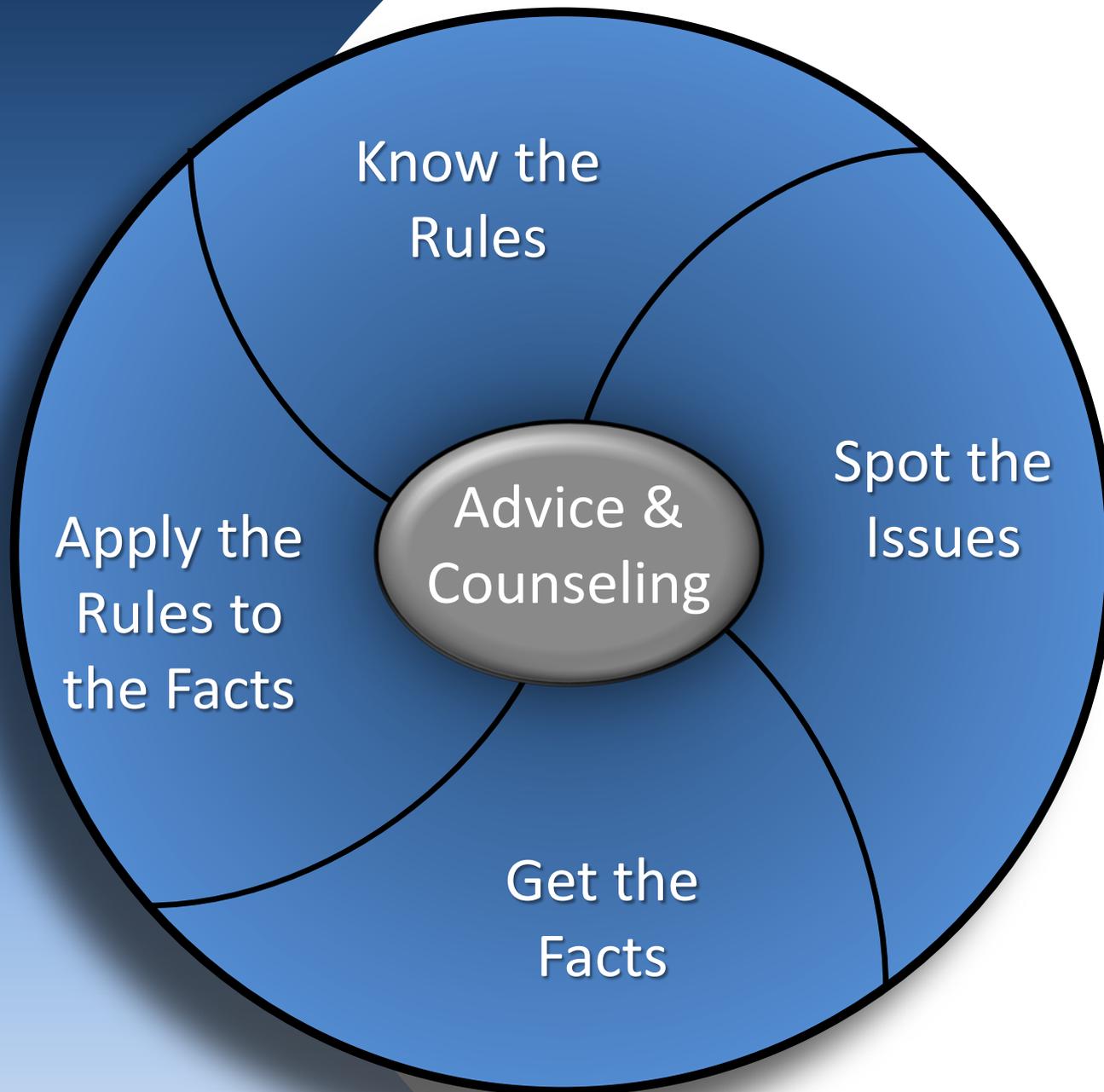


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Understanding Gifts Exceptions Part I



Know the
Rules

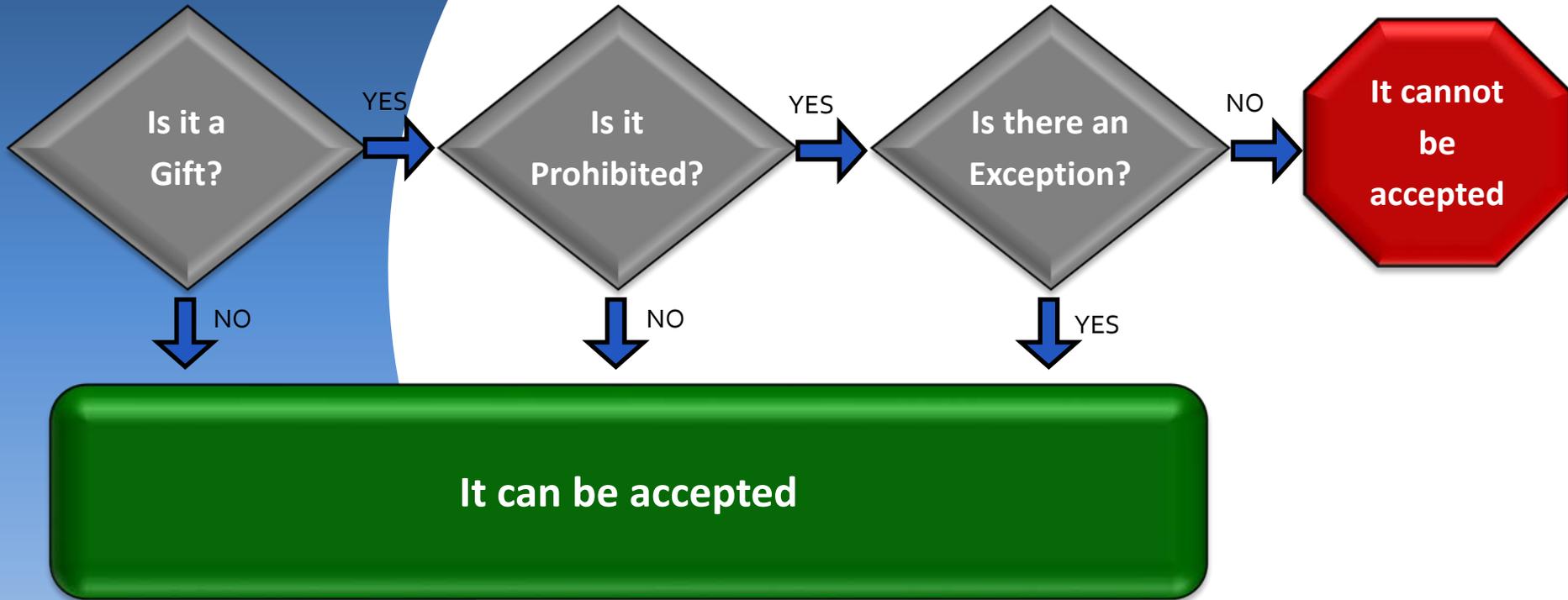
Spot the
Issues

Advice &
Counseling

Get the
Facts

Apply the
Rules to
the Facts

Gifts Analysis



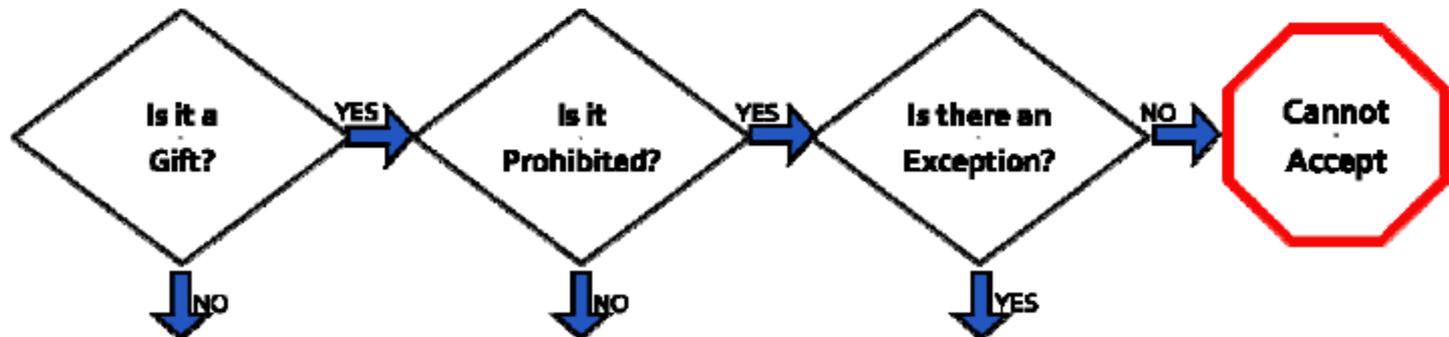
REFERENCE

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- ❖ Analyze*
 - Review relevant authorities
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 - Review any relevant AOs and/or DOs, AND agency specific guidance
- ❖ Communicate advice and counsel to EE in a way the EE can understand

Note: May need to solicit additional information from EE at various points in the process

GIFTS FROM OUTSIDE SOURCES



Gifts of \$20 or less

Exception to the

PROHIBITION



**Gifts Based on a Personal
Relationship Exception to
the PROHIBITION**



**Discounts and Similar
Benefits Exception to
the PROHIBITION**

**Awards and Honorary
Degrees Exception to
the PROHIBITION**



Questions?

Stayed tuned for:

**Understanding
Gifts Exceptions
Part II**

It's here.

National Government Ethics Summit

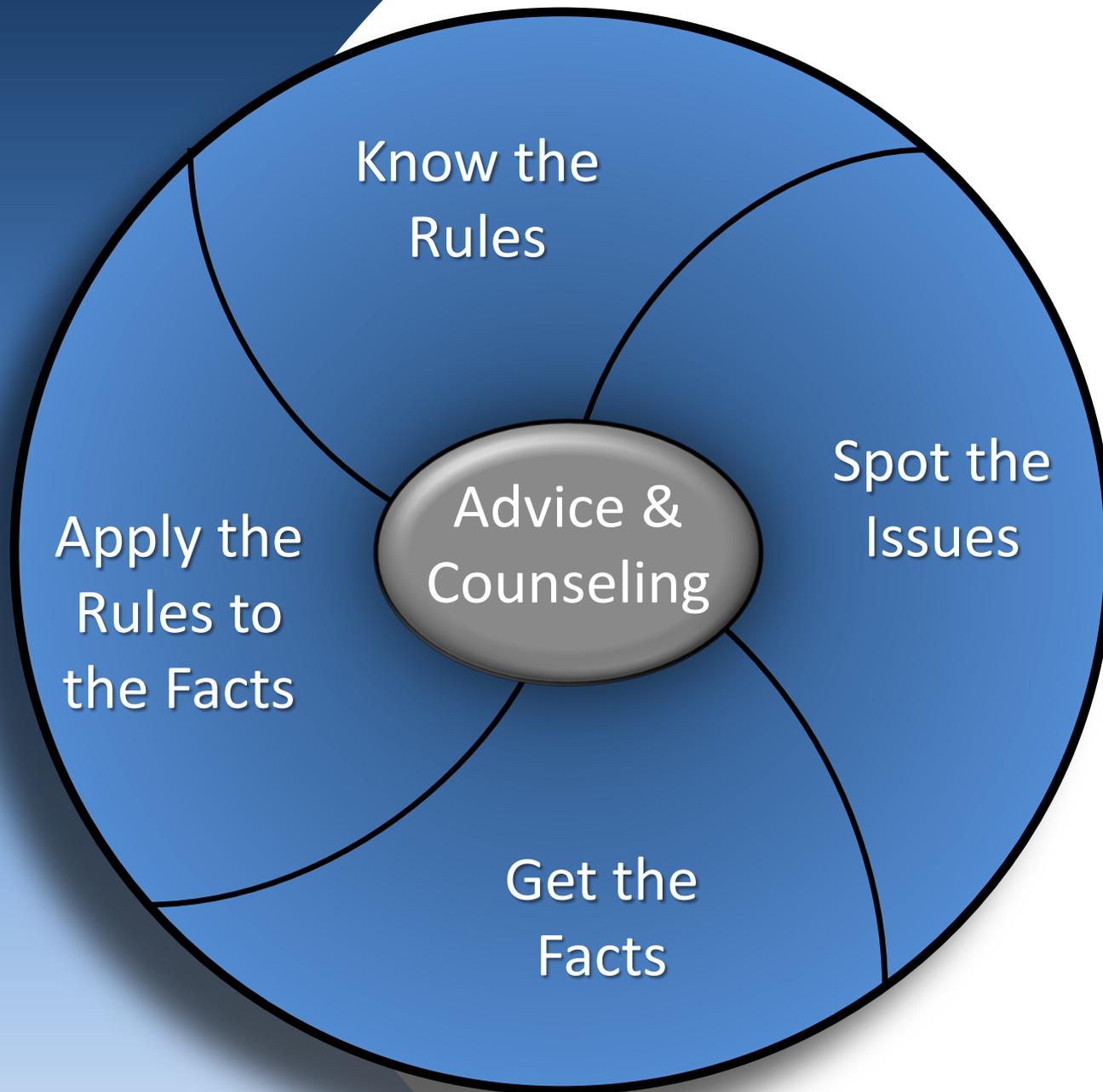
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Understanding Gifts Exceptions Part II



