other attendees accompanying an invited employee may only attend following a separate gift acceptance determination.

⁴⁷ *Id.* § 2635.204(d).

⁴⁸ 5 C.F.R. §§ 2635.202, .203(f).

⁴⁹ *Id.* § 2635.204(g)(6).

⁵⁰ *Id.* § 2635.203(f). Employees should be aware that gifts to a spouse or children may be "indirect gifts" and therefore added to the total valuation of the gift to the employee.

⁵¹ *Id.*

⁵² *Id.* § 2635.204(g)(1).

the employee's agency, on excused absence pursuant to applicable guidelines for granting such absences, or otherwise without charge to the employee's leave account.⁵³

1. *Does an employee have to be in a leave status to attend a WAG?*

If the employee is attending an event under the WAG exception and is subject to a leave system, then they must attend on their personal time, which may require taking leave, or requesting an excused absence if the event takes place during duty hours, subject to approval pursuant to agency guidelines.⁵⁴

2. *If an employee is speaking at a multiday event, does the employee have to take leave to attend the event on a day they are not speaking?*

Employees who have been assigned to speak at an event in an official capacity are treated as attending on behalf of their agency on any day they are speaking.⁵⁵ If an employee plans to attend additional, non-speaking days of an event, attendance can only be accepted under the WAG exception if the employee has taken leave (if subject to a leave system) or requested an excused absence, such as administrative leave, on the additional non-speaking days. If the employee is in official travel status to attend the meeting, agency designees should not analyze it under the WAG exception but should analyze attendance under 31 U.S.C. § 1353.⁵⁶

F. *What constitutes a “large number” of persons for WAG purposes?*

An employee may be permitted to accept a gift under the WAG exception only if “it is expected that a large number of persons will attend” the event.⁵⁷ Over the years, OGE has received questions about what constitutes a large number of persons.

1. *What is a “large number” of persons?*

Although OGE has not established a set minimum number of expected attendees for an event to qualify as a WAG by regulation, past guidance makes clear that the exception is unavailable for “relatively small gatherings.”⁵⁸ To that end, in most cases an event will not be considered widely attended if fewer than 20 individuals are expected to be in attendance.⁵⁹

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* § 2635.203(b)(8). For additional information on attendance on speaking days, *see infra* Section H.

⁵⁶ There may be situations where, while an employee is attending a meeting away from their duty station under 31 U.S.C. § 1353, they are invited to a different event in their personal capacity. In these situations, the employee may be able to accept attendance to the separate event under the WAG, so long as all elements of the regulation are met, including that the employee does not accept travel expenses, even though the employee is away from their duty station. *See* 41 C.F.R. § 304-3.19(d).

⁵⁷ 5 C.F.R. § 2635.204(g)(2).

⁵⁸ OGE DAEOgram DO-07-047, at 4 n.4 (Dec. 5, 2007).

⁵⁹ This guidance is similar to guidance provided by the Senate Select Committee on Ethics and the House Ethics Committee on accepting free attendance to an event under similar gift exceptions for widely attended events. As set forth in the Senate and House Ethics Manuals, Members of Congress and Senate and House employees must be able

Because the rule “emphasizes both the size of the gathering and the diversity of views or interests represented,” however, it can be appropriate to authorize an employee to attend an event with less than 20 expected attendees when there will be a significant opportunity to exchange views among attendees who have a diversity of views or interests.⁶⁰

2. How do you determine if a large number of persons is expected to attend?

In some cases, this information can be gleaned from the sponsor’s website or the invitation. If it is unclear whether an event is expected to be attended by a large number of persons, agency designees may contact the sponsor of the event for an estimate of expected attendance. In situations where the sponsor is unresponsive or unable to provide an accurate estimate of people who are expected to attend, and there is no useful information on the website or invitation, agency designees may use information about the same event in past years to make an estimate, if available. Employees will not be required to reimburse the sponsor or donor if the number of attendees is lower than expected.

G. What constitutes a “diversity of views or interests” and how do agency designees determine if there will be an “opportunity to exchange ideas”?

