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LEGAL ADVISORY

TO: Designated Agency Ethics Officials

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Director

SUBJECT: Analyzing Virtual Events under the Gift Rules

The U.S. Office of Government Ethics (OGE) is issuing this Legal Advisory to address recurring questions about the gifts analysis for virtual events.<sup>1</sup> As the number of virtual events has increased, OGE has received an increasing number of questions about how to apply the gift rules under Subpart B of the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards) to such events. In short, ethics officials should analyze virtual events under the same framework as in-person events. If a virtual event has monetary value and an exception to or exclusion from the gift rules does not apply, employees should not accept invitations to such events if the invitation is offered by a prohibited source or because of the employee's official position.

**I. Virtual Events as “Gifts”**

The Standards define a gift as “any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.”<sup>2</sup> The method for determining the value of a virtual event, just like an in-person event, will depend on whether event organizers charge attendees a fee to attend.

**a. Fee Charged to All or Some Attendees**

In some cases, event organizers may charge attendees a fee to attend a virtual event. Free or discounted invitations for employees to such an event is a gift<sup>3</sup> that employees cannot accept if the invitation is from a prohibited source or offered because of the employee's official position, unless an exception or exclusion to the gift rules applies.<sup>4</sup>

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<sup>1</sup> For purposes of this Legal Advisory, a “virtual event” is an event conducted over video or audioconferencing platforms rather than in-person.

<sup>2</sup> 5 C.F.R. § 2635.203(b).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* § 2635.202(b).



## **b. No Fee Charged to Any Attendee**

A virtual event that is free of charge to all attendees will usually not have monetary value under the Standards, as organizers usually do not provide attendees with any tangible benefits.<sup>5</sup> For example, a prohibited source has invited an employee to a virtual program about a topic of interest to the scientific community. The program provides attendees with no tangible benefits; it is for informational purposes only. Attendance is free to all invited, but the event is not open to the public. Because there is no fee to attend and attendees receive no tangible benefits, it would not be considered a gift. Accordingly, the employee may accept the invitation. Similarly, free informational presentations that are livestreamed or on-demand and open to the public would not be considered gifts.

However, as with in-person events, some virtual events could have monetary value if organizers offer “entertainment . . . or other tangible benefit[s] . . . to attendees in connection with the event” even if no fee is charged.<sup>6</sup> For example, a virtual event may include entertainment or the shipment and delivery items to attendees ahead of the event, such as books, alcoholic beverages, food, or gift bags. In those circumstances, the event would have monetary value and an employee could not be accept if it was from a prohibited source or offered because of the employee’s official position, unless an exception or exclusion to the gift rules applies.<sup>7</sup>

## **II. Gift Exceptions and Exclusions**

If attendance at a virtual event constitutes a “gift” because it has monetary value, various exceptions and exclusions might apply. If an exception or exclusion applies, or the employee pays fair market value, the employee may attend the virtual event.<sup>8</sup> Below is a brief summary of some common regulatory exceptions and exclusions that could apply to a specific virtual event, although OGE does not intend this list to be exhaustive.

### **a. Widely Attended Gatherings Exception**

Just like in-person events, attendance at a virtual event could qualify for the widely attended gathering (WAG) exception,<sup>9</sup> but the analysis is highly fact-specific. As with all potential WAGs, the agency must determine whether the virtual event meets the WAG definition: (1) a large number of persons are expected to attend; (2) persons with a diversity of views or interests will be present; (3) attendees will have an opportunity to exchange ideas and views;<sup>10</sup> and (4) the agency has a sufficient interest in the employee’s attendance.<sup>11</sup>

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<sup>5</sup> *See id.* § 2635.203(b).

<sup>6</sup> OGE Legal Advisory LA-15-05 (May 5, 2015).

<sup>7</sup> 5 C.F.R. § 2635.202(b).

<sup>8</sup> *Id.* § 2635.203(b)(10). Of course, “employees should consider declining otherwise permissible gifts if they believe that a reasonable person with knowledge of the relevant facts would question the employee’s integrity or impartiality as a result of accepting the gift.” *Id.* § 2635.201(b)(1).

<sup>9</sup> 5 C.F.R. § 2635.204(g).

<sup>10</sup> *Id.* § 2635.204(g)(2).

<sup>11</sup> In order to permit the employee to attend, the agency designee must make a written determination that: (1) the employee’s attendance at the virtual event is “in the agency’s interest because it will further agency programs or operations” and (2) “the agency’s interest in the employee’s attendance outweighs the concern that the employee may be, or may appear to be, improperly influenced in the performance of official duties.” *Id.* § 2635.204(g)(3); OGE DAEogram DO-07-047 (Dec. 5, 2007).

Regarding the first three requirements that the event provide an opportunity to exchange ideas and views among a large number of persons with a diversity of interests, the exception does not require that such exchanges occur in-person. Many video conferencing platforms permit those in attendance to exchange ideas and views through breakout discussion “rooms” in which participants can exchange views using audio and instant messaging features. Depending on whether and how organizers utilize such features, agencies may determine that the event provides a sufficient opportunity for attendees to exchange ideas and views with each other.

For example, a well-known industry association, which is a prohibited source, offers an executive branch employee free attendance to a virtual event that the prohibited source holds via a videoconferencing platform. The association charges other attendees a \$50 registration fee. Registration is open to the public and any person interested in attending can register. The agenda includes breakout discussion “rooms” that will contain 20 participants each, where participants will use features such as audio, chat, and a whiteboard to discuss specific topics. Under these circumstances an ethics official could properly determine that this virtual event meets the WAG definition; however, in order for the employee to attend, the ethics official still will need to determine that the employee’s attendance is in the agency’s interest and that the agency’s interest outweighs the concern that the employee may be improperly influenced.

#### **b. Other Exceptions and Exclusions**

In addition to the WAG exception, various other exceptions or exclusions could apply to the acceptance of free or discounted attendance to a virtual event that has monetary value. For instance, if a virtual event has a market value of \$20 or less, employees could accept an invitation if all aspects of that exception are met.<sup>12</sup> Employees also may accept gifts motivated by a family relationship or personal friendship,<sup>13</sup> discounts and similar benefits,<sup>14</sup> awards and honorary degrees including presentation events,<sup>15</sup> gifts based on outside business or employment relationships,<sup>16</sup> and social invitations.<sup>17</sup> Employees and ethics officials should ensure, however, the virtual event satisfies all requirements for the exception or exclusion.

### **III. Conclusion**

Ethics officials should analyze virtual events in the same manner as in-person events. When a virtual event has monetary value and an exception to or exclusion from the gift rules does not apply, employees should not accept invitations to such events if the invitation is offered by a prohibited source or because of the employee’s official position.<sup>18</sup> OGE encourages ethics officials with questions about analyzing virtual events or other gifts issues to contact their OGE Desk Officers.

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<sup>12</sup> 5 C.F.R. § 2635.204(a).

<sup>13</sup> *Id.* § 2635.204(b).

<sup>14</sup> *Id.* § 2635.203(b)(4) (excluding “[o]pportunities and benefits . . . available to the public or to a class consisting of all Government employees or all uniformed military personnel” from the definition of “gift”); *id.* § 2635.204(c) (excepting discounts and similar benefits for narrow categories of individuals).

<sup>15</sup> 5 C.F.R. § 2635.204(d).

<sup>16</sup> *Id.* § 2635.204(e).

<sup>17</sup> *Id.* § 2635.204(h).

<sup>18</sup> *Id.* § 2635.202(b).