Know the
Rules

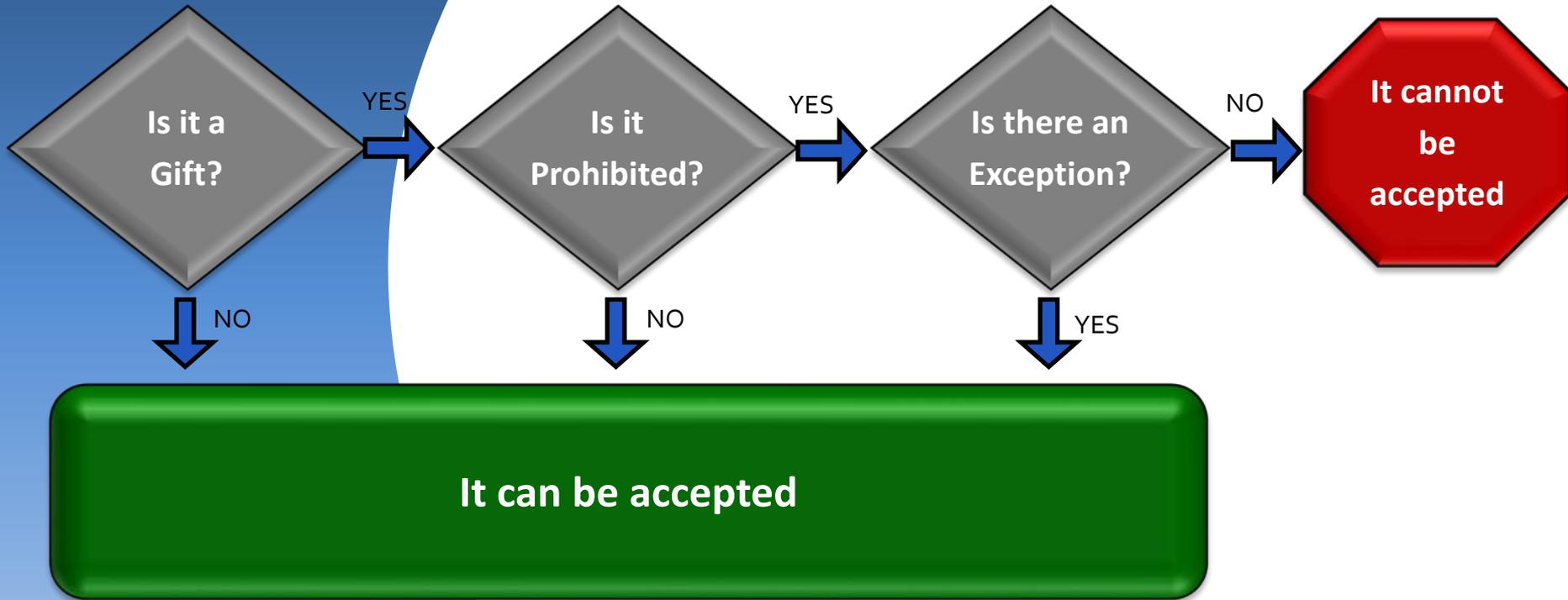
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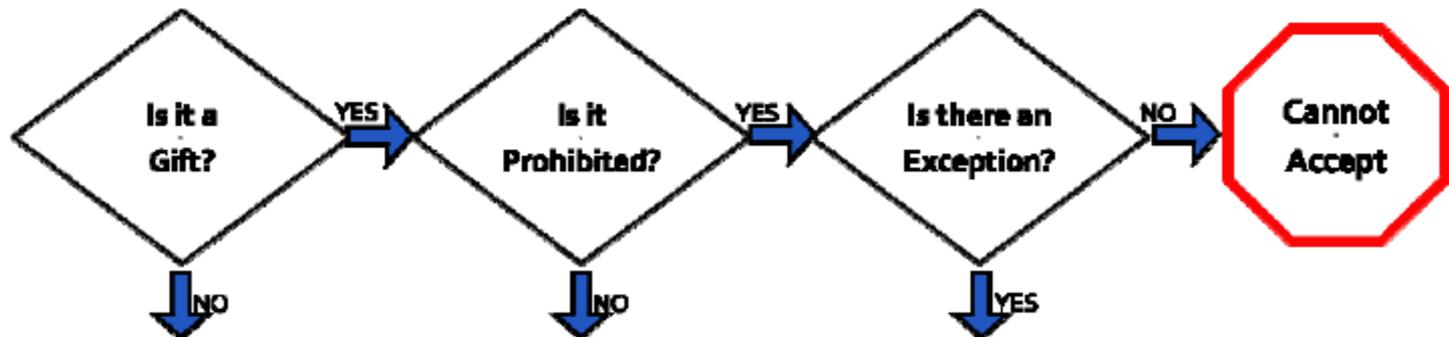
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GIFTS FROM OUTSIDE SOURCES





**Gifts Based on Outside
Business or Employment
Relationships Exception to
the PROHIBITION**

**Gifts in Connection with Political
Activities Permitted by the Hatch Act
Reform Amendments Exception to
the PROHIBITION**

NOTE: The next virtual session will focus exclusively on WAGs.

**Social Invitations from
Persons Other than Prohibited
Sources Exception to the
PROHIBITION**



Questions?

Stayed tuned for:

**Understanding
Gifts Exceptions
Part III**

It's here.

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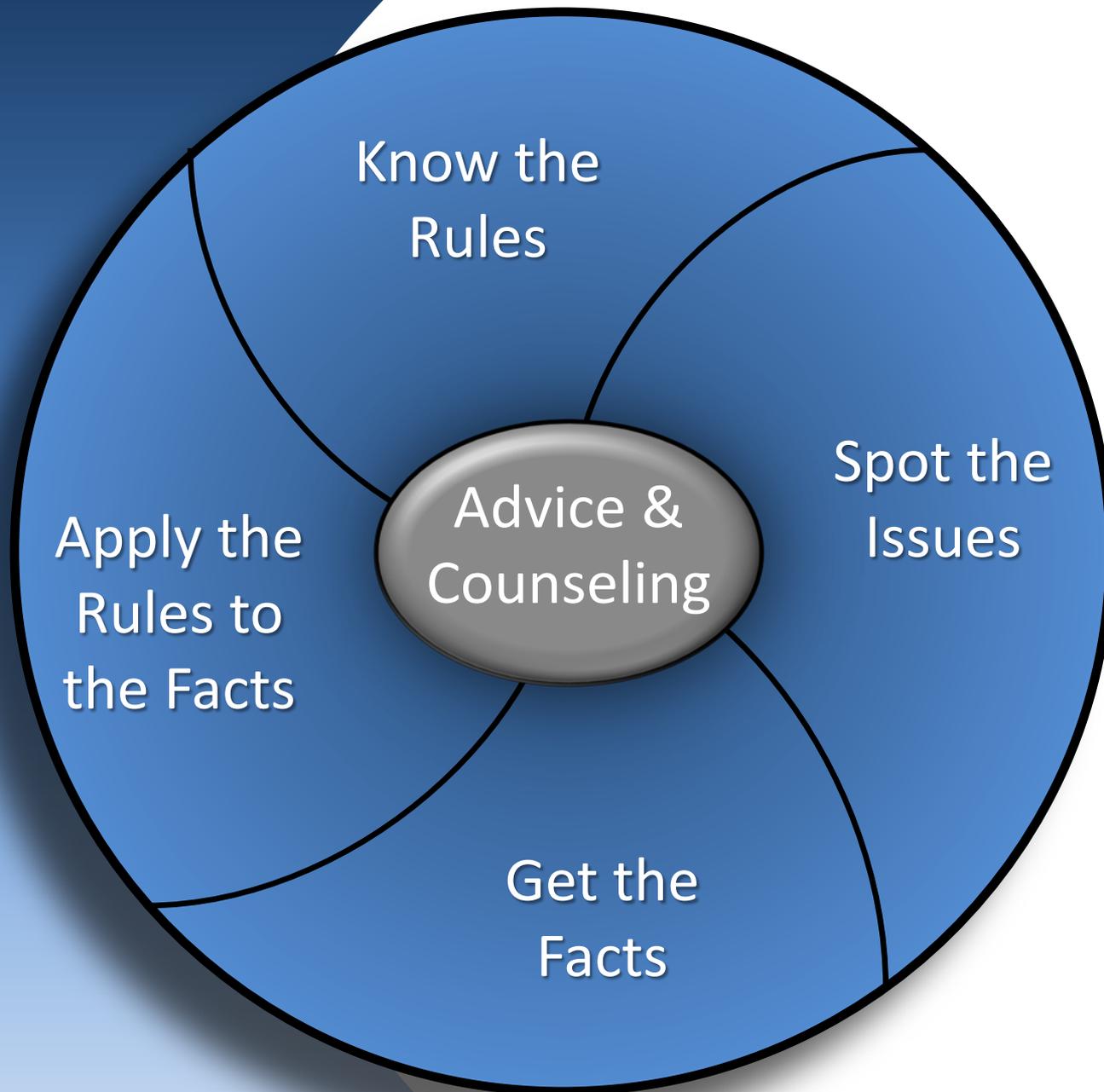
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Understanding Gifts Exceptions Part III



Know the
Rules

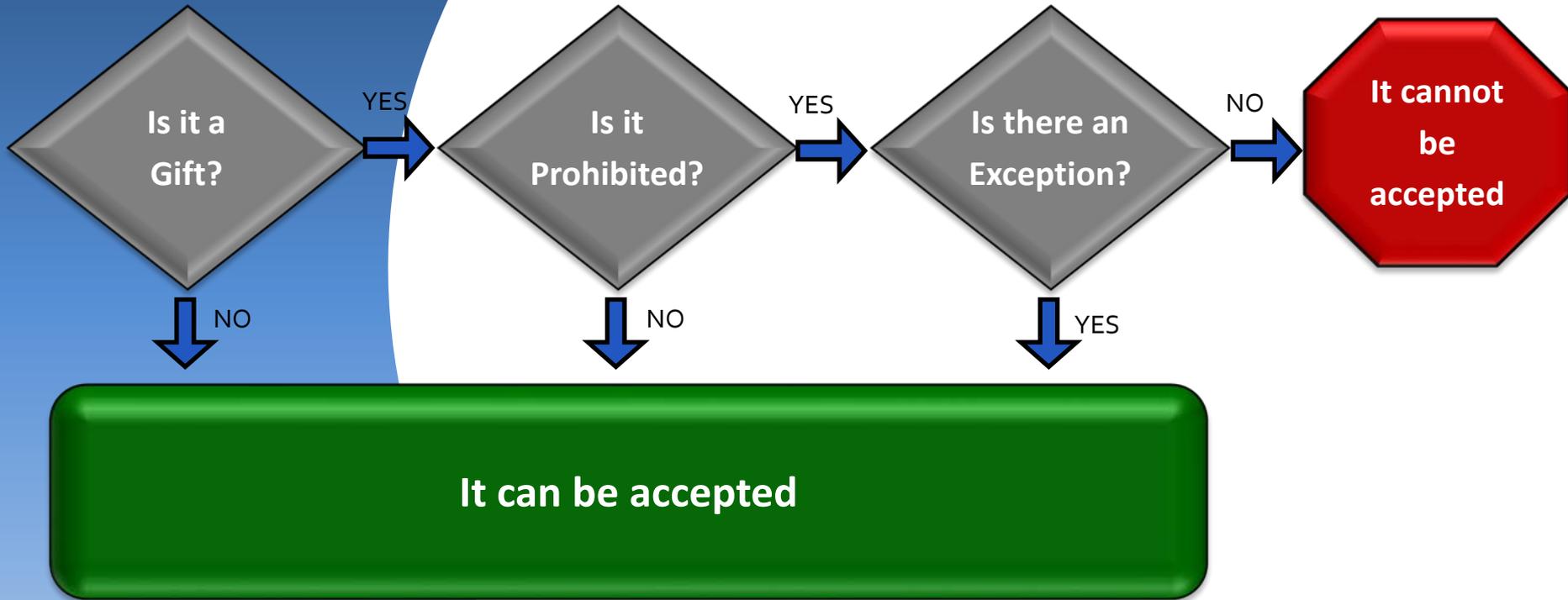
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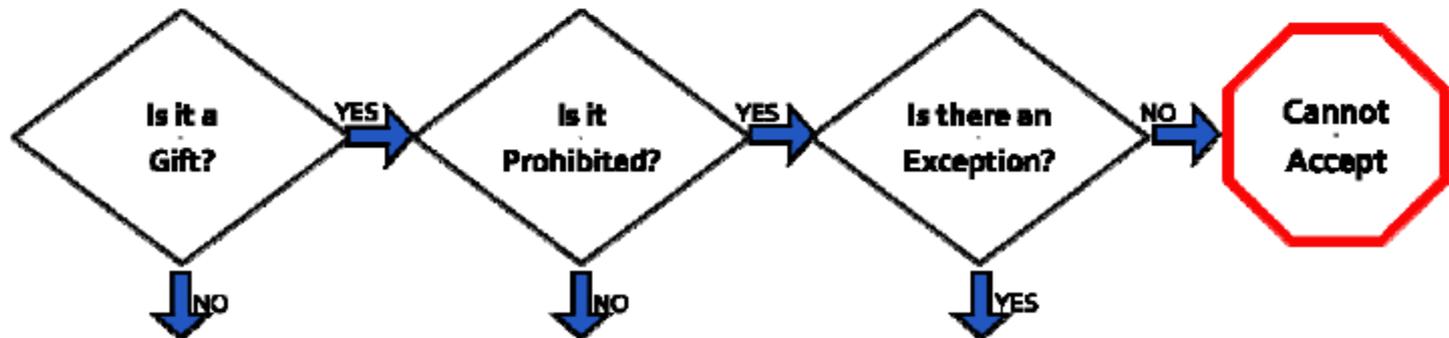
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GIFTS FROM OUTSIDE SOURCES