An event can only qualify as a WAG if it will be attended by individuals with a diversity of views or interests.⁶¹ An event will have a diversity of views or interests if the anticipated attendees have a wide range of expertise, perspectives, and opinions which is more likely when the anticipated attendees have different professions and backgrounds or represent various entities. OGE has previously provided guidance on different types of events, such as board meetings of a single organization, that will not typically have attendees that represent a diversity of views.⁶²

1. How to determine if an event is expected to have individuals with a diversity of viewpoints?

Agency designees attempting to determine whether individuals with a diversity of viewpoints are anticipated to attend an event should generally be able to determine that information from the type of event and expected number of attendees. For example, events that are open to the public, that are of interest to several industries, or that are expected to be attended by members throughout a given industry are generally anticipated to have individuals with diverse viewpoints. On the other hand, events that will only be attended by employees of a single company or a small handful of companies would not normally have the diversity of viewpoints required by the regulation. OGE has already noted that certain events, such as vendor product

to show that at least 25 people who are not Members, Senators, officers, or employees of Congress or their spouses are expected to be in attendance to an event for it to be considered widely attended. *See* SELECT COMM. ON ETHICS, U.S. SENATE, SENATE ETHICS MANUAL 38 (2003); COMM. ON ETHICS, HOUSE ETHICS MANUAL 55 (2022).

⁶⁰ As noted in section B. above, if the gift of free attendance is wholly or partially from someone other than the sponsor and that person designates the employee to attend the event, then at least 100 persons must be expected to attend for it to be considered “widely attended.” *See* 5 C.F.R. § 2635.204(g)(2).

⁶¹ *Id.*

⁶² *See* OGE DAEOgram DO-07-047, at 11-12.

trainings, company board meetings, and corporate parties do not provide the diversity of viewpoints anticipated by the regulation.⁶³ Likewise, the larger the number of individuals who are attending, the more likely that there will be a diversity of views. Agency designees may need to coordinate with the sponsor of the event to determine who is likely to attend an event, particularly for smaller events.

2. *How to determine whether there will be an opportunity to exchange ideas?*

Agency designees who are attempting to determine whether there will be an opportunity for attendees to exchange ideas should consider the nature of the event and how the event is structured.⁶⁴ OGE has previously stated that certain types of events, such as sporting events, theatrical events, movie screenings, and musical events (although typically widely attended) would not afford the opportunity to exchange ideas by their very nature because these events emphasize passive viewing rather than mixing and conversing with other attendees.⁶⁵ On the other hand, other types of events, such as academic symposia and training activities, generally do provide the opportunity for employees to engage with individuals with diverse views.⁶⁶ Agency designees should also consider the event agenda and organization. Some events provide formal opportunities for attendees to exchange ideas, for example in training activities or breakout sessions. Other events build in informal opportunities for discussion, while some are not structured in a way that is conducive to attendees engaging with each other.

3. *What if the expected attendees to an event will mostly be Federal employees?*

Events limited mainly to attendees from one agency, or a small number of agencies involved in related operations, may not meet the diversity of views required for a WAG.⁶⁷ However, if the event is intended to bring together representatives from various agencies or from across the Government to discuss a certain topic, this may satisfy the diversity requirement.

4. *What if the expected attendees to an event will mostly be from a single company?*

An event attended primarily by individuals representing the same company will not satisfy the diversity of views requirement.⁶⁸ As OGE stated in 2007, these events are “largely for the benefit of the company’s own employees and do not permit the opportunity for an exchange of ideas among participants with adequately varied points of view.”⁶⁹

⁶³ *Id.* at 9-12.

⁶⁴ *See id.* at 5.

⁶⁵ *Id.* at 8-9.

⁶⁶ *Id.*

⁶⁷ *Id.* at 13. Events which are “paid for by the Government or secured by the Government under Government contract” could be accepted under the exception in 5 C.F.R. § 2635.203(b)(7).

⁶⁸ *Id.* at 10.

⁶⁹ *Id.* (citing OGE Inf. Adv. Op. 06x7 (Aug. 9, 2006)).

5. *What if an event is open only to members of a professional organization, trade association, chamber of commerce, or business league?*

If an event is only open to members of a professional organization, trade association, chamber of commerce, or business league, agency designees should consider whether attendees represent a variety of industries, professions, and interests. Frequently, members of professional organizations, trade associations, chambers of commerce, and business leagues represent a variety of stakeholders from throughout an industry. As a result, an event limited to individuals from one of these groups will not necessarily mean the event lacks the diversity of views needed to qualify as a WAG.

