

# SOCO ADVISORY

**Department of Defense  
Office of General Counsel  
Standards of Conduct Office**

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This advisory discusses the authorities that are often applied for Department of Defense (DoD) personnel to accept free attendance to an outside event, and the limited circumstances when the Department's general gift acceptance authority at 10 U.S.C. § 2601 may be used to accept the value of attendance in an official capacity. We have received calls from ethics counselors indicating there are differing views on how free attendance may be accepted when a senior official is not formally presenting information on behalf of the Department. SOCO is providing this advisory to ensure a uniform understanding of the various authorities. Where personnel from multiple Services or commands have been invited to an event, the respective ethics counselors are encouraged to coordinate with one another to mitigate the potential for inconsistent or conflicting ethics advice.

## **Evaluating gifts of attendance at an outside event generally**

Ethics counselors frequently rely on two well-established authorities for agency personnel to accept free attendance at an outside event. The first is 5 C.F.R. 2635.203(b)(8), the gift *exclusion* which removes attendance to an event where agency personnel are presenting information on behalf of the Department from the definition of "gift." Thus, the value of such attendance is considered necessary to the presentation and not a gift to either the official or the agency. The second is 5 C.F.R. 2635.204(g), the gift *exception* for gifts of free attendance at a widely attended gathering (WAG).

Ethics counselors should always consider all of the exceptions, exclusions, or other authorities under which free attendance is appropriate. For example, the Foreign Gifts and Decorations Act might allow personnel to attend an embassy function or bilateral military reception hosted by a foreign government, while award recipients may be able to accept attendance for themselves and family members to a banquet pursuant to the specific authority for award ceremonies at 5 C.F.R. 2635.204(d). This advisory is not intended to be a comprehensive listing of all potential exceptions or exclusions for event invitations. For additional discussion on some of the other bases for free attendance, see the DoD Ethics Deskbook chapter on Gifts.

[http://ogc.osd.mil/defense\\_ethics/resource\\_library/deskbook/gifts.pdf](http://ogc.osd.mil/defense_ethics/resource_library/deskbook/gifts.pdf)

There may be instances when the WAG exception is unavailable because of circumstances related to the individual or location. For example, where free attendance is provided by a registered lobbying organization, the WAG exception is not available to political appointees who sign the President's Ethics Pledge (Executive Order 13770). Also, because personnel attending a WAG must be in a leave or other authorized absence status, the WAG exception may not be available to personnel traveling on government orders where the widely attended gathering is the primary purpose of the trip (although acceptance under 31 USC § 1353 may be an option in such cases, depending on the event and other facts). The WAG exception's personal capacity

attendance requirement also may limit access to official logistical support including transportation, aides-de-camp, translators, communications, and security—any of which may reduce its practical viability.

In addition to speaking engagements and WAGs, another potential mechanism (discussed *infra*) is to accept the gift of free attendance on behalf of the agency (utilizing a Department's broad gift acceptance authority in 10 U.S.C. §2601) and then, in turn, provide the admission to the employee required to attend. While 10 U.S.C. § 2601 may appear an appealing option in situations where an invited Department official is not speaking and will incur significant inconvenience or barriers if attending in a personal capacity, ethics counselors must nonetheless use this authority sparingly to avoid appearing to inappropriately benefit senior officials.

### **Use of 10 U.S.C. § 2601 for events that include a fundraising component**

Our office and DoD OGC's fiscal attorneys generally caution against using the agency authority in 10 U.S.C. § 2601 to accept free attendance at fundraising events as a gift to the Government. Concerns include the potential for creating an appearance that DoD personnel attending in an official capacity are the "draw" for a fundraising event. However, there may be narrowly-scoped circumstances applicable to senior personnel when § 2601 could be used for these events to accept an offer of free attendance by organizations with an obvious, articulable nexus to the military community relations mission. SOCO continues to recognize this very narrow use of § 2601 authority under limited circumstances. This authority, however, should not be used to accept free attendance for personnel to events that are primarily social, where the DoD interest is primarily networking rather than a visible and obvious representation of DoD's personnel or mission. Offers of free attendance to social events or those lacking a very strong military nexus and community outreach benefit should instead be accepted under the exception for widely attended gatherings or another available authority.

Even within these narrowly-scoped circumstances discussed above, this possible use of 10 U.S.C. § 2601 is not without caveats. For example, two important considerations suggest that it would be highly unusual for multiple individuals from a single department or organization to attend in their official capacity. First is the inherently limited nature of attendance in a military service representational role. At the Service level, the most visibly obvious personnel who "represent" their Service are the Service Secretaries, uniformed Service Chiefs, and CJCS, or a subordinate General or Flag Officer designated to represent the principal at an event. If the Service Chief or other senior uniformed official is already attending, additional attendees would typically not qualify for Departmental gift acceptance as an organization representative (with the possible exception of the Service Secretary or the Service's senior enlisted advisor). Second, Department of Defense policy in the Deputy Secretary of Defense's Memorandum of January 31, 2018 ("DoD Senior Leader Attendance at Outside Events") limits the number of senior personnel who may attend the same outside event in an official capacity.