2635.204(g)(1)

2635.204(g)(2)



The “Sponsor” Problem

(g)(2) and
“Sponsors”

(g)(2) and “Non-Sponsors”



Agency Determinations



Guests



Questions?

Stayed tuned for:

**Understanding
Gifts Exceptions
Part IV**

It's here.

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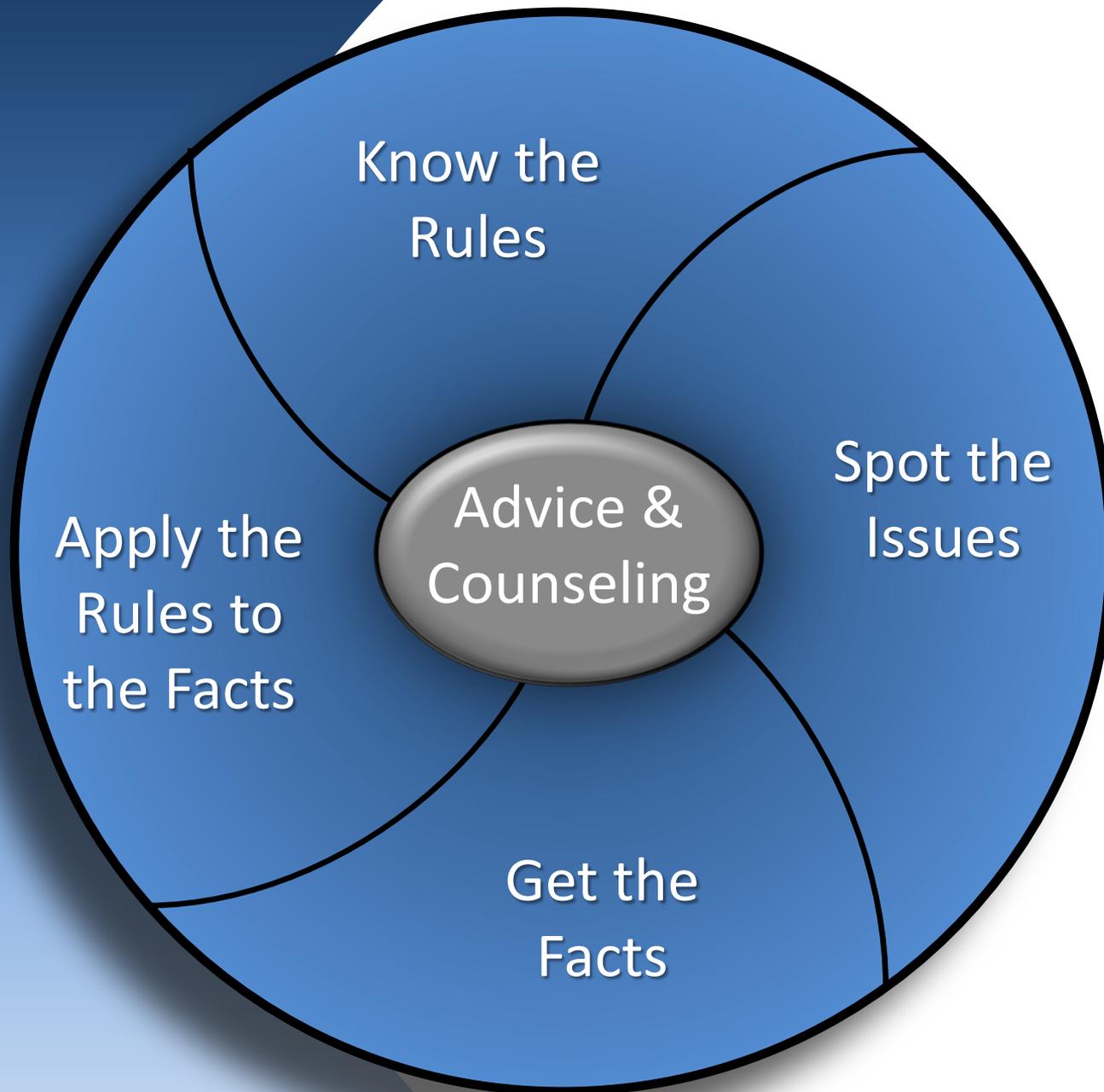
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Understanding Gifts Exceptions Part IV



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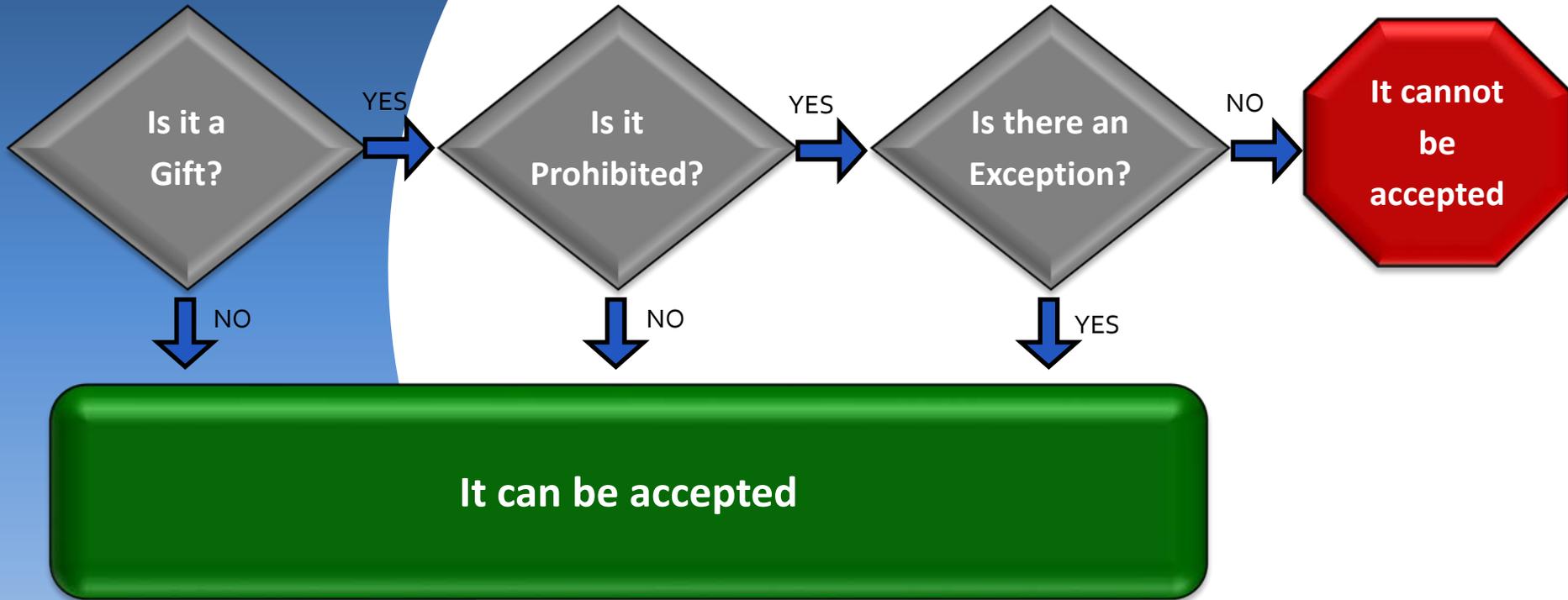
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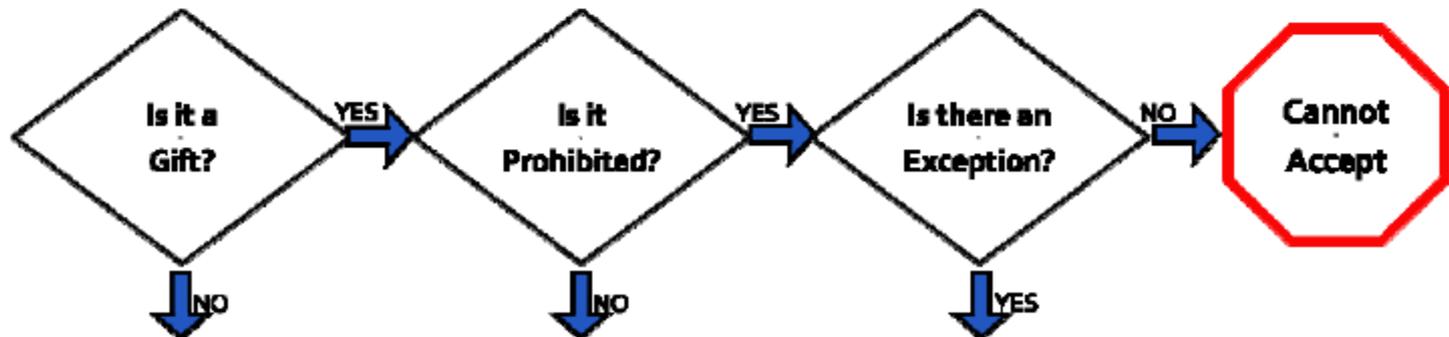
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GIFTS FROM OUTSIDE SOURCES



**Meals, Refreshments,
and Entertainment in
Foreign Areas
Exception to the
PROHIBITION**

**Gifts to the President or
Vice President Exception
to the PROHIBITION**



Gifts Authorized by
Supplemental Agency
Regulation **Exception to the**
PROHIBITION

**Gifts Accepted Under Specific
Statutory Authority Exception
to the PROHIBITION**



Questions?

Thank you.

It's here.

