

## WAG

As a general rule, 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 begs the question: what does or does not constitute a widely attended gathering ("WAG")? The elements listed below must be met in order for the exception to apply.

**The event must be "widely attended".**

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).

The rule does not use any numerical standards to define the necessary size or diversity of a WAG. But it is fundamental that a WAG must provide the opportunity for "an exchange of ideas" with a large and diverse group. Some social events may well provide sufficient opportunities for exchange to be considered WAGs, but most sporting, theatrical, and musical events do not.

**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).**

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)**

Such gifts from a non-sponsor may be accepted only if more than 100 attendees are expected and the cost of the employee's attendance does not exceed \$350. 5 C.F.R. § 2635.204(g)(2).

**There are 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.

**The WAG exception is subject to the general gift 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).

**REMINDER: Financial disclosure mandatory for WAG gifts.**

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 \$350 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.**

**IF YOU HAVE A PARTICULAR QUESTION ABOUT WAGS CONTACT OUR OFFICE.**

**ARNORTH AND FORT SAM HOUSTON, OFFICE OF THE STAFF JUDGE ADVOCATE, ADMINISTRATIVE/CIVIL LAW DIVISION, YOU CAN CONTACT A DESIGNATED ETHICS COUNSELOR AT 210-295-2373.**