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LEGAL ADVISORY

TO: Designated Agency Ethics Officials

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SUBJECT: Identifying a “Sponsor” under the Gift Rules for Purposes of the Free Attendance Exclusion and the Widely Attended Gatherings Exception

Under the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), the gift rules at 5 C.F.R. part 2635, subpart B, include both an exclusion from the definition of “gift” and an exception to the gift prohibition permitting employees to accept gifts of free attendance at certain events under specified circumstances. *See* 5 C.F.R. § 2635.203(b)(8) (exclusion for free attendance to an event); 5 C.F.R. § 2635.204(g) (exception for widely attended gatherings). The analysis under the exclusion and, in some circumstances, the exception turns on whether the person offering the gift is a sponsor of the event. *See* 5 C.F.R. § 2635.203(b)(8); 5 C.F.R. § 2635.204(g)(3)(iv). The U.S. Office of Government Ethics (OGE) is issuing this Legal Advisory to assist agencies in identifying the sponsor of an event for purposes of this exclusion and this exception.

Under the Standards of Conduct, an executive branch employee may not accept a gift from a prohibited source or a gift given because of the employee’s official position, unless an exception applies. 5 C.F.R. § 2635.202. Among other exclusions, however, the Standards of Conduct exclude from the definition of “gift” an offer of free attendance from the sponsor of an event on a day when the employee is assigned to present information on behalf of the agency. 5 C.F.R. § 2635.203(b)(8). While this exclusion permits an employee to accept free attendance from the event’s sponsor, the exclusion does not permit the employee to accept free attendance from a non-sponsor.¹

Similarly, an exception to the gift prohibition permits an employee to accept a gift of free attendance at a “widely attended gathering” under certain circumstances, whether or not the employee is assigned to present information on behalf of the agency. Free admission to a widely attended gathering falls within the definition of “gift” if the employee is not assigned to present information on behalf of the agency on the date of the free admission. *See* 5 C.F.R. § 2635.203(b). Nevertheless, the exception permits the employee to accept an unsolicited offer of

¹ With regard to the exclusion, the fact that a person has authority to invite an employee to deliver a speech at an event would be evidence that the person is a “sponsor.”



free attendance from the sponsor of the widely attended gathering when an agency designee has determined that (i) the event meets the definition of a “widely attended gathering,” (ii) the employee’s attendance is in the agency’s interest because it will further agency programs and operations, and (iii) the agency’s interest in the employee’s attendance outweighs the concern that the employee may be, or may appear to be, improperly influenced in the performance of official duties. 5 C.F.R. § 2635.204(g)(3)(i)-(iii). When the offer of free attendance comes from a non-sponsor, however, the agency designee must also determine that more than 100 persons are expected to attend the event and that the market value of the gift is \$375² or less.³ 5 C.F.R. § 2635.204(g)(3)(iv).

Therefore, agency ethics officials need guidance on how to identify a sponsor of an event. The term “sponsor” is not defined in the gift rules or in OGE’s prior legal advisories regarding widely attended gatherings. *See, e.g.*, 5 C.F.R. § 2635.203; *see also* OGE Informal Advisory Opinion 07 x 14 (2007).⁴ Over the years, however, OGE has advised agencies that an individual or organization that takes responsibility for actively organizing, planning, and conducting the event will be considered a sponsor of the event for purposes of the gift exclusion at § 2635.203(b)(8) and the exception at § 2635.204(g).⁵ In this context, OGE has also advised that ethics officials should consider the totality of the circumstances.

Certain activities undertaken by an individual or organization support a finding that the individual or organization is a sponsor of an event. For example, a sponsor may perform such activities as determining the topics to be covered, the intended audience, the agenda, the speakers, the date, or the location for the event. A sponsor may also serve as the primary point of contact for questions about an event. While none of these activities is necessarily dispositive, each is informative when considering the totality of the circumstances. The significance of each of these activities in any case is fact-specific, and agency ethics officials are normally in the best position to determine whether an individual or organization is a sponsor of an event.

² The ceiling of the market value of the non-sponsor gifts of free attendance will increase from \$375 to \$390 when OGE issues a final rule revising the executive branch financial disclosure regulation to reflect the retroactive increase of the thresholds for reporting gifts, reimbursements, and travel expenses. This retroactive increase follows the General Service Administration’s increase in the “minimal value” for purposes of the Foreign Gifts and Decorations Act. *See* General Services Administration, GSA Bull. FMR B-41, Foreign Gift and Decoration Minimal Value (2017).

³ Note, however, that appointees who sign the ethics pledge under E.O. 13770 may not accept an offer of free attendance to attend a widely attended gathering from a lobbying organization, regardless of whether that organization is a sponsor or a non-sponsor. In OGE LA 17-02 (2017) OGE clarified that ethics officials’ and employees’ interpreting new E.O. 13770 may continue to rely on OGE’s prior guidance regarding E.O. 13490. *See* OGE Memorandum DO-09-007 (2009), which discusses limitations on the reliance on gift rule exceptions that are applicable to full-time, non-career appointees who are subject to E.O. 13490.

⁴ OGE Informal Advisory Opinion 07 x 14 provides detailed guidance regarding the exception at 5 C.F.R. § 2635.204(g). That advisory discusses the meaning of the term “widely attended gathering,” provides examples of types of events OGE has evaluated over the years, and includes a reminder concerning the financial disclosure requirements applicable to gifts accepted under the widely attended gatherings exception.