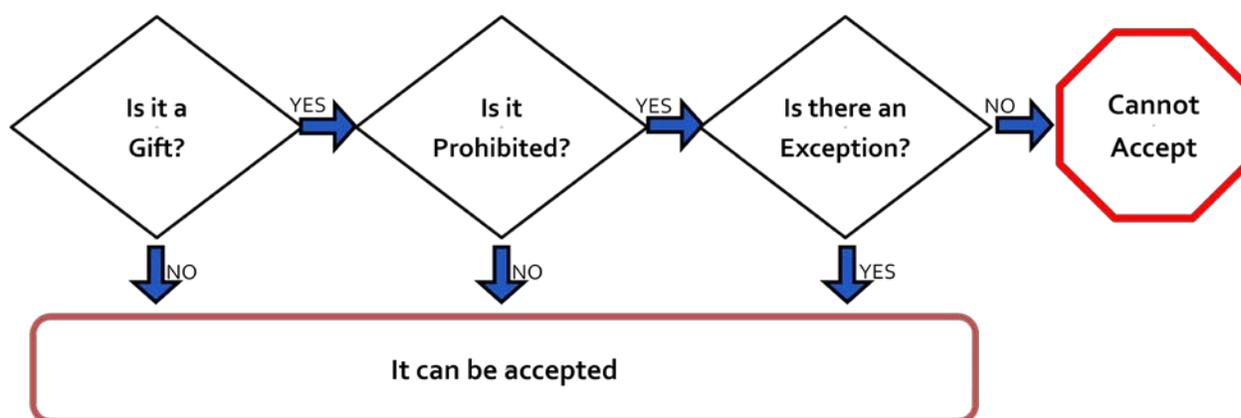
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 - ❖ **Analyze***
 - Review relevant authorities
 - Review previous advice given by your office/agency on the issue
 - Review any relevant AOs and/or DOs, AND agency specific guidance
 - ❖ **Communicate advice and counsel to EE** in a way the EE can understand
- Note: May need to solicit additional information from EE at various points in the process*

GIFTS FROM OUTSIDE SOURCES



Exclusions

- | | |
|---------------------------|----------------------------|
| 1. Modest food items | 5. Rewards/prizes |
| 2. Presentation items | 6. Pensions/Other benefits |
| 3. Loans | 7. Paid by Government |
| 4. Benefits/Opportunities | 8. Statutory authority |
| | 9. Market Value Paid |

Exceptions

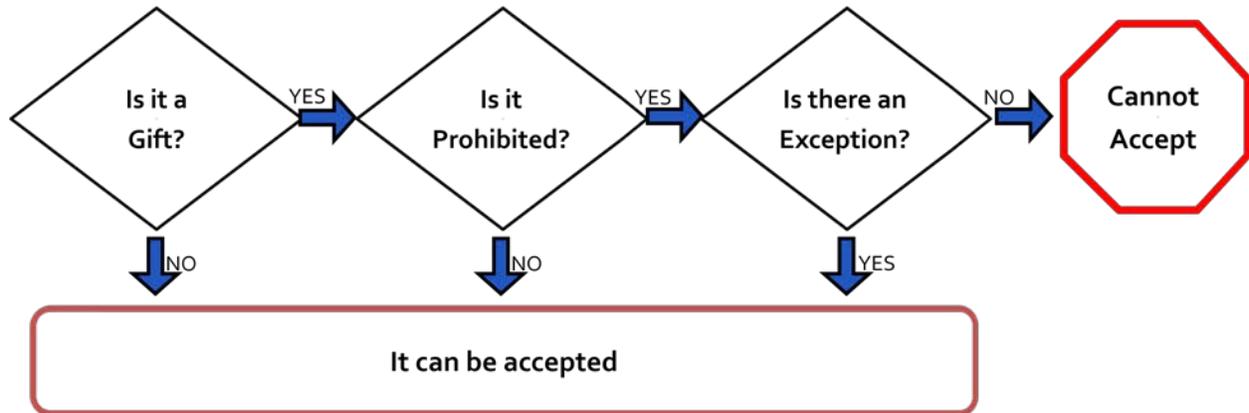
- | | |
|--------------------------------|-------------------------------|
| a) \$20 or Less | g) Widely Attended Gatherings |
| b) Personal Relationship | h) Social Invitations |
| c) Discounts/Similar Benefits | i) Foreign Areas |
| d) Awards & Honorary Degrees | j) President / Vice-President |
| e) Outside Business/Employment | k) Supplemental Regulation |
| f) Political Activities | l) Statutory authority |

RESOURCES

5 CFR part 2635, Subparts B (Gifts from Outside Sources) and C (Gifts Between Employees)

DAEOgrams (DO) and Advisory Opinions (AO) on Common Gift Issues: WAGs: DO-07-047 (and DO-08-010); Prizes as Gifts: DO-99-017; Awards: DO-04-011; Commercial Discounts & Benefits: AO 99x1; Employee Purchase Program: AO 06x11; Provided Transportation: AO 98x8

ANALYSIS FOR GIFTS FROM OUTSIDE SOURCES



Exclusions

- | | |
|---------------------------|----------------------------|
| 1. Modest food items | 5. Rewards/prizes |
| 2. Presentation items | 6. Pensions/Other benefits |
| 3. Loans | 7. Paid by Government |
| 4. Benefits/Opportunities | 8. Statutory authority |
| | 9. Market Value Paid |

Prohibitions

Standards of Conduct

An employee may not accept a gift:

1. from a prohibited source; or
2. given because of official position

Ethics Pledge

An employee may not accept a gift:

1. from a registered lobbyist, (does not include 501(c)(3) or media organizations unless the organization employee offering the gift is a registered lobbyist himself)

Exceptions

- | | |
|--|--------------------------------------|
| a) \$20 or Less | g) Widely Attended Gatherings |
| b) Personal Relationship | h) Social Invitations |
| c) Discounts/Similar Benefits | i) Foreign Areas |
| d) Awards & Honorary Degrees | j) President / Vice-President |
| e) Outside Business/Employment* | k) Supplemental Regulation |
| * only (1) and (3) | |
| f) Political Activities | l) Statutory authority |

RESOURCES

5 CFR part 2635, Subpart B (Gifts from Outside Sources) and E.O. 13490, Paragraph 1 (Ethics Pledge)

DAEOgrams (DO) and Advisory Opinions (AO) on Common Gift Issues: Lobbyist Gift Ban Guidance: DO-09-007; WAGs: DO-07-047 (and DO-08-010); Prizes as Gifts: DO-99-017; Awards: DO-04-011; Commercial Discounts & Benefits: AO 99x1; Employee Purchase Program: AO 06x11; Provided Transportation: AO 98x8

The Ethics Scorecard: Gifts

1. Is it a Gift?

No

- Modest Food Item
- Presentation Item
- Greeting Card
- Commercial Loan
- Discount Available to the Public
- Reward/Prize Open to the Public
- Pension/Continuing Benefit
- Gov't Paid For/Accepted
- Employee Paid For

Yes

2. Is it Prohibited?

No

Yes

- Employee Solicited Gift†
- It's From a Prohibited Source:
 - Seeking Official Action from Agency
 - Has Business Before Agency
 - Is Regulated by Agency; or
 - Has Interests that may be affected by Employee's Duties
- It was Given Because of Official Position
- It is from a Lobbyist*

**FLIP OVER FOR EXCEPTIONS
TO THE RULE!**

3. Does an Exception Apply?

Yes

- De Minimis (\$20 per occasion/\$50 per year) ◇
- Personal Relationship
- Discount or Similar Benefit
- Award or Honorary Degree◇
- Gift Based on Spousal Outside Employment
- Gift Based on Personal Outside Employment◇
- Customary Gift From Future Employer
- Political Activity
- Official Speech
- Widely Attended Gathering
- Social Invitation from Non-Prohibited Source◇
- Gift in Foreign Area◇
- Gift to President/VP
- Permitted Under Supplemental Regulation
- Permitted Under Statutory Exception

No

**If it is a gift, is prohibited, & no
exception applies:
Employee CANNOT Accept.**

†If employee has solicited the gift, he or she cannot rely on an exception.

*Applies if Person is Pledge Signer

◇Not Available if Gift is from Lobbyist.

Subpart B—Gifts From Outside Sources

§2635.201 Overview.

This subpart contains standards that prohibit an employee from soliciting or accepting any gift from a prohibited source or given because of the employee's official position unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in this subpart.

§2635.202 General standards.

(a) *General prohibitions.* Except as provided in this subpart, an employee shall not, directly or indirectly, solicit or accept a gift:

- (1) From a prohibited source; or
- (2) Given because of the employee's official position.

(b) *Relationship to illegal gratuities statute.* Unless accepted in violation of paragraph (c)(1) of this section, a gift accepted under the standards set forth in this subpart shall not constitute an illegal gratuity otherwise prohibited by 18 U.S.C. 201(c)(1)(B).

(c) *Limitations on use of exceptions.* Notwithstanding any exception provided in this subpart, other than §2635.204(j), an employee shall not:

- (1) Accept a gift in return for being influenced in the performance of an official act;
- (2) Solicit or coerce the offering of a gift;
- (3) Accept gifts from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his public office for private gain;

Example 1: A purchasing agent for a Veterans Administration hospital routinely deals with representatives of pharmaceutical manufacturers who provide information about new company products. Because of his crowded calendar, the purchasing agent has offered to meet with manufacturer representatives during his lunch hours Tuesdays through Thursdays and the representatives routinely arrive at the employee's office bringing a sandwich and a soft drink for the employee. Even though the market value of each of the lunches is less than \$6 and the aggregate value from any one manufacturer does not exceed the \$50 aggregate limitation in §2635.204(a) on de minimis gifts of \$20 or less, the practice of accepting even these modest gifts on a recurring basis is improper.

(4) Accept a gift in violation of any statute. Relevant statutes applicable to all employees include:

(i) 18 U.S.C. 201(b), which prohibits a public official from seeking, accepting, or agreeing to receive or accept anything of value in return for being influenced in the performance of an official act or for being induced to take or omit to take any action in violation of his official duty. As used in 18 U.S.C. 201(b), the term "public official" is broadly construed and includes regular and special Government employees as well as all other Government officials; and

(ii) 18 U.S.C. 209, which prohibits an employee, other than a special Government employee, from receiving any salary or any contribution to or supplementation of salary from any source other than the United States as compensation for services as a Government employee. The statute contains several specific exceptions to this general prohibition, including an exception for contributions made from the treasury of a State, county, or municipality; or

(5) Accept vendor promotional training contrary to applicable regulations, policies or guidance relating to the procurement of supplies and services for the Government, except pursuant to §2635.204(l).

[57 FR 35041, Aug. 7, 1992; 57 FR 48557, Oct. 27, 1992, as amended at 62 FR 48747, Sept. 17, 1997]

§2635.203 Definitions.

For purposes of this subpart, the following definitions shall apply:

(a) *Agency* has the meaning set forth in §2635.102(a). However, for purposes of this subpart, an executive department, as defined in 5 U.S.C. 101, may, by supplemental agency regulation, designate as a separate agency any component of that department which the department determines exercises distinct and separate functions.

(b) *Gift* includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. It does not include:

(1) Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal;

(2) Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;

(3) Loans from banks and other financial institutions on terms generally available to the public;

(4) Opportunities and benefits, including favorable rates and commercial discounts, available to the public or to a class consisting of all Government employees or all uniformed military personnel, whether or not restricted on the basis of geographic considerations;

(5) Rewards and prizes given to competitors in contests or events, including random drawings, open to the public unless the employee's entry into the contest or event is required as part of his official duties;

(6) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer;

(7) Anything which is paid for by the Government or secured by the Government under Government contract;

NOTE: Some airlines encourage those purchasing tickets to join programs that award free flights and other benefits to frequent fliers. Any such benefit earned on the basis of Government-financed travel belongs to the agency rather than to the employee and may be accepted only insofar as provided under 41 CFR 301-53.

(8) Any gift accepted by the Government under specific statutory authority, including:

(i) Travel, subsistence, and related expenses accepted by an agency under the authority of 31 U.S.C. 1353 in connection with an employee's attendance at a meeting or similar function relating to his official duties which takes place away from his duty station. The agency's acceptance must be in accordance with the implementing regulations at 41 CFR part 304-1; and

(ii) Other gifts provided in-kind which have been accepted by an agency under its agency gift acceptance statute; or

(9) Anything for which market value is paid by the employee.

(c) *Market value* means the retail cost the employee would incur to purchase the gift. An employee who cannot ascertain the market value of a gift may estimate its market value by reference to the retail cost of similar items of like quality. The market value of a gift of a ticket entitling the holder to food, refreshments, entertainment, or any other benefit shall be the face value of the ticket.

Example 1: An employee who has been given an acrylic paperweight embedded with the corporate logo of a prohibited source may determine its market value based on her observation that a comparable acrylic paperweight, not embedded with a logo, generally sells for about \$20.

Example 2: A prohibited source has offered an employee a ticket to a charitable event consisting of a cocktail reception to be followed by an evening of chamber music. Even though the food, refreshments, and entertainment provided at the event may be worth only \$20, the market value of the ticket is its \$250 face value.

(d) *Prohibited source* means 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 performance or nonperformance of the employee's official duties; or

(5) Is an organization a majority of whose members are described in paragraphs (d) (1) through (4) of this section.

