

NOTE: Employees may no longer rely on the advice found in this advisory that some farewell receptions may qualify as a continuing benefit from a former employer under 5 C.F.R. § 2635.203(b)(6). Please consult OGE Legal Advisory LA-18-14 (2018) for further discussion.

## **Office of Government Ethics**

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### **Letter to a Deputy Designated Agency Ethics Official dated January 13, 1994**

This is in reply to your letter dated December 21, 1993, in which you request a formal written opinion from this Office "as to when and under what circumstances it would be proper for a[n employee in your Department]

to accept a reception in his or her honor." Your letter follows your receipt of advice on this question provided over the telephone by members of the staff of this Office. Although your request does not meet the criteria for the rendering of a formal advisory opinion, we are pleased to provide the following additional information to you.

Like other employees of the executive branch, [employees in your Department] are subject to the Standards of Ethical Conduct in 5 C.F.R. part 2635. Subpart B of the Standards prohibits an employee from soliciting or accepting, directly or indirectly, any gift from a prohibited source<sup>1</sup> or given because of the employee's official position unless the item is excluded from the definition of "gift" in the subpart or falls within one of the exceptions set forth in the subpart.

Generally, an employee's free attendance at a reception would be a "gift" to the employee under the Standards. However, such attendance would not be a "gift" under the Standards, and would therefore be permissible, if the only items offered at the reception are modest refreshments that are not a meal (such as soft drinks, coffee, and donuts), or if the reception could be said to have no monetary value. 5 C.F.R. § 2635.203(b).

As you were advised previously, a farewell party or reception for an employee, hosted by a former employer after the employee has been appointed to his Government position, could be considered a continued benefit from the former employer and not a "gift" under the Standards if the former employer has an established policy or practice of giving similar parties or receptions for departing employees. 5 C.F.R. § 2635.203(b)(6). Also, in cases where the former employer is not a prohibited source, such a party or reception would not be given "because of the employee's official position" if the party or reception would have been held regardless of where the employee was going to work. 5 C.F.R. § 2635.203(e).

Regardless of whether the sponsor of a reception in honor of the appointment of a [Departmental employee] is a prohibited source of gifts for that employee, such a reception would be subject to the Standards since it would be "given because of the employee's official position." Under those circumstances, the reception "would not have been . . . offered or given had the employee not held his position as a Federal employee." 5 C.F.R. § 2635.203(e). A [Departmental employee] could attend such a reception (or any other type of reception that would be a "gift" given because of his official position or by a prohibited source) only if permitted to do so by one or more of the exceptions in subpart B.

As you also were advised previously, there is an exception at 5 C.F.R. § 2635.204(g)(2) which permits an employee to accept a sponsor's unsolicited gift of free attendance at all or appropriate parts of a "widely attended gathering" of mutual interest to a number of parties, when there has been a determination that the employee's attendance is in the interest of the agency because it will further agency programs or operations.<sup>2</sup> An event is widely attended if it is open to members from throughout a given industry or profession or if those in attendance represent a range of persons interested in a given matter. The focus of this exception is not on the nature of the activity that takes place at the widely attended gathering; rather, the focus of this exception is on whether the gathering is of mutual interest to those in attendance.

The "widely attended gathering" exception could apply to events that are primarily social in nature if the requisite determination of agency interest can be made for the event. In this regard, note that it is likely to be more difficult to make a finding that an employee's attendance is in the interest of the agency when the event is primarily social, as opposed to when the event is in the nature of a conference or seminar. Therefore, at least in cases where the event is not hosted by a prohibited source, a more appropriate exception to apply in some of these cases would be the one at 5 C.F.R. § 2635.204(h), which permits employees to accept food, refreshments and entertainment (not including travel or lodgings) at a social event attended by several persons where the invitation is from a person who is not a prohibited source and no fee is charged to any person in attendance.

Because the Standards prohibit an employee's accepting a gift "directly or indirectly," an employee may not designate, recommend, or otherwise specify that an impermissible gift be given to any other person. 5 C.F.R. § 2635.203(f)(2). Consistent with what you were advised previously, this means that for something that is a "gift" under the Standards, an exception that allows an employee to accept it for himself would not

necessarily allow the employee to have the same gift given to anyone else at his request.

We trust that the additional information provided in this letter will be of assistance to you.

Sincerely,

Stephen D. Potts  
Director

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**1**A "prohibited source" is any person (including any organization more than half of whose members are persons) seeking official action by the employee's agency; doing business or seeking to do business with the employee's agency; conducting activities regulated by the employee's agency; or having interests that may be substantially affected by the performance or nonperformance of the employee's official duties. 5 C.F.R. § 2635.203(d).

**2**If the sponsor of the event is a person who has interests that may be substantially affected by the performance or nonperformance of the employee's official duties, i.e., the kind of prohibited source that is described at 5 C.F.R. § 2635.203(d)(4), or an organization the majority of whose members have such interests, the employee's attendance 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 attendance outweighs 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. 5 C.F.R. § 2635.204(g)(3)(i). However, the former employer of a recently appointed [Departmental employee] would not have interests that may be substantially affected by the performance or nonperformance of the [employee's] official duties since the [employee] would have agreed to recuse himself from participating in such matters as a condition of his appointment.