Finally, although ethics officials and fiscal attorneys may believe an event provides an identifiable agency benefit that would justify accepting attendance as a gift to the agency under 10 U.S.C. § 2601, we recommend prudence when using this rationale. Because of the concern that DoD personnel not serve as the "draw" for a fundraising event, ethics counselors should

confirm that event organizers are assigning seating for DoD officials and that proximity is not offered as a reward to premium donors. Where there is not an obvious, articulable nexus to the military community relations mission, it is not the role of the ethics counselor to determine whether an event is official. When there is a question concerning whether attendance should be in an official capacity, the employee or service member should seek and document a decision from his or her superior.

Agency designees and ethics counselors should be mindful of any circumstance that would create the appearance of accepting a gift on behalf of the agency primarily to permit use of a Government vehicle to attend an event, particularly where members of Congress and other Government leaders attending may not have similar access to official transportation. These considerations underscore the need for ethics officials to coordinate with subordinate organizations and colleagues in other Military Departments and DoD organizations when the nature of an event or scope of an invitation suggest participation by officials from throughout the Department of Defense. Only such coordinated evaluation will prevent inappropriate multiple “representatives” and ensure uniform judgments regarding official capacity attendance among components.

### **Examples**

1. Senior officials from across the Department are offered free attendance to an annual gala hosted by a non-federal entity (NFE) that provides assistance to surviving family members of military personnel who died on active duty. Invited guests include the Service Secretary, Service Chief, and a number of other senior officers and civilian personnel. The gala also serves as a fundraising event for the NFE. The senior officials are not making remarks or otherwise presenting information on behalf of the Department or their respective Services. The information provided by the host indicates that the event meets the criteria for a WAG and that the host is not assigning seating based upon donor request or size of contribution. The agency designee determines, based on the invited officials’ involvement related to the NFE’s mission of providing care to military families, that there is a DoD interest in having these officials attend. The Service Secretary and Chief could accept free attendance under 10 U.S.C. § 2601 as the direct and visible representatives of all Service men and women, in support of the DoD community outreach mission in this instance where they determine there is a clear nexus to military personnel and families. Other DoD personnel would be able to accept free attendance in their personal capacity under the WAG exception.
2. An organization formed primarily to host an annual dinner attended by 100 prominent Government, civic, and business leaders invites the Service Chief to attend. The Chief is not making remarks or otherwise presenting information on behalf of the Department, but the event provides a valuable opportunity to interact with people able to influence support for DoD programs and personnel. Under these circumstances, it would not be appropriate to accept free attendance in an official capacity under 10 U.S.C. § 2601. However, the WAG exception could be used, provided the agency designee makes the appropriate determinations in writing as required by 5 C.F.R. 2635.204(g).

3. A local installation commander is invited to the Chamber of Commerce's annual business award dinner. The local community is very supportive of the military and the Chamber will recognize a "Soldier of the year," as well as a "military spouse of the year." The Chamber has asked the commander to be on stage for the award presentation, although she has not been allotted time for remarks. In these circumstances, the "presenting information" exclusion in 5 C.F.R. 2635.203(b)(8) would not be available. However, 10 U.S.C. § 2601 may be an appropriate basis to accept free attendance for the commander, as the representative of all service men and women in the area. The commander – and other DoD personnel attending – could also potentially accept free attendance if the criteria for a WAG are satisfied and a written opinion is provided.

4. Several personnel at your installation (along with their spouses) are invited to a holiday party hosted by a local community organization, with attendance sponsored by corporate donors. The event is expected to have 150-200 attendees. Your Commander believes this will be an excellent opportunity to engage with key stakeholders in the local community and the Commander, Deputy, and Senior Enlisted Advisor typically attend each year in uniform. In this case, 10 U.S.C. § 2601 would not be an appropriate basis to accept free attendance, as the event is primarily social and any DoD interest is primarily networking rather than a visible and obvious representation of DoD's personnel or mission. Whether or not invitees will attend in uniform may have some relevance in determining the nature of an event, but should not be used to justify official attendance for an event that lacks a strong military nexus for which official representation might be warranted. The WAG exception could be used for this function, subject to the appropriate determinations required by 5 C.F.R. 2635.204(g).

**DISCLAIMER: The purpose of this advisory is to disseminate relevant information and sources of general guidance, policy and law on Government Ethics issues to the Department of Defense ethics community. Advisories are not intended to be and should not be cited as authoritative guidance, DoD policy, or law.**

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