(e) A gift is solicited or accepted because of the employee's official position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held the status, authority or duties associated with his Federal position.

NOTE: Gifts between employees are subject to the limitations set forth in subpart C of this part.

Example 1: Where free season tickets are offered by an opera guild to all members of the Cabinet, the gift is offered because of their official positions.

Example 2: Employees at a regional office of the Department of Justice (DOJ) work in Government-leased space at a private office building, along with various private business tenants. A major fire in the building during normal office hours causes a traumatic experience for all occupants of the building in making their escape, and it is the subject of widespread news coverage. A corporate hotel chain, which does not meet the definition of a prohibited source for DOJ, seizes the moment and announces that it will give a free night's lodging to all building occupants and their families, as a public goodwill gesture. Employees of DOJ may accept, as this gift is not being given because of their Government positions. The donor's motivation for offering this gift is unrelated to the DOJ employees' status, authority or duties associated with their Federal position, but instead is based on their mere presence in the building as occupants at the time of the fire.

(f) A gift which is solicited or accepted indirectly includes a gift:

(1) Given with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person's relationship to the employee, or

(2) Given to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee, except as permitted for the disposition of perishable items by §2635.205(a)(2).

Example 1: An employee who must decline a gift of a personal computer pursuant to this subpart may not suggest that the gift be given instead to one of five charitable organizations whose names are provided by the employee.

(g) *Vendor promotional training* means training provided by any person for the purpose of promoting its products or services. It does not include training provided under a Government contract or by a contractor to facilitate use of products or services it furnishes under a Government contract.

[57 FR 35042, Aug. 7, 1992, as amended at 60 FR 51667, Oct. 3, 1995; 63 FR 69993, Dec. 18, 1998; 64 FR 2422, Jan. 14, 1999; 72 FR 16986, Apr. 6, 2007]

§2635.204 Exceptions.

The prohibitions set forth in §2635.202(a) do not apply to a gift accepted under the circumstances described in paragraphs (a) through (l) of this section, and an employee's acceptance of a gift in accordance with one of those paragraphs will be deemed not to violate the principles set forth in §2635.101(b), including appearances. Even though acceptance of a gift may be permitted by one of the exceptions contained in paragraphs (a) through (l) of this section, it is never inappropriate and frequently prudent for an employee to decline a gift offered by a prohibited source or because of his official position.

(a) *Gifts of \$20 or less.* An employee may accept unsolicited gifts having an aggregate market value of \$20 or less per source per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph shall not exceed \$50 in a calendar year. This exception does not apply to gifts of cash or of investment interests such as stock, bonds, or certificates of deposit. Where the market value of a gift or the aggregate market value of gifts offered on any single occasion exceeds \$20, the employee may not pay the excess value over \$20 in order to accept that portion of the gift or those gifts worth \$20. Where the aggregate value of tangible items offered on a single occasion exceeds \$20, the employee may decline any distinct and separate item in order to accept those items aggregating \$20 or less.

Example 1: An employee of the Securities and Exchange Commission and his spouse have been invited by a representative of a regulated entity to a Broadway play, tickets to which have a face value of \$30 each. The aggregate market value of the gifts offered on this single occasion is \$60, \$40 more than the \$20 amount that may be accepted for a single event or presentation. The employee may not accept the gift of the evening of entertainment. He and his spouse may attend the play only if he pays the full \$60 value of the two tickets.

Example 2: An employee of the Defense Mapping Agency has been invited by an association of cartographers to speak about his agency's role in the evolution of missile technology. At the conclusion of his speech, the association presents the employee a framed map with a market value of \$18 and a book about the history of cartography with a market value of \$15. The employee may accept the map or the book, but not both, since the aggregate value of these two tangible items exceeds \$20.

Example 3: On four occasions during the calendar year, an employee of the Defense Logistics Agency was given gifts worth \$10 each by four employees of a corporation that is a DLA contractor. For purposes of applying the yearly \$50 limitation on gifts of \$20 or less from any one person, the four gifts must be aggregated because a person is defined at §2635.102(k) to mean not only the corporate entity, but its officers and employees as well. However, for purposes of applying the \$50 aggregate limitation, the employee would not have to include the value of a birthday present received from his cousin, who is employed by the same corporation, if he can accept the birthday present under the exception at §2635.204(b) for gifts based on a personal relationship.

Example 4: Under the authority of 31 U.S.C. 1353 for agencies to accept payments from non-Federal sources in connection with attendance at certain meetings or similar functions, the Environmental Protection Agency has

accepted an association's gift of travel expenses and conference fees for an employee of its Office of Radiation Programs to attend an international conference on "The Chernobyl Experience." While at the conference, the employee may accept a gift of \$20 or less from the association or from another person attending the conference even though it was not approved in advance by the EPA. Although 31 U.S.C. 1353 is the only authority under which an agency may accept gifts from certain non-Federal sources in connection with its employees' attendance at such functions, a gift of \$20 or less accepted under §2635.204(a) is a gift to the employee rather than to his employing agency.

Example 5: During off-duty time, an employee of the Department of Defense (DOD) attends a trade show involving companies that are DOD contractors. He is offered a \$15 computer program disk at X Company's booth, a \$12 appointments calendar at Y Company's booth, and a deli lunch worth \$8 from Z Company. The employee may accept all three of these items because they do not exceed \$20 per source, even though they total more than \$20 at this single occasion.

(b) *Gifts based on a personal relationship.* An employee may accept a gift given under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.

Example 1: An employee of the Federal Deposit Insurance Corporation has been dating a secretary employed by a member bank. For Secretary's Week, the bank has given each secretary 2 tickets to an off-Broadway musical review and has urged each to invite a family member or friend to share the evening of entertainment. Under the circumstances, the FDIC employee may accept his girlfriend's invitation to the theater. Even though the tickets were initially purchased by the member bank, they were given without reservation to the secretary to use as she wished, and her invitation to the employee was motivated by their personal friendship.

Example 2: Three partners in a law firm that handles corporate mergers have invited an employee of the Federal Trade Commission to join them in a golf tournament at a private club at the firm's expense. The entry fee is \$500 per foursome. The employee cannot accept the gift of one-quarter of the entry fee even though he and the three partners have developed an amicable relationship as a result of the firm's dealings with the FTC. As evidenced in part by the fact that the fees are to be paid by the firm, it is not a personal friendship but a business relationship that is the motivation behind the partners' gift.

(c) *Discounts and similar benefits.* In addition to those opportunities and benefits excluded from the definition of a gift by §2635.203(b)(4), an employee may accept:

(1) Reduced membership or other fees for participation in organization activities offered to all Government employees or all uniformed military personnel by professional organizations if the only restrictions on membership relate to professional qualifications; and

(2) Opportunities and benefits, including favorable rates and commercial discounts not precluded by paragraph (c)(3) of this section:

(i) Offered to members of a group or class in which membership is unrelated to Government employment;

(ii) Offered to members of an organization, such as an employees' association or agency credit union, in which membership is related to Government employment if the same offer is broadly available to large segments of the public through organizations of similar size; or

(iii) Offered by a person who is not a prohibited source to any group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of type of official responsibility or on a basis that favors those of higher rank or rate of pay; provided, however, that

(3) An employee may not accept for personal use any benefit to which the Government is entitled as the result of an expenditure of Government funds.

Example 1: An employee of the Consumer Product Safety Commission may accept a discount of \$50 on a microwave oven offered by the manufacturer to all members of the CPSC employees' association. Even though the CPSC is currently conducting studies on the safety of microwave ovens, the \$50 discount is a standard offer that the manufacturer has made broadly available through a number of similar organizations to large segments of the public.

Example 2: An Assistant Secretary may not accept a local country club's offer of membership to all members of Department Secretariats which includes a waiver of its \$5,000 membership initiation fee. Even though the country club is not a prohibited source, the offer discriminates in favor of higher ranking officials.

Example 3: The administrative officer for a district office of the Immigration and Naturalization Service has signed an INS order to purchase 50 boxes of photocopy paper from a supplier whose literature advertises that it will give a free briefcase to anyone who purchases 50 or more boxes. Because the paper was purchased with INS funds, the administrative officer cannot keep the briefcase which, if claimed and received, is Government property.

(d) *Awards and honorary degrees.* (1) An employee may accept gifts, other than cash or an investment interest, with an aggregate market value of \$200 or less if such gifts are a bona fide award or incident to a bona fide award that is given for meritorious public service or achievement by a person who does not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties or by an association or other organization the majority of whose members do not have such interests. Gifts with an aggregate market value in excess of \$200 and awards of cash or investment interests offered by such persons as awards or incidents of awards that are given for these purposes may be accepted upon a written determination by an agency ethics official that the award is made as part of an established program of recognition:

(i) Under which awards have been made on a regular basis or which is funded, wholly or in part, to ensure its continuation on a regular basis; and

(ii) Under which selection of award recipients is made pursuant to written standards.

(2) An employee may accept an honorary degree from an institution of higher education as defined at 20 U.S.C. 1141(a) based on a written determination by an agency ethics official that the timing of the award of the degree would not cause a reasonable person to question the employee's impartiality in a matter affecting the institution.

(3) An employee who may accept an award or honorary degree pursuant to paragraph (d)(1) or (2) of this section may also accept meals and entertainment given to him and to members of his family at the event at which the presentation takes place.

Example 1: Based on a determination by an agency ethics official that the prize meets the criteria set forth in §2635.204(d)(1), an employee of the National Institutes of Health may accept the Nobel Prize for Medicine, including the cash award which accompanies the prize, even though the prize was conferred on the basis of laboratory work performed at NIH.

Example 2: Prestigious University wishes to give an honorary degree to the Secretary of Labor. The Secretary may accept the honorary degree only if an agency ethics official determines in writing that the timing of the award of the degree would not cause a reasonable person to question the Secretary's impartiality in a matter affecting the university.

Example 3: An ambassador selected by a nonprofit organization as recipient of its annual award for distinguished service in the interest of world peace may, together with his wife, and children, attend the awards ceremony dinner and accept a crystal bowl worth \$200 presented during the ceremony. However, where the organization has also offered airline tickets for the ambassador and his family to travel to the city where the awards ceremony is to be held, the aggregate value of the tickets and the crystal bowl exceeds \$200 and he may accept only upon a written determination by the agency ethics official that the award is made as part of an established program of recognition.

(e) *Gifts based on outside business or employment relationships.* An employee may accept meals, lodgings, transportation and other benefits:

(1) Resulting from the business or employment activities of an employee's spouse when it is clear that such benefits have not been offered or enhanced because of the employee's official position;

Example 1: A Department of Agriculture employee whose husband is a computer programmer employed by an Agriculture Department contractor may attend the company's annual retreat for all of its employees and their families held at a resort facility. However, under §2635.502, the employee may be disqualified from performing official duties affecting her husband's employer.

Example 2: Where the spouses of other clerical personnel have not been invited, an employee of the Defense Contract Audit Agency whose wife is a clerical worker at a defense contractor may not attend the contractor's annual retreat in Hawaii for corporate officers and members of the board of directors, even though his wife received a special invitation for herself and her spouse.

(2) Resulting from his outside business or employment activities when it is clear that such benefits have not been offered or enhanced because of his official status; or

Example 1: The members of an Army Corps of Engineers environmental advisory committee that meets 6 times per year are special Government employees. A member who has a consulting business may accept an invitation to a \$50 dinner from her corporate client, an Army construction contractor, unless, for example, the invitation was extended in order to discuss the activities of the committee.

(3) Customarily provided by a prospective employer in connection with bona fide employment discussions. If the prospective employer has interests that could be affected by performance or nonperformance of the employee's duties, acceptance is permitted only if the employee first has complied with the disqualification requirements of subpart F of this part applicable when seeking employment.

Example 1: An employee of the Federal Communications Commission with responsibility for drafting regulations affecting all cable television companies wishes to apply for a job opening with a cable television holding company. Once she has properly disqualified herself from further work on the regulations as required by subpart F of this part, she may enter into employment discussions with the company and may accept the company's offer to pay for her airfare, hotel and meals in connection with an interview trip.

(4) For purposes of paragraphs (e)(1) through (3) of this section, employment shall have the meaning set forth in §2635.603(a).

(f) *Gifts in connection with political activities permitted by the Hatch Act Reform Amendments.* An employee who, in accordance with the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323, may take an active part in political management or in political campaigns, may accept meals, lodgings, transportation and other benefits, including free attendance at events, when provided, in connection with such active participation, by a political organization described in 26 U.S.C. 527(e). Any other employee, such as a security officer, whose official duties require him to accompany an employee to a political event may accept meals, free attendance and entertainment provided at the event by such an organization.

