



United States  
**Office of Government Ethics**  
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LEGAL ADVISORY

TO: Designated Agency Ethics Officials

FROM: Don W. Fox, General Counsel 

SUBJECT: SPEAKING AND SIMILAR ENGAGEMENTS INVOLVING  
PRESENTATION OF INFORMATION ON BEHALF OF THE AGENCY

The Office of Government Ethics (OGE) is taking this opportunity to clarify when an employee's participation in an event will constitute "otherwise presenting information on behalf of the agency," such that his or her acceptance of free attendance on that day is permissible under the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct). See 5 C.F.R. § 2635.204(g)(1). OGE has become aware that the "speaking and similar engagements" gift provision with regard to an employee who is assigned to take an active but less formal role than that of a speaker or panel participant has been interpreted in some instances to permit an employee to attend an event when there is a mere possibility that the attendee might give remarks. The purpose of this legal advisory is to clarify that the exception to the general prohibition against gifts requires actual participation in the event and the conveying of information through a presentation or other remarks to those in attendance. Only the exception provided at 5 C.F.R. § 2635.204(g)(2) may be used to simply attend an event that has been determined to be in an agency's interest.

Unless an exception applies, an employee may not accept a gift from a prohibited source or a gift that is given because of the employee's official position. 5 C.F.R. § 2635.202(a). Section 2635.204(g) contains two provisions that permit an employee to accept a gift of free attendance at an event, provided certain requirements are met. The "widely attended gatherings" exception at section 2635.204(g)(2) may be invoked by an employee who is simply *attending* certain events. See OGE Informal Advisory Letter 93 x 18. The "speaking and similar engagements" provision is more narrowly applicable than the "widely attended gatherings" exception because it only permits an employee to accept free attendance on the day of an event when he or she 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." 5 C.F.R. § 2635.204(g)(1).

As proposed in 1991, the exception now found at 5 C.F.R. § 2635.204(g)(1) extended to only "events at which the employee is a speaker or panel participant." 56 Fed. Reg. 33,778,

33,782 (July 23, 1991). In response to comments received on the proposed Standards of Conduct, OGE revised the final Standards of Conduct to recognize that an employee is sometimes assigned by his or her agency “to take an active but less formal role than that of a speaker or panel participant” in the presentation of information at events. *See* Standards of Ethical Conduct for Employees of the Executive Branch, 57 Fed. Reg. 35,006, 35,019 (Aug. 7, 1992).

The revisions from the proposed to final Standards of Conduct recognized that an employee is not required to be part of a formal agenda or program. Nevertheless, the employee must be “assigned . . . to present information on behalf of the agency.” 5 C.F.R. § 2635.204(g)(1). As a practical matter, such an assignment can only happen in situations in which the employee has pre-arranged his or her presentation with the event sponsor. For this reason, the mere possibility of an exchange of ideas with only some attendees would not qualify as taking an active role in presenting information on behalf of the agency for purposes of section 2635.204(g)(1), but might meet the threshold for a widely attended gathering under section 2635.204(g)(2).

Under section 2635.204(g)(1), the employee may accept an unsolicited gift of free attendance only so long as the event’s host has agreed in advance that the employee will make informal remarks on behalf of the agency to those attendees. An employee’s “presentation” at an event need not come from a dais or the stage, but the employee must nonetheless communicate the agency’s message in a deliberate, substantive presentation. For example, when an employee is serving as an agency liaison to a particular outside organization, participation at periodic meetings or ongoing working groups would qualify as “presenting information on behalf of the agency” because the employee has been assigned to communicate a specific agency message. 57 Fed. Reg. at 35,020.

A critical distinction between 5 C.F.R. § 2635.204(g)(1) and (g)(2) is that the presentation of information under (g)(1) is done in an employee’s official capacity on official time. Attending a widely attended gathering under (g)(2) is done on personal time. For this reason, only employees who are otherwise authorized official travel pursuant to 31 U.S.C. § 1344 may use a Government vehicle or driver to attend a widely attended gathering. If an employee incorrectly accepts an offer of free attendance under section 2635.204(g)(1) and proceeds in error to use such Government resources, the employee could unintentionally violate certain laws, including regulations concerning misuse of Government vehicles. *See, e.g.*, 41 C.F.R. part 102-34.

In this regard, OGE has recognized that there are some popular kinds of events that should not be considered official for the purpose of using Government resources, such as purely social events. *See* OGE Informal Advisory Letter 85 x 09. Purely social events, regardless of whether the employee “voluntarily talked ‘business’ with another guest at the event,” are not proper events to assign an employee to attend in an official capacity. *Id.* Merely showing up at certain social events may be an important part of life and business, but it was not deemed sufficient by the drafters of the Standards of Conduct to satisfy the requirements of either 5 C.F.R. § 2635.204(g)(1) or (g)(2). As noted in the preamble to the final Standards of Conduct, only “the exception at renumbered §2635.204(h) may permit an employee to accept an invitation

to an event of a social nature.” Agencies and employees must exercise sound judgment when determining to assign an employee to attend any outside event in an official capacity. 57 Fed. Reg. at 35,020.

It should also be noted that if the employee wishes to attend an event beyond the day in which he or she is presenting information, the employee may not rely on section 2635.204(g)(1) because free attendance would no longer have a nexus to the employee’s speaking or similar engagement. *See* 57 Fed. Reg. at 35020. However, it may be possible for an employee to accept an offer of free attendance for the days the employee is merely attending the event under the “widely attended gatherings” exception or other statutory authorities.

Agency ethics officials should consult with their OGE Desk Officer Team regarding any questions about the issues addressed in this legal advisory.