⁵ An individual or organization that takes responsibility for actively organizing, planning, and conducting an event can be a sponsor for purposes of applying the § 2635.203(b)(8) gift exclusion and the § 2635.204(g) gift exception even if identified in written materials by a title other than “sponsor,” such as “host” or “underwriter,” because the titles used are not dispositive.

In contrast, merely providing financial support for an event does not make an individual or organization a sponsor of an event. As a practical matter, it may sometimes be difficult for agency ethics officials to distinguish between mere financial contributors and sponsors when written materials associated with an event refer to financial contributors as “partners” or “sponsors.” These labels, however, are not dispositive in determining whether individuals or organizations are sponsors of events for purposes of applying the gift exclusion at § 2635.203(b)(8) or the gift exception at § 2635.204(g). Ethics officials should dig deeper when necessary to learn about the actual role of individuals and organizations in organizing, planning, and conducting events.⁶

The following examples illustrate how agency ethics officials might apply the standard discussed above to identify an event’s sponsor(s).

Example #1: Identifying a sponsor based on information provided in the invitation

An employee of the Corporation for National and Community Service is invited by a volunteers association (Association) to participate in a panel discussion on the first day of a three-day conference on youth volunteerism. The Association has offered to waive the fee for the entire conference for all panelists. The invitation states that the Association is the “host” of the conference, the conference location is the auditorium at the Association’s headquarters, and the point of contact is an employee of the Association. The invitation also has a separate heading listing the names of the conference’s “partners and friends.” In this case, the agency’s ethics officials have sufficient information to reasonably conclude that the Association is responsible for actively organizing, planning, and conducting the event and that the Association is, therefore, the sponsor of the event. The agency’s ethics officials may reasonably rely on the information provided, even though the invitation uses the term “host” instead of “sponsor.” The employee may accept the free attendance under the exclusion at § 2635.203(b)(8) on the day the employee is presenting as a panel member if the agency assigns the employee to participate on the panel. The agency’s ethics officials may also consider authorizing the employee to accept the gift of free attendance for the entire conference if they determine that the event meets the criteria for the widely attended gatherings exception at § 2635.204(g).

Example #2: Identifying a sponsor when multiple organizations are co-sponsors

A shipping company offers a newly-appointed Department of Commerce employee free attendance at a panel discussion on procurement regulations. The shipping company and a trade association are listed as the sponsors of the panel discussion. The event will be held at a convention center, and an employee of the trade association is listed as the point of contact. When the ethics official contacts the trade association, the association informs the ethics official that tickets to the event cost \$450 and over 100 people are expected to attend. In addition, the ethics official is informed that both the shipping company and the trade association participated

⁶ Whether or not the source of funding for an employee’s free attendance at a widely attended gathering is a sponsor of the event, ethics officials should be mindful that the identity of the source of funding may also be relevant to determining whether the employee’s acceptance of the gift would cause a reasonable person to question the employee’s integrity or impartiality. *See* 5 C.F.R. § 2635.201(b).

in organizing, planning, and conducting the event. In this situation, the agency's ethics officials could reasonably conclude that the shipping company and the trade association are co-sponsors of the event. If the agency decides that the employee's attendance is in the interest of the agency and meets the other criteria for the widely attended gatherings exception at § 2635.204(g), the employee may accept the gift of free attendance from the shipping company even though the shipping company is only one of the event's sponsors.

Example #3: Determining whether a financial contributor is also a sponsor after obtaining additional information

An information technology (IT) company offers an employee who is an IT security specialist in the Department of Labor free attendance at an IT security event. The cost to attend the event is \$400. The employee is interested in attending the event because the keynote speaker has written several noteworthy articles concerning government IT security issues. An agency designee determines that the employee's attendance is in the agency's interest. The conference website identifies the IT company that offered the employee free attendance as a "Gold Sponsor." An agency ethics official calls the point of contact listed on the conference website, who explains that the companies listed as Silver, Gold, and Platinum Sponsors have provided financial support and will have information booths set up at the conference. However, the point of contact confirms that these companies are not involved in organizing, planning, and conducting the event. With this additional information, the agency's ethics officials could reasonably determine that the IT company is not a sponsor for purposes of the gift exception at § 2635.204(g). Based on the determination that the IT company is not a sponsor of the event, the agency may not authorize the employee to accept the gift of free attendance because the market value of the gift is greater than \$375. *See* 5 C.F.R. §2635.204(g)(3)(iv).

Example #4: Determining that the actual source of a gift is a non-sponsor

An airline industry association that is a prohibited source has planned a two-day seminar to be held in Washington, D.C. The seminar will focus on airline safety, and the association has invited speakers from several aviation security firms. The association is charging a \$500 admission fee and anticipates approximately 600 attendees. The association has organized, planned, and conducted the event. An airline pays the association \$2,500 to cover the admission fees for five attendees and designates five Department of Transportation employees to attend the event free of charge. The industry association then contacts these five agency employees and offers them the gift of free attendance. An agency ethics official contacts the industry association and learns that the admission fees were actually covered by the airline and that the airline has not been involved in organizing, planning, and conducting the event. Under 5 C.F.R. § 2635.204(g)(5), the tickets in this case are considered to be from the airline rather than the association. Because the airline is merely a financial contributor, the airline is not a sponsor of the event. Therefore, the agency may not authorize the employees to accept the gift of free attendance from the airline, inasmuch as the market value of the gift is greater than \$375.