

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



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LEGAL ADVISORY

TO: Designated Agency Ethics Officials

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SUBJECT: Determining the “Market Value” of Events When No Fee is Charged to Attend

The U.S. Office of Government Ethics (OGE) has recently received a number of questions regarding how employees should calculate the “market value” of an event for purposes of the gift rules at 5 C.F.R. § 2635, Subpart B, where no entrance fee is charged to any person to attend the event. This Legal Advisory clarifies that to determine the “market value” of an event where no fee is charged to any attendee, employees should aggregate the market value of any food, beverages, entertainment, or other tangible benefit offered to attendees in connection with the event, but do not need to consider the cost incurred by the sponsor to rent the venue where the event is held. In the alternative, an employee may elect to rely on a per-person cost estimate provided by the sponsor of the event, unless the estimate is implausible or would be inconsistent with a fair value estimate.

The term “market value” is defined as the “retail cost the employee would incur to purchase the gift.” 5 C.F.R. § 2635.203(c). Where an employee is charged to attend an event, the market value is generally the entrance fee or the face value of the ticket. *Id.* Where an employee cannot ascertain the market value of a gift, such as at an event where there is no entrance fee, OGE has provided that an employee can estimate the market value “by reference to the retail cost of similar items of like quality.” 5 C.F.R. § 2635.203(c).

What constitutes the “cost of similar items of like quality” depends on the gift that is being offered. For example, OGE advised in 2007 that the cost of free admission to sit in a private skybox or suite at an event for which “there is no publicly available ticket to use to determine market value” is “determined by adding the market value of the most expensive publicly available ticket to the event to the market value of the food, parking and other tangible benefits provided in connection with the gift of attendance.” OGE Informal Advisory Opinion 07 x 2. That opinion did not require the employee to independently factor in the rental costs of the skybox.

This method of determining “market value” also applies to determining the “market value” of an event when there is no fee charged to any attendee. However, because there is no “publicly available ticket” or entrance fee charged to any attendee, the market value of a gift of admission to such events is calculated by adding the market value of food, beverages, entertainment, and other tangible benefits offered to attendees. The market value of these items is based on the cost an employee would incur to obtain similar items at a comparable location or event. As in the case of determining the market value of free admission to a skybox or suite, the calculation does not need to include a per-person estimate of the cost that the sponsor or host incurred to rent the venue where the event is held.

This analysis is also consistent with other prior guidance in this area. As OGE explained in 2007, “Where no attendance fees are charged [to attend an event] and the only personal items given to employees are refreshments or meals, employees may be able to rely on provisions in the OGE gift rules other than the WAG exception. *See* 5 C.F.R. §§ 2635.204(a)(\$20 *de minimis* exception); 2635.203(b)(1)(exclusion for modest refreshments).” OGE Informal Advisory Opinion 07 x 14, note 9; *see also* OGE Informal Advisory Opinion 98 x 15. That guidance did not instruct employees to factor in the rental costs of the event venue. Furthermore, the opinion provided that in certain circumstances the exclusion for modest refreshments may be available. As rental costs would not constitute modest refreshments, it is clear that OGE did not intend for employees to consider such costs in the circumstances described in the opinion.

Employees who are considering attending an event where there is no cost charged to any attendee are encouraged to seek advice from the appropriate agency ethics official regarding how to value the gift of attendance to such events, as well as whether attendance would be permissible under the gift rules.