

good in seeking to gather, record and disseminate information about current events. In the view of the White House, members of the press and press organizations do not seek to do business with, nor do they seek official action from, the Government officials about whom they report. The White House suggested that this provides a justification for treating invitations from press organizations differently than invitations from others who are prohibited sources or who invite Government employees because of their official positions.

It may be true that members of the press, in some instances, do not seek to do business with or seek official action from the particular Government official about whom they are reporting. More often than not, however, those who report about the actions of Government officials or about Government programs do interview, or seek to interview, those who are the subject of their reporting or who have official knowledge about the subject. When that occurs they and the press organizations they represent often are seeking official information from Government officials and are seeking to occupy their official time. They are "prohibited sources" within the meaning of 5 CFR 2635.203(d)(1) to the same extent as are others who seek official action from the employees of a Federal agency. How successful they are in obtaining that official information impacts upon their work product and redounds to their benefit or detriment and, ultimately, to the benefit or detriment of the news organizations they serve. Members of the press and press organizations have interests that may be substantially affected by the performance or nonperformance of the official duties of the Government officials of whom they seek information and, thus, also meet the definition of prohibited sources in 5 CFR 2635.203(d)(4). See OGE informal advisory memorandum 87x13 issued October 23, 1987, as published in the "Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics" (at pp. 743-755 of the 1979-1988 bound volume), which is available from the U.S. Government Printing Office. We agree with the White House view that reporting by the press often serves the public good. Whether the product or service is a new cancer medication approved by the Food and Drug Administration or a blockbuster documentary on World War I funded, in part, by a grant from the National Endowment for the Humanities, the same can be said of the products or

services of many others who are prohibited sources.

For the reasons stated above, we cannot concur in the White House view that invitations from the press to widely attended gatherings should be treated differently than invitations from other prohibited sources or from others who invite Government officials because of their official positions. We do agree with the White House view, however, that § 2635.204(g)(2) may be unnecessarily restrictive in prohibiting acceptance of invitations to all widely attended gatherings from a person other than the sponsor of the event. By this notice, OGE proposes to adopt the White House's alternative suggestion to modify § 2635.204(g)(2) to permit acceptance of invitations to widely attended gatherings from persons other than the sponsors of those events where more than 100 will be in attendance and where the gift of free attendance has a market value of \$250 or less. The Office of Government Ethics also proposes to modify § 2635.204(g)(2) to clarify that events attended by a few, rather than many, are not widely attended gatherings. In addition, OGE is proposing to amend § 2635.204(g)(6) to permit authorization for a person other than a spouse to accompany an employee to a widely attended gathering or to an event at which the employee is assigned to participate as a speaker, panel participant or other presenter of information (pursuant to § 2635.204(g)(1)), where an invitation has been extended to the spouse or a guest and where others in attendance will generally be accompanied by a spouse or a guest.

The proposed amendments to § 2635.204(g) are incorporated in this notice of proposed rulemaking after consultation with the Department of Justice and the Office of Personnel Management.

## II. Analysis of the Proposed Changes

As an exception to the gift prohibitions set forth in 5 CFR 2635.202(a), § 2635.204(g)(2) now permits an employee to accept an unsolicited gift of free attendance at a widely attended gathering where the agency makes a determination that the employee's attendance is in the interest of the agency, provided that the gift is from the sponsor of the event. One of the two changes to § 2635.204(g)(2) proposed by this rule would permit an employee to accept an unsolicited gift of free attendance at a widely attended gathering from a person other than the sponsor of the event where there has been a determination of agency interest, provided that more than 100 persons are

expected to attend the event and provided that the gift of free attendance has a market value of \$250 or less. The requirement that attendance be expected to exceed 100 persons is proposed to limit the use of this exception to events which, by their larger, more public nature are unlikely to prompt questions regarding the appropriateness of their characterization as widely attended. The \$250 ceiling on the value of free attendance that may be accepted from a person other than the event's sponsor coincides generally with the public financial disclosure reporting exclusion at 5 U.S.C. app. § 102(a)(2)(A) of the Ethics in Government Act (and 5 CFR 2634.304(a) of OGE's implementing regulations) for gifts of less than \$250 and, thus, comports with legislative consensus that gifts below that amount are of a value that need not be subjected to public scrutiny. Together, the two limitations reduce the possibility that the exception for widely attended gatherings might be used to provide lavish entertainment for Government employees.

To accommodate the proposed change to § 2635.204(g)(2), a conforming change to § 2635.204(g)(3)(i) is proposed to require a written finding of agency interest where the person who has extended the invitation may be substantially affected by performance or nonperformance of the employee's duties. The phrase "person who has extended the invitation" means the person who is the donor of the gift of free attendance. A conforming change to § 2635.204(g)(4) is proposed to clarify that the market value of free attendance by an accompanying spouse or other guest, when authorized under § 2635.204(g)(6), is to be added to the market value of the employee's own free attendance in determining the market value of the gift of free attendance for the purpose of applying the \$250 limit and for the purpose of considering the relevant factors under § 2635.204(g)(3)(i). A new example 2 is proposed to be added following § 2635.204(g) to illustrate this modification. Example 1 would be modified to incorporate a free attendance value in excess of \$250 so that the example will continue to illustrate that higher value gifts of free attendance may be accepted with agency approval only from the sponsor of the event.

The other change proposed to § 2635.204(g)(2) is to add language to clarify that widely attended gatherings are only those attended by a large number of persons. As presently in effect, the paragraph states that a gathering "is widely attended if, for