- H. Are there additional considerations when an employee is authorized to speak at an event?*

Employees are routinely assigned to speak at events in their official capacity. Event sponsors generally do not charge speakers to attend on the day they are speaking, and OGE has long viewed the waiver of an attendance fee on such days as a gift neither to the employee nor to their agency. Questions often arise, however, as to whether an employee can accept free attendance on non-speaking days.

1. *If the employee is speaking officially at an event, is free attendance on the day they are presenting considered a gift?*

No. If the employee is assigned to present information on behalf of their agency at the event, then attendance on the day they are presenting at the event is not a gift.⁷⁰

2. *What type of speaking qualifies for the exclusion?*

An employee is “speaking” for the agency when they are assigned to formally present information on behalf of their agency.⁷¹ This includes, for example, presenting during a panel presentation, roundtable discussion, fireside chat, or keynote address. An employee is not considered to be speaking at an event simply because they have an opportunity to discuss official matters with other attendees.⁷²

3. *Can an employee accept free attendance for days other than the speaking day?*

An employee may be able to accept attendance to an event on days other than their speaking day under a separate gift exception, including the WAG exception.⁷³ Although free attendance is not considered a gift on the day the employee is speaking, additional days of

⁷⁰ 5 C.F.R. § 2635.203(b)(8).

⁷¹ *See id.*

⁷² *See, e.g., id.*, ex. 3.

⁷³ If an event is held outside of the employee’s duty station, free attendance is seen as a gift to the agency and must generally be accepted under 31 U.S.C. § 1353.

attendance are a separate thing of value, and agency designees must make a separate gift acceptance determination for non-speaking days.

4. *Can an employee accept a free meal offered to other speakers?*

Free attendance to an event only includes meals that are an integral part of the event and available to all attendees.⁷⁴ Generally, free attendance does not include meals that are only provided to a subset of attendees.⁷⁵ This is true even if many attendees will also be at the separate meal. The only exception is when the sponsor has provided a separate meal for speakers or presenters at the event. In this situation, the employee may accept the free meal, even if the meal is not integral to the event and is not available to all attendees.⁷⁶

5. *Can an employee receive a free meal for speakers on a day an employee isn't speaking?*

Only meals that are provided to speakers on the day they are speaking are part of a gift of "free attendance" that is excluded from the scope of the gift regulations.⁷⁷ All other meals, constitute a gift to the employee and must be accepted, if at all, consistent with another gift exception. For example, if the employee has been authorized to attend the entire event as a WAG, the employee can accept a speakers' meal provided by the sponsor at any time.⁷⁸ Likewise, the employee may also be authorized to attend just the speakers' meal if it otherwise meets the definition of a WAG, or it meets another exception, for example where the meal has a market value of \$20 or less and is otherwise consistent with 5 C.F.R. § 2635.204(a).⁷⁹

6. *Can an employee attend a collateral meal or reception to an approved WAG?*

Meals and receptions that are separate from, and collateral to, a WAG would need to be considered separately from the original WAG authorization.⁸⁰

III. Conclusion

Federal executive branch employees are commonly invited to a variety of events. Whether these events qualify for the WAG exception depends not only on the nature of the event, but also on the agency's interest in the employee attending and the risk that their attendance may result in the employee being or appearing to be improperly influenced in the performance of their duties. Agency designees should apply the guidance in this Legal Advisory when considering whether the criteria of the WAG exception have been met. Ethics officials with questions on this Legal Advisory should reach out to their OGE Desk Officer.

⁷⁴ See 5 C.F.R. §§ 2635.203(b)(8) and 2635.203(g).

⁷⁵ *Id.*

⁷⁶ *Id.* § 2635.203(b)(8), (g).

⁷⁷ *Id.* § 2635.203(b)(8), (g).

⁷⁸ 5 C.F.R. §§ 2635.204(g), 2635.203(g).

⁷⁹ To qualify for the \$20 gift exception, an employee may not accept more than \$50 worth of gifts from the same source in the same calendar year. 5 C.F.R. § 2635.204(a).

⁸⁰ OGE Legal Advisory LA-15-02 (Apr. 6, 2015).