Example 1: The Secretary of the Department of Health and Human Services may accept an airline ticket and hotel accommodations furnished by the campaign committee of a candidate for the United States Senate in order to give a speech in support of the candidate.

(g) *Widely attended gatherings and other events—(1) Speaking and similar engagements.* When an employee is assigned to participate as a speaker or panel participant or otherwise to present information on behalf of the agency at a conference or other event, his acceptance of an offer of free attendance at the event on the day of his presentation is permissible when provided by the sponsor of the event. The

employee's participation in the event on that day is viewed as a customary and necessary part of his performance of the assignment and does not involve a gift to him or to the agency.

(2) *Widely attended gatherings.* When there has been a determination that his attendance is in the interest of the agency because it will further agency programs and operations, an employee may accept an unsolicited gift of free attendance at all or appropriate parts of a widely attended gathering of mutual interest to a number of parties from the sponsor of the event or, if more than 100 persons are expected to attend the event and the gift of free attendance has a market value of \$375 or less, from a person other than the sponsor of the event. A gathering is widely attended if it is expected that a large number of persons will attend and that persons with a diversity of views or interests will be present, for example, if it is open to members from throughout the interested industry or profession or if those in attendance represent a range of persons interested in a given matter. For employees subject to a leave system, attendance at the event shall be on the employee's own time or, if authorized by the employee's agency, on excused absence pursuant to applicable guidelines for granting such absence, or otherwise without charge to the employee's leave account.

(3) *Determination of agency interest.* The determination of agency interest required by paragraph (g)(2) of this section shall be made orally or in writing by the agency designee.

(i) If the person who has extended the invitation has interests that may be substantially affected by the performance or nonperformance of an employee's official duties or is an association or organization the majority of whose members have such interests, the employee's participation may be determined to be in the interest of the agency only where there is a written finding by the agency designee that the agency's interest in the employee's participation in the event outweighs the concern that acceptance of the gift of free attendance may or may appear to improperly influence the employee in the performance of his official duties. Relevant factors that should be considered by the agency designee include the importance of the event to the agency, the nature and sensitivity of any pending matter affecting the interests of the person who has extended the invitation, the significance of the employee's role in any such matter, the purpose of the event, the identity of other expected participants and the market value of the gift of free attendance.

(ii) A blanket determination of agency interest may be issued to cover all or any category of invitees other than those as to whom the finding is required by paragraph (g)(3)(i) of this section. Where a finding under paragraph (g)(3)(i) of this section is required, a written determination of agency interest, including the necessary finding, may be issued to cover two or more employees whose duties similarly affect the interests of the person who has extended the invitation or, where that person is an association or organization, of its members.

(4) *Free attendance.* For purposes of paragraphs (g)(1) and (g)(2) of this section, free attendance may include waiver of all or part of a conference or other fee or the provision of food, refreshments, entertainment, instruction and materials furnished to all attendees as an integral part of the event. It does not include travel expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees. Where the invitation has been extended to an accompanying spouse or other guest (see paragraph (g)(6) of this section), the market value of the gift of free attendance includes the market value of free attendance by the spouse or other guest as well as the market value of the employee's own attendance.

NOTE: There are statutory authorities implemented other than by part 2635 under which an agency or an employee may be able to accept free attendance or other items not included in the definition of free attendance, such as travel expenses.

(5) *Cost provided by sponsor of event.* The cost of the employee's attendance will not be considered to be provided by the sponsor, and the invitation is not considered to be from the sponsor of the event, where a person other than the 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 that employee's

attendance. Payment of dues or a similar assessment to a sponsoring organization does not constitute a payment intended to facilitate a particular employee's attendance.

(6) *Accompanying spouse or other guest.* 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 to another accompanying guest to participate in all or a portion of the event at which the employee's free attendance is permitted under paragraph (g)(1) or (g)(2) of this section. The authorization required by this paragraph may be provided orally or in writing.

Example 1: An aerospace industry association that is a prohibited source sponsors an industrywide, two-day seminar for which it charges a fee of \$400 and anticipates attendance of approximately 400. An Air Force contractor pays \$2,000 to the association so that the association can extend free invitations to five Air Force officials designated by the contractor. The Air Force officials may not accept the gifts of free attendance. Because the contractor specified the invitees and bore the cost of their attendance, the gift of free attendance is considered to be provided by the company and not by the sponsoring association. Had the contractor paid \$2,000 to the association in order that the association might invite any five Federal employees, an Air Force official to whom the sponsoring association extended one of the five invitations could attend if his participation were determined to be in the interest of the agency. The Air Force official could not in any case accept an invitation directly from the nonsponsor contractor because the market value of the gift exceeds \$375.

Example 2: An employee of the Department of Transportation is invited by a news organization to an annual press dinner sponsored by an association of press organizations. Tickets for the event cost \$375 per person and attendance is limited to 400 representatives of press organizations and their guests. If the employee's attendance is determined to be in the interest of the agency, she may accept the invitation from the news 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, her guest could not be authorized to attend for free since the market value of the gift of free attendance would be \$750 and the invitation is from a person other than the sponsor of the event.

Example 3: An employee of the Department of Energy (DOE) and his wife have been invited by a major utility executive to a small dinner party. A few other officials of the utility and their spouses or other guests are also invited, as is a representative of a consumer group concerned with utility rates and her husband. The DOE official believes the dinner party will provide him an opportunity to socialize with and get to know those in attendance. The employee may not accept the free invitation under this exception, even if his attendance could be determined to be in the interest of the agency. The small dinner party is not a widely attended gathering. Nor could the employee be authorized to accept even if the event were instead a corporate banquet to which forty company officials and their spouses or other guests were invited. In this second case, notwithstanding the larger number of persons expected (as opposed to the small dinner party just noted) and despite the presence of the consumer group representative and her husband who are not officials of the utility, those in attendance would still not represent a diversity of views or interests. Thus, the company banquet would not qualify as a widely attended gathering under those circumstances either.

Example 4: An employee of the Department of the Treasury authorized to participate in a panel discussion of economic issues as part of a one-day conference may accept the sponsor's waiver of the conference fee. Under the separate authority of §2635.204(a), he may accept a token of appreciation for his speech having a market value of \$20 or less.

Example 5: An Assistant U.S. Attorney is invited to attend a luncheon meeting of a local bar association to hear a distinguished judge lecture on cross-examining expert witnesses. Although members of the bar association are assessed a \$15 fee for the meeting, the Assistant U.S. Attorney may accept the bar association's offer to attend for free, even without a determination of agency interest. The gift can be accepted under the \$20 de minimis exception at §2635.204(a).

Example 6: An employee of the Department of the Interior authorized to speak on the first day of a four-day conference on endangered species may accept the sponsor's waiver of the conference fee for the first day of the conference. If the conference is widely attended, he may be authorized, based on a determination that his attendance is in the agency's interest, to accept the sponsor's offer to waive the attendance fee for the remainder of the conference.

(h) *Social invitations from persons other than prohibited sources.* An employee may accept food, refreshments and entertainment, not including travel or lodgings, at a social event attended by several persons where:

- (1) The invitation is from a person who is not a prohibited source; and
- (2) No fee is charged to any person in attendance.

Example 1: Along with several other Government officials and a number of individuals from the private sector, the Administrator of the Environmental Protection Agency has been invited to the premier showing of a new adventure movie about industrial espionage. The producer is paying all costs of the showing. The Administrator may accept the invitation since the producer is not a prohibited source and no attendance fee is being charged to anyone who has been invited.

Example 2: An employee of the White House Press Office has been invited to a cocktail party given by a noted Washington hostess who is not a prohibited source. The employee may attend even though he has only recently been introduced to the hostess and suspects that he may have been invited because of his official position.

(i) *Meals, refreshments and entertainment in foreign areas.* An employee assigned to duty in, or on official travel to, a foreign area as defined in 41 CFR 301-7.3(c) may accept food, refreshments or entertainment in the course of a breakfast, luncheon, dinner or other meeting or event provided:

(1) The market value in the foreign area of the food, refreshments or entertainment provided at the meeting or event, as converted to U.S. dollars, does not exceed the per diem rate for the foreign area specified in the U.S. Department of State's Maximum Per Diem Allowances for Foreign Areas, Per Diem Supplement Section 925 to the Standardized Regulations (GC,FA) available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402;

(2) There is participation in the meeting or event by non-U.S. citizens or by representatives of foreign governments or other foreign entities;

(3) Attendance at the meeting or event is part of the employee's official duties to obtain information, disseminate information, promote the export of U.S. goods and services, represent the United States or otherwise further programs or operations of the agency or the U.S. mission in the foreign area; and

(4) The gift of meals, refreshments or entertainment is from a person other than a foreign government as defined in 5 U.S.C. 7342(a)(2).

Example 1: A number of local businessmen in a developing country are anxious for a U.S. company to locate a manufacturing facility in their province. An official of the Overseas Private Investment Corporation may accompany the visiting vice president of the U.S. company to a dinner meeting hosted by the businessmen at a province restaurant where the market value of the food and refreshments does not exceed the per diem rate for that country.

(j) *Gifts to the President or Vice President.* Because of considerations relating to the conduct of their offices, including those of protocol and etiquette, the President or the Vice President may accept any gift on his own behalf or on behalf of any family member, provided that such acceptance does not violate §2635.202(c) (1) or (2), 18 U.S.C. 201(b) or 201(c)(3), or the Constitution of the United States.

(k) *Gifts authorized by supplemental agency regulation.* An employee may accept any gift the acceptance of which is specifically authorized by a supplemental agency regulation.

(l) *Gifts accepted under specific statutory authority.* The prohibitions on acceptance of gifts from outside sources contained in this subpart do not apply to any item, receipt of which is specifically

authorized by statute. Gifts which may be received by an employee under the authority of specific statutes include, but are not limited to:

(1) Free attendance, course or meeting materials, transportation, lodgings, food and refreshments or reimbursements therefor incident to training or meetings when accepted by the employee under the authority of 5 U.S.C. 4111 from an organization with tax-exempt status under 26 U.S.C. 501(c)(3) or from a person to whom the prohibitions in 18 U.S.C. 209 do not apply. The employee's acceptance must be approved by the agency in accordance with part 410 of this title; or

NOTE: 26 U.S.C. 501(c)(3) is authority for tax-exempt treatment of a limited class of nonprofit organizations, including those organized and operated for charitable, religious or educational purposes. Many nonprofit organizations are not exempt from taxation under this section.

(2) Gifts from a foreign government or international or multinational organization, or its representative, when accepted by the employee under the authority of the Foreign Gifts and Decorations Act, 5 U.S.C. 7342. As a condition of acceptance, an employee must comply with requirements imposed by the agency's regulations or procedures implementing that Act.

[57 FR 35041, Aug. 7, 1992; 57 FR 48557, Oct. 27, 1992; 61 FR 42969, Aug. 20, 1996; 61 FR 48733, Sept. 16, 1996; 61 FR 50691, Sept. 27, 1996; 62 FR 48747, Sept. 17, 1997; 63 FR 69993, 69994, Dec. 18, 1998; 65 FR 69657, Nov. 20, 2000; 67 FR 61762, Oct. 2, 2002; 70 FR 12112, Mar. 11, 2005; 73 FR 15388, Mar. 24, 2008; 76 FR 38548, July 1, 2011; 79 FR 28606, May 19, 2014]

§2635.205 Proper disposition of prohibited gifts.

(a) An employee who has received a gift that cannot be accepted under this subpart shall, unless the gift is accepted by an agency acting under specific statutory authority:

(1) Return any tangible item to the donor or pay the donor its market value. An employee who cannot ascertain the actual market value of an item may estimate its market value by reference to the retail cost of similar items of like quality. See §2635.203(c).

Example 1: To avoid public embarrassment to the seminar sponsor, an employee of the National Park Service did not decline a barometer worth \$200 given at the conclusion of his speech on Federal lands policy. The employee must either return the barometer or promptly reimburse the sponsor \$200.

(2) When it is not practical to return a tangible item because it is perishable, the item may, at the discretion of the employee's supervisor or an agency ethics official, be given to an appropriate charity, shared within the recipient's office, or destroyed.

Example 1: With approval by the recipient's supervisor, a floral arrangement sent by a disability claimant to a helpful employee of the Social Security Administration may be placed in the office's reception area.

