

WIDELY-ATTENDED GATHERING REQUEST

An employee offered free attendance to an event where their participation may be in the interest of the DoD, but where the invitation is offered because of their official position or comes from a “prohibited source,” must first obtain written approval. 5 C.F.R. § 2635.204(g)(1), (3). In most cases, approval may be given by the employee’s supervisor, after consultation with an ethics counselor. Supervisors should consider the following information in determining whether there is an agency interest in approving the employee’s attendance.

General Rule: 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. 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. An exception exists, however, for certain widely attended events.

Gift Exception: An employee may accept an unsolicited offer of 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). However, there are limitations to the gift that may be accepted:

(1) “Free attendance” does not include travel or lodging expenses, such as hotel, car, or flight. Unless the Government has traveled the employee to the location for business or professional reasons, travel, necessary lodging, and other expenses are to be borne by the employee. Another consideration is that the employee must take leave to attend the event.

(2) The exception does permit a waiver of all or part of any attendance fee, as well as food, refreshments, entertainment, instruction and materials "furnished to all attendees as an integral part of the event." § 2635.204(g)(4). However, the exception does not cover "entertainment collateral to the event, or meals taken other than in a group setting with all other attendees."

Agency Designee: The written determination must be made by the first supervisor in the employee’s chain of command who is either (a) a commissioned military officer or (b) a civilian (not a contractor) above the grade of GS-11. The agency designee must consult with an ethics counselor. If the requester is a military officer in grade O-7 or above who is in command or a civilian Presidential appointee confirmed by the Senate, the agency designee is the ethics counselor. JER 1-202, DoD 5500.7-R.

Gift Exclusion: 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. §

Rev (October 2017)

2635.203(b)(8). Official participation that requires the presentation of information does not need formal approval. 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.

Detailed Criteria for Approval (5 C.F.R. 2635.204(g)(3)): The agency designee must find that:

(1) The event is a widely attended gathering. That is, a large number of persons with a diversity of views or interests are expected to be present, and there will be an opportunity to exchange ideas and views with other attendees (5 C.F.R. 2635.204(g)(2)); and

(2) The employee's attendance at the event is in the agency's interest because it will further agency programs or operations (5 C.F.R. 2635.204(g)(3)(ii)); and

(3) 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)(iii)); and

(4) If 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 is expected to be attended by more than 100 persons and the value of the gift of free attendance does not exceed \$375 (5 C.F.R. 2635.204(g)(3)(iv)) .

Determination of Agency Interest (5 C.F.R. 2635.204(g)(4)): In determining whether 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, the agency designee may consider relevant factors including:

(1) The importance of the event to the agency;

(2) 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;

(3) The purpose of the event;

(4) The identity of other expected participants;

(5) Whether acceptance would reasonably create the appearance that the donor is receiving preferential treatment;

(6) Whether the Government is also providing persons with views or interests that differ from those of the donor with access to the Government; and

(7) The market value of the gift of free attendance.

Accompanying spouse or other guest (5 C.F.R. 2635.204(g)(6)): When others in attendance will generally be accompanied by a spouse or other guest, and where the invitation is from the same person who has invited the employee, the agency designee may authorize an employee to accept an unsolicited invitation of free attendance to an accompanying spouse or one other accompanying guest to participate in all or a portion of the event. This authorization must be in writing.

Examples:

A medical non-profit association that is a prohibited source sponsors an industry-wide, two-day seminar for which it charges a fee of \$200 and anticipates attendance of approximately 400 medical professionals from the private sector and state and federal governments. The non-profit has invited a USU faculty member to attend the seminar free of charge. The employee may accept the gift of free attendance if the employee's attendance is determined to be in the interest of USU and/or DoD and she receives a written authorization from the agency designee.

A medical non-profit association that is a prohibited source sponsors an industry-wide, two-day seminar for which it charges a fee of \$800 and anticipates attendance of approximately 400 medical professionals. A DoD contractor pays \$4,000 to the association so that the association can extend free invitations to five USU employees designated by the contractor. The employees may not accept the gifts of free attendance because (a) the contractor, rather than the association, provided the cost of their attendance; (b) the contractor designated the specific employees to receive the gift of free attendance; and (c) the value of the gift exceeds \$375 per employee.

A USU employee is invited by a medical non-profit organization to attend a conference sponsored by an association of hospitals. Tickets for the conference cost \$375 per person and attendance is limited to 400 representatives of the non-profit organizations and their guests. If the employee's attendance is determined to be in the interest of the agency and she receives a written authorization from the agency designee, she may accept the invitation from the non-profit organization because more than 100 persons will attend and the cost of the ticket does not exceed \$375. However, if the invitation were extended to the employee and an accompanying guest, the employee's guest could not be authorized to attend for free because the market value of the gift of free attendance would exceed \$375.

A USU faculty member is authorized to speak on the first day of a four-day conference on military operational medicine. She may accept the sponsor's waiver of the conference fee for the first day of the conference under 5 C.F.R. § 2635.203(b)(8) without seeking approval from the agency designee. If the conference is widely attended, the faculty member may be authorized to accept the sponsor's offer to waive the attendance fee for the remainder of the conference if the agency designee has made a written determination that attendance is in the agency's interest.

A military officer has been approved by the agency designee to attend a widely attended gathering that will be held in the same city as the officer's duty station. The defense contractor sponsoring the event has offered to transport the officer in a limousine to the event. The officer may not accept the offer of transportation because the definition of "free attendance" excludes travel, and the market value of the transportation would exceed \$20.