(3) For any entertainment, favor, service, benefit or other intangible, reimburse the donor the market value. Subsequent reciprocation by the employee does not constitute reimbursement.

Example 1: A Department of Defense employee wishes to attend a charitable event to which he has been offered a \$300 ticket by a prohibited source. Although his attendance is not in the interest of the agency under §2635.204(g), he may attend if he reimburses the donor the \$300 face value of the ticket.

(4) Dispose of gifts from foreign governments or international organizations in accordance with 41 CFR part 101-49, and dispose of materials received in conjunction with official travel in accordance with 41 CFR 101-25.103.

(b) An agency may authorize disposition or return of gifts at Government expense. Employees may use penalty mail to forward reimbursements required or permitted by this section.

(c) An employee who, on his own initiative, promptly complies with the requirements of this section will not be deemed to have improperly accepted an unsolicited gift. An employee who promptly consults his agency ethics official to determine whether acceptance of an unsolicited gift is proper and who, upon the advice of the ethics official, returns the gift or otherwise disposes of the gift in accordance with this section, will be considered to have complied with the requirements of this section on his own initiative.



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

December 5, 2007
DO-07-047

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Robert I. Cusick
Director

SUBJECT: Widely Attended Gatherings

The Office of Government Ethics (OGE) is issuing this memorandum to provide ethics officials with guidance on what kinds of events are covered by the widely attended gathering (WAG) exception to the gift prohibitions in the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct).

Unless an exception applies, employees may not accept a gift from a prohibited source or a gift given because of their official position. 5 C.F.R. § 2635.202(a). One of the most commonly used exceptions is for gifts of free attendance at a "widely attended gathering of interest to a number of parties." 5 C.F.R. § 2635.204(g)(2). This exception also may generate more questions for OGE and agency ethics officials than any other exception. One of the most frequently asked questions is what does or does not constitute a WAG? The discussion below explains the general criteria for answering this question in a given case and provides several examples of recurring types of events that OGE has evaluated over the years. The memorandum concludes with a reminder concerning the financial disclosure requirements applicable to gifts accepted under the WAG exception.

A. Overview of the WAG Exception

The WAG exception has several elements. Not only must the event be "widely attended," under the criteria described more fully below, but a number of other requirements must be met.

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First, an agency designee must determine that the employee's attendance at the event "is in the interest of the agency because it will further agency programs and operations." 5 C.F.R. § 2635.204(g)(3). Although this standard leaves considerable discretion with the agency designee, sometimes it may be more difficult to make a determination of agency interest with respect to certain types of events, as noted below.

Also, a higher standard must be met if the donor has interests that may be substantially affected by the performance of the employee's official duties, or if the donor is an organization a majority of whose members have such interests. In such cases, the agency designee must make a written finding that the agency's interest outweighs any concern that the gift of free attendance may appear to influence the employee's performance improperly. Id.

Further criteria must be met if the cost of the employee's attendance is provided by someone other than the sponsor of the event. § 2635.204(g)(5)(explaining circumstances in which cost is not provided by sponsor). Such gifts from a nonsponsor may be accepted only if more than 100 attendees are expected and the cost of the employee's attendance does not exceed \$305. 5 C.F.R. § 2635.204(g)(2).¹

There also are important limits on the kinds of benefits or items that an employee may accept under this provision. The exception permits 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). The exception does not cover "entertainment collateral to the event, or meals taken other than in a group setting with all other attendees." Id. Nor does the exception cover travel and lodging.

Additionally, the rule provides criteria concerning the status of the employee during attendance at a WAG. Specifically, if the employee is subject to a personnel leave system, the employee generally must attend the event on personal

¹OGE periodically revises this rule to increase the dollar amount, consistent with comparable adjustments to other regulations. See 70 Federal Register 12111 (March 11, 2005).

time. However, an employee may be authorized to attend on excused absence or otherwise without charge to the employee's leave account, pursuant to any applicable guidelines.

Finally, like all of the exceptions to the gift prohibitions, the WAG exception is subject to the general limitations found in 5 C.F.R. § 2635.202(c). Thus, an employee may not coerce, or even solicit, an offer of free attendance at a WAG. Nor may an employee accept free attendance in return for being influenced in the performance of an official act. Moreover, it bears emphasizing that employees may not accept gifts of free attendance "from the same or different sources on a basis so frequent that a reasonable person would be led to believe the employee is using his public office for private gain." 5 C.F.R. § 2635.202(c)(3).²

B. What is a WAG?

In order to understand what constitutes a widely attended gathering, it is helpful to understand a little history about the origin and purposes of the WAG exception.

As OGE stated when it first proposed the Standards of Conduct in 1991, the "exception for widely-attended gatherings . . . is one that has been incorporated into the standards of

²Section 2635.202(c)(5) provides one further limitation: employees may not accept "vendor promotional training," as defined in section 2635.203(g), in violation of any applicable procurement regulations, policies or guidance. OGE added this limitation to ensure that any gift would be consistent with the guidelines on vendor promotional training in the Federal Information Resources Management Regulation, which was issued by the General Services Administration (GSA). 57 Federal Register 35006, 35012-13 (August 7, 1992). However, the GSA regulation was rescinded in 1996, and OGE is aware of no Government-wide regulation, policy or guidance that has taken its place. To the extent that any agency has its own procurement regulations, policies or guidance regarding vendor promotional training, employees may not rely on the OGE gift exceptions to accept a gift that would be inconsistent with such guidelines. See also the discussion of "Contractor-Sponsored Seminars and Similar Events" below.

conduct regulations of many agencies." 56 Federal Register 33777, 33782 (July 23, 1991).³ OGE previously had explained the basic purposes of such a provision: "We believe that there are certain instances where an agency may have a legitimate interest in permitting attendance at certain group events where food is served so that employees may be able to meet on a less formal basis and have an interchange of ideas with a variety of individuals, including members of nongovernmental groups, legislators and other Government agency personnel, who are interested in but may have divergent positions on the same issues." OGE Informal Advisory Memorandum 87 x 13 (emphasis added). OGE emphasized that the focus was on "the larger group gathering where the invitees and/or the hosts are more diverse." Id. at fn. 1 (emphasis added).

These same purposes are still embodied in section 2635.204(g)(2). In defining a WAG, the rule provides a two-part standard that emphasizes both the size of the gathering and the diversity of views or interests represented: "[a] gathering is widely attended if it is expected that a large number of persons will attend and that persons with a diversity of views or interests will be present." 5 C.F.R. § 2635.204(g)(2).⁴ The rule does not use any numerical standards

³Before OGE promulgated the final Standards of Conduct in 1992, each agency had its own standards of conduct regulations, including gift exceptions, subject to approval by OGE (originally the Civil Service Commission). The OGE WAG exception in 5 C.F.R. § 2635.204(g)(2) was modeled on similar WAG exceptions that were already found in some of these agency standards of conduct regulations.

⁴The version first promulgated in 1992 did not explicitly require that the event be attended by a "large" and "diverse" group, but OGE amended the rule in 1996 to make this intention plain. As explained in the preamble to the proposed amendment, OGE always had viewed "the normal meaning of the phrase 'widely attended' as encompassing those attended by many," but some interpreters had incorrectly applied section 2635.204(g)(2) to relatively small gatherings. 60 Federal Register 31415, 31417 (June 15, 1995). OGE also sought to clarify its intention that the size of the group is only one part of the test, and that a second requirement, diversity of viewpoints or interests represented,

(continued)

to define the necessary size or diversity of a WAG.⁵ However, the examples following section 2635.204(g) illustrate the concepts; example 3, in particular, indicates that a small dinner party is not a WAG, that an event attended primarily by the personnel of a particular company is not a WAG regardless of the number of attendees, and that the presence of a token representative of a divergent interest group will not cure an otherwise non-diverse gathering. In any case, the rule plainly contemplates that the agency designee will make sufficient inquiry into the number and diversity of expected attendees at a given event before an employee is permitted to rely on the exception.

OGE also still considers it fundamental that a WAG must provide the opportunity for "an exchange of ideas" with a large and diverse group. OGE Informal Advisory Letter 99 x 2; see OGE Informal Advisory Memorandum 87 x 13 ("interchange of ideas"). If an event is so structured that an employee has little opportunity to exchange views with a large and diverse number of persons, then the very purpose of the exception would be defeated. In fact, the requirement that attendees represent "a diversity of views or interests" would be irrelevant if the employee had no meaningful opportunity actually to exchange views with those other attendees. OGE does not consider such events to be WAGs. As described below, some social events may well provide sufficient opportunities for exchange to be considered WAGs, but most sporting, theatrical, and musical events do not.

must be satisfied as well. See 61 Federal Register 42965, 42966 (August 20, 1996).

⁵As OGE stated in connection with the 1996 amendments: "While a specific minimum number or a range of numbers might, in some ways, facilitate agency administration of the rule and even possibly reduce employee inquiries, OGE believes that setting such numbers for sponsor gifts would unduly limit the flexibility that agencies require to administer this rule effectively." 61 Federal Register at 42966. Note, however, that the rule does specify a minimum number of attendees (more than 100) where the gift of free attendance is from someone other than the sponsor of the event. 5 C.F.R. § 2635.204(g)(2).

C. Recurring Types of Events

Over the years, employees and ethics officials have raised questions about certain recurring scenarios, so OGE thought it would be useful to summarize its advice with respect to the following general categories of events. Of course, a particular event may raise unique issues that need to be evaluated on a case-by-case basis, but the general guidance below should help ethics officials determine whether many proposed events actually qualify as WAGs.

1. "Social" Events Generally

Although many of the events that fall within the WAG exception have a substantive or educational component, such as conferences and seminars, OGE long has held that some events that are primarily social in nature also can qualify as WAGs. See OGE Informal Advisory Letters 99 x 2; 97 x 15; 94 x 2; 93 x 15. Thus, agencies have applied the exception to a range of receptions, gala celebrations, and similar social events over the years. This should not be surprising, considering the genesis of the rule: as described above, the original impetus for this and similar exceptions under the former agency standards of conduct was the desire to afford employees the opportunity to meet with a variety of persons in less formal settings than official working meetings.

Of course, many social gatherings are not WAGs. For example, small dinner parties, whether held in a restaurant or a more private setting, simply are not widely attended, even though the guests may have the opportunity to exchange views. See 5 C.F.R. § 2635.204(g)(example 3); OGE 87 x 13, fn. 1. Likewise, some of the specific types of events discussed below are social occasions, such as sporting and theatrical events, that OGE generally does not consider to be WAGs.

Even where a social event is widely attended, the agency still must make a determination that the employee's attendance is in the interest of the agency. OGE has stated that it can be more difficult to find that an employee's attendance is in the agency's interest "when the event is primarily social as opposed to when the event is in the nature of a conference or seminar." OGE 93 x 15; see OGE 94 x 2 (same). Likewise, OGE has indicated that some social events may be more conducive than others to the exchange of ideas. See OGE 99 x 2. Therefore, agencies are

advised to evaluate the circumstances of any social event carefully, including the identity of likely attendees and the expectation of exchanges that actually "will further agency programs and operations." 5 C.F.R. § 2635.204(g)(2).

2. Charity Fundraisers

Fundraising events can be viewed as "one type of social gathering." OGE 99 x 2. OGE has advised that nothing in the WAG rule bars its application to fundraisers per se. Id.⁶ One might argue that a fundraising event does not reflect a sufficient diversity of attendees, because all attendees are united by their common support of the same charity. However, OGE does not read the diversity requirement in section 2635.204(g)(2) to require this result. In OGE's experience, fundraisers may bring together persons with diverse interests and views on broader public policy concerns that are related to the particular charitable mission. For instance, a fundraiser for a nonprofit health organization might bring together public health advocates, academic researchers, health industry representatives, and state and Federal health officials, all of whom are interested in health policy but have diverse perspectives. Indeed, the Standards of Conduct elsewhere recognize that a fundraiser can be "an appropriate forum for the dissemination of information." 5 C.F.R. § 2635.808(a)(3).

Nevertheless, agencies still need to determine that attendance by an employee at any fundraiser really furthers agency interests. In connection with fundraising events, OGE has noted that "concerns about appearances and preferential treatment . . . may still provide relevant considerations for an agency's use in evaluating whether to approve an employee's acceptance of free participation at widely attended gatherings as being in the agency's interest." OGE 99 x 2; see also OGE 89 x 2. In other words, ethics officials appropriately may consider whether it is truly in the agency's interest for

⁶ Although OGE raised certain concerns about attendance of employees at fundraisers in an opinion issued prior to the Standards of Conduct, see OGE Informal Advisory Letter 89 x 2, OGE later concluded that fundraisers could be covered by the WAG exception in appropriate cases. OGE 99 x 2.

employees to accept free attendance at a function devoted to singling out a particular organization for special recognition and largesse.⁷ Moreover, as always, it is important to consider whether an employee's attendance is likely to result in the kinds of interaction in which the agency is truly interested, given the structure and content of the event and the identity of the other attendees.

3. Sporting Events

OGE has received many questions from agency ethics officials and others concerning the application of the WAG exception to sporting events, such as baseball games, horse races, and golf tournaments. OGE has concluded that such events typically do not qualify as WAGs. Sporting events generally are not structured in a way that facilitates the exchange of ideas among a large and diverse group of attendees, which is the purpose of the WAG exception. Employees in these settings typically do not have sufficient freedom to mix and converse with all other attendees.

Occasionally, OGE has been asked whether a sporting event can be characterized as a WAG if there is a reception, either before, during, or after the event. Some have argued that a reception, where attendees can move about and converse more freely, provides an adequate opportunity for interaction with other attendees. OGE does not agree that the mere availability of a reception is sufficient to convert an entire sporting event into a WAG. It is true that the exception permits employees to accept free "entertainment" furnished to all WAG attendees "as an integral part of the event." 5 C.F.R. § 2635.204(g)(4). In most cases, however, the real "event" is the sporting activity, not the reception, which is simply ancillary to the main attraction. It would be a case of the "tail wagging the dog" to

⁷ Note that if an employee is not merely an attendee, but a participant in the conduct of a fundraising event, other limitations pertaining to employee fundraising activities will apply. See 5 C.F.R. § 2635.808. In such cases, however, the waiver of any fee for attendance at the fundraiser by a participant in the conduct of the event does not constitute a gift, under the OGE gift rules. 5 C.F.R. § 2635.808(a)(2).

say that free attendance at the main sporting event is justified because it is "integral" to a clearly subsidiary reception.⁸

4. Theatrical and Musical Events

OGE generally treats plays, operas, concerts, and similar performances in the same way as sporting events. Like sporting events, performing arts presentations usually are not structured to foster the kind of interchange among attendees envisioned by the WAG rule. Therefore, such performances ordinarily would not constitute WAGs. A possible exception might be a play or a movie screening where attendees are invited to participate in a group discussion of issues raised by the presentation as a significant part of an overall event. As with sporting events, OGE generally would not view the availability of a reception as sufficient reason to characterize an artistic or theatrical performance as a WAG.

5. Company Parties

Regulated companies, Government contractors, law firms and other business entities sometimes invite agency employees to attend private company parties, often during the holiday season. In the case where the expected attendance at these parties includes individuals from a variety of types of organizations with a diversity of view points such as clients, legislative

⁸Arguably, some of these receptions may be large and diverse enough to be characterized as WAGs in their own right, apart from the sporting event. However, this would not permit free entry to the actual sporting event on the theory that it is somehow "integral" to the reception. For one thing, this would open the door to gifts of lavish entertainment that do not particularly further the regulatory purpose of promoting the "exchange of views." Moreover, if one chooses to view the reception as a discrete WAG in the first place, OGE does not think it makes much sense to say that the sporting event is "integral" to the reception in the sense of being "essential or necessary for completeness." The American Heritage Dictionary of the English Language (2006). Basically, the WAG rule may not be manipulated to cover a reception or other function that serves mainly as an excuse for employees to accept free admission to a sporting event.

branch employees, executive branch employees from different agencies, employees of non-Governmental organizations, suppliers, customers, and others, OGE would view the event to be sufficiently diverse to be a widely attended gathering. However, if the expected attendance at a party is limited to the company's employees and a few executive branch employees from the same agency, or to a similar group lacking a diversity of view points, OGE generally would not view such a party as being sufficiently widely attended. These latter events often 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. See OGE Informal Advisory Memorandum 06 x 7 (example following question 27). Of course, an agency must still determine that the employee's attendance at the party is in the agency's interest. See the discussion of "'Social' Events Generally" in Section C, paragraph (1) above.

6. Contractor-Sponsored Seminars and Similar Events

Government contractors occasionally invite agency employees to attend seminars and similar events devoted to various subjects. Depending on the circumstances, these contractor-sponsored events may or may not be WAGs. Usually, the question turns on the diversity of the attendees, which in turn may depend on the focus of the event.

On the one hand, an event that is primarily focused on promoting a given company's products and services to current or prospective customers is not a WAG. The intended audience for such an event is generally confined to those who have an actual or potential commercial relationship with a single company. This is not the kind of opportunity for exchange among persons with diverse interests and views at which the rule is directed.⁹

⁹Apart from the WAG rule, OGE understands that agencies sometimes may assign employees to attend such events on official duty in order to learn more about the products and services the contractor can offer the agency. In some cases, agencies may pay any attendance fees, or accept a waiver of fees if permitted under an applicable agency gift acceptance statute. Where no attendance fees are charged and the only personal items given to employees are refreshments or meals, employees may be able to rely on provisions in the OGE gift rules other than the WAG

(continued)

Compare 5 C.F.R. § 2635.204(g)(2)(gathering is diverse "for example, if it is open to members from throughout the interested industry").

On the other hand, OGE has advised that the WAG exception may apply to more diverse gatherings focused on broader issues than the sponsor's own products. In OGE 06 x 7, for example, we indicated that an agency may authorize attendance at a conference, co-sponsored by a contractor and a university, that would not focus on a particular company's own products and services but rather on IT security threats generally. The latter example also included speakers from academia, industry and government. Note, however, that if an employee has official duties related to a particular contractor, there must be a written determination that the agency's interest in the employee's attendance will outweigh any concern that the employee may be improperly influenced.

7. Board Meetings

Agencies sometimes ask whether the WAG exception applies to free attendance at the meeting of a board of directors of a for-profit or nonprofit corporation. Some corporate boards are relatively large and their members often come from different walks of life. Nevertheless, OGE does not view corporate board meetings as being sufficiently diverse, within the meaning of the WAG rule. The focus of a corporate board meeting is on the business of the corporation, and all board members are attending in their capacity as fiduciaries of the same organization. Although OGE does not doubt that agencies occasionally may have an interest in their employees attending a particular board meeting, the WAG exception is simply not appropriate for such events.

This does not necessarily mean that attendance at such meetings is precluded. In some cases, attendance at a board meeting will not involve a "gift" at all, for example, if no entertainment or food is provided, other than modest refreshments. See 5 C.F.R. § 2635.203(b)(1); OGE Informal Advisory Letter 98 x 15. In other cases, the employee may be

exception. See 5 C.F.R. §§ 2635.204(a)(\$20 de minimis exception); 2635.203(b)(1)(exclusion for modest refreshments).

attending in an official capacity to present the views of the agency, which may be permissible under section 2635.204(g)(1); note that the latter provision is not by its own terms limited to "widely attended" events.¹⁰ Moreover, various gift exceptions, such as the de minimis exception, 5 C.F.R. § 2635.204(a), or the exception for meals and other benefits resulting from an employee's outside business activities, 5 C.F.R. § 2635.204(e)(2), could be applicable in other circumstances.

OGE also would distinguish board meetings from the kinds of periodic conventions that are held by many associations for their members. Although these conventions may have some activities related to the internal business of the organization as such, often there are many other activities focused on issues of broader concern to an entire industry or profession. Indeed, these events can become the very occasion for bringing together "members from throughout the interested industry or profession" envisioned by the WAG rule. 5 C.F.R. § 2635.204(g)(2).

8. University Events

Symposia and similar proceedings sponsored by universities often are attended by members of the public or the larger academic world, and one generally would expect such events to qualify as WAGs. Occasionally, however, employees may be invited to attend narrower events that are limited almost exclusively to the internal university community, i.e., administrators, faculty and students. For example, if a senior official at the Department of Education were invited by a university to attend a reception where attendance is otherwise limited to the internal university community, the event would not constitute a WAG because the interests or points of view represented are more or less associated with the university itself.

¹⁰See 57 Federal Register at 35020 ("an employee serving as an agency liaison to a particular organization is authorized to perform those liaison duties on official time and could accept waiver of an attendance fee under § 2635.204(g)(1) if his or her participation in the particular meeting involves presentation of information on behalf of the agency").

9. Events Focused on Federal Officials

A difficult set of issues is posed by events that are limited or primarily directed to an audience of Federal employees. In such cases, one reasonably might question whether the gathering is sufficiently diverse, because most of the attendees are employed by the same Government and there is little opportunity to exchange ideas with outside parties.

Certainly, an event that is largely devoted to promoting the sponsor's products to a Federal audience is not a WAG (see discussion of "Contractor-Sponsored Seminars and Similar Events" above). Moreover, events limited mainly to attendees from one agency, or a small number of agencies involved in related operations, would be very difficult to characterize as a WAG.

Other events, however, may come closer to the kind of diversity required by the rule. For example, OGE is aware that think tanks and other organizations occasionally conduct events to sensitize Federal officials to certain issues or to bring together representatives from various agencies to share their experiences and views on matters of common concern. Sometimes, this type of event can be characterized as a WAG, particularly if the attendees represent a significant range of agencies with different perspectives on the subject and the sponsoring organization brings in at least a few scholars or experts who are neither Federal employees nor officers or staff of the sponsor.

Another example involves organizations comprised mostly of Federal employees, such as associations of Federal attorneys or physicians, which may sponsor educational and other events. Federal policy generally recognizes that such organizations can benefit an agency's programs. See 5 C.F.R. § 251.202 (agency support to organizations in which employees participate); cf. 18 U.S.C. § 205(d)((1)(B)(representation of organizations comprised of Federal employees). Particularly where the event is likely to attract professionals from across the Government, agencies may authorize employees to accept offers of free attendance under the WAG rule. Of course, employees who are actually members of the particular organization sometimes may accept certain benefits, including free attendance at certain

events, pursuant to other gift provisions. See, e.g., 5 C.F.R. § 2635.204(c)(discounts and similar benefits).¹¹

D. Financial Disclosure

A final word is in order concerning the disclosure of gifts of free attendance on public and confidential financial disclosure statements. With certain limitations, filers of annual and termination reports generally are required to disclose all gifts from any one source with an aggregate value in excess of \$305 for the reporting period. See 5 C.F.R. §§ 2634.304; 2634.907(g).¹² **Gifts of free attendance accepted under the WAG exception are subject to this reporting requirement because these gifts are accepted by an employee in a personal capacity. They are not gifts accepted by the employee's agency.**

OGE's experience suggests that some may have misunderstood this disclosure requirement in the past, perhaps on the assumption that such items need not be reported as personal gifts because an agency designee already has made a determination that attendance is in the agency's interest. Nevertheless, nothing in section 2635.204(g)(2) or in the Standards of Conduct generally excuses filers from disclosing otherwise reportable gifts. Moreover, this conclusion serves the policies underlying financial disclosure: the transparency afforded by public reporting, in particular, serves as an additional disincentive to accepting gifts of free attendance under questionable circumstances. See S. Rep. 170, 95th Cong., 1st Sess. 21-22 (1977)(public disclosure will deter conflicts and enable public to evaluate officials' performance in light of outside interests). In the future, therefore, agency ethics officials should be mindful of the financial disclosure obligations of employees who are authorized to accept free attendance at events under the WAG rule.

¹¹An employee whose membership fee payment automatically entitles him or her to attendance at certain meetings has already paid market value, and the attendance would not even constitute a gift. See 5 C.F.R. § 2635.203(b)(9).

¹²Periodic adjustments are made to the dollar thresholds for gift reporting. See 5 U.S.C. app. § 102(a)(2)(A).

Of course, many gifts of free attendance may not meet the dollar threshold for financial disclosure. Moreover, employees who are granted free attendance at an event for the purpose of giving an official speech or otherwise conveying information on behalf of their agency have not received a gift at all. See 5 C.F.R. § 2635.204(g)(1) ("The employee's participation in the event on that day is viewed as a customary and necessary part of his performance of the assignment and does not involve a gift to him or to the agency.").

Conclusion

As should be apparent from the discussion above, the application of the WAG exception requires good judgment on the part of ethics officials and agency designees. This is true not only in determining whether the event is widely attended but also in determining that a particular employee's attendance is in the interest of the agency. No doubt, some events will pose close questions. Officials should take care, therefore, to evaluate all the relevant circumstances of any proposed WAG before an employee is authorized to accept free attendance.