OFFICE SYMBOL Date

MEMORANDUM FOR

SUBJECT: Free Attendance at the \_\_(NFE Event)\_\_

1. This responds to your inquiry concerning whether you may accept from \_(donor)\_\_ a gift of free attendance at the \_(NFE Event) on \_ (date)\_.

2. BLUF: (Highlight main legal conclusions/findings).

3. Background.

 a. You are the \_\_(duty title)\_\_\_. Your duties include: \_\_\_\_\_\_

 b. The \_\_(donor) \_\_\_ is a person/company that (describe what donor does and state whether donor is a registered lobbyist). The \_\_(donor)\_\_ (does/does not) have interests that may be substantially affected by the performance or nonperformance of your official duties, or (is/is not) an association or organization the majority of whose members have such interests.

 c. The \_\_(NFE hosting the event)\_\_ is an organization (e.g., for profit or 501(c)(3) nonprofit) that focuses on \_\_\_\_\_\_. Their mission is to \_\_\_\_\_\_\_\_.

 d. The \_\_(NFE Event)\_\_ will consist of (describe event). The purpose of the event is (describe purpose). The event is/is not considered a fundraising event.

 e. The cost for a member of the general public to attend the \_(NFE Event)\_ is $X. The cost of your ticket was borne by \_\_(donor)\_\_, who designated you to be invited. The \_\_(donor)\_\_ paid $X to \_\_(NFE)\_\_ to provide for your attendance. The fair market value of the food and beverage to be provided is approximately \_\_\_\_.

 f. Approximately XXX persons will attend the event. The event will be attended by (describe attendees, e.g., private sector corporate leaders, members of the press, lobbyists, government officials, and academics.) Describe the opportunity to exchange views and ideas among the group of persons in attendance during the pre-dinner reception.

 4. Free Attendance.

 a. a. The Standards of Conduct for Employees of the Executive Branch (Standards) and Joint Ethics Regulation (JER) ordinarily prohibit Army personnel from accepting gifts given because of their official positions or from a prohibited source, unless an exception applies. A “gift” is defined as any gratuity, favor, discount, hospitality, or other item having monetary value. Free attendance at events, receptions, and meals falls within this definition. In the instant case, it appears that the gift of free attendance to this event has been offered because of your official position. Therefore, an exception to the gift rules must apply in order to accept this invitation.

 b. Executive Branch employees may accept free attendance at an event under the widely attended gathering (WAG) exception, if all of the following conditions apply: 1) a large number of persons will attend the event; 2) persons with a diversity of views or interests will be present; 3) the employee’s attendance will further agency programs and operations; 4) the cost of the event is paid by the event’s sponsor (or additional conditions are met if paid by a non-sponsor); and 5) in cases where the employee’s duties can substantially affect the interest of the sponsoring organization or the entity extending the invitation, the government’s interest in the employee’s participation outweighs the concern that the gift of free attendance may (or may appear to) improperly influence the employee in the performance of his duties. See, 5 CFR § 2635.204(g)(2).

 c. In cases where the cost of the employee’s attendance is provided by someone other than the sponsor of the event, the WAG exception is applicable only where more than 100 persons are expected to attend the event and the value of the gift of free attendance is less than $375.

 d. [Based on the information provided, it appears that the WAG exception is applicable. The \_(NFE Event)\_ will be attended by more than 100 people; the event will be attended by a variety of persons from throughout the business, government, and academic community; and there will be ample opportunity to exchange views with other guests on \_\_\_\_\_\_, a topic of interest to the Army. Your attendance furthers Army interests by (identify factors considered in making this determination). The cost of your admission is less than $375.] [Based on the information provided, it appears that the WAG exception is not applicable. The cost of your attendance at the \_(NFE Event)\_ is provided by \_\_(donor) \_, not the sponsor of the event. When the cost is borne by a non-sponsor of the event, the WAG exception is applicable only where more than 100 persons are expected to attend and the value of free attendance is $375 or less. In this instance, fewer than 100 persons are expected to attend/the value of the gift of free attendance is more than $375.]

 e. (If WAG exception is applicable and donor has interests that may be substantially affected by employee’s duties, analyze whether there is a conflict or appearance of a conflict that nevertheless prevents acceptance.) Because \_(donor)\_ has interests that may be substantially affected by the performance or nonperformance of your duties, your supervisor/agency designee must determine, in writing, that the Army’s interest in you attending the event outweighs concern that acceptance of the gift may appear to improperly influence the performance of your official duties. Relevant factors include: 1) importance of the event to the Army; 2) nature of any pending matter affecting the interests of the person who extended the invitation; 3) significance of the employee’s role in any such matter; 4) purpose of the event; 5) identity of other expected participants; and 6) market value of the gift of free attendance. (Apply facts to analyze these factors.) The facts support a written determination by your supervisor/agency designee that the benefit to the Army of your attendance (does/does not) outweigh any appearance of a conflict of interest.

 f. Under the WAG gift exception, you may accept free attendance, food, refreshments, entertainment, and materials furnished to all attendees as an integral part of the event. This would not include items, such as “gift bags,” that are not necessary for participation at the event. Such items may be accepted only if another exception applies (e.g., the item is valued at $20 or less). We note, however, that gifts to the employee's spouse or guest are treated as gifts to the employee for purposes of gift limitations.

 g. [(If cost of two tickets is $375 or less and spouse has been invited) Because the (NFE Event) attendees will generally be accompanied by a spouse or other guest, and the (donor) has invited both you and your spouse or guest, you may also accept the offer of free attendance for your spouse or guest. See, 5 CFR § 2635.204(g)(6).] [(If cost of one ticket is $375 or less but cost of two tickets is more than $375) When the cost is borne by a non-sponsor of the event, the WAG exception is applicable only where more than 100 persons are expected to attend and the value of free attendance is $375 or less. In this instance, the value of the gift of free attendance for both you and your spouse is more than $375. Accordingly, you may only accept a ticket for yourself.]

5. Financial Reporting Requirements. In general, employees required to file financial disclosure reports (OGE Form 450 or OGE Form 278) must report each gift item worth more than $150 when the total value of all such gifts from one source exceeds $375 for the reporting period. 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. In calculating the value of the gift for financial reporting purposes, employees may exclude the fair market value of the food and refreshments served at the event. 5 CFR § 2634.105h(4).

6. Fundraising. [If event is a fundraiser:] The Joint Ethics Regulation imposes restrictions on employee participation in fundraising. Therefore, attendees at this event must be mindful that their participation in the event does not rise to the level of “active and visible participation” in any fundraising. JER 3-210 provides that “DoD employees shall not officially endorse or appear to endorse fundraising for any non-Federal entity” unless an enumerated exception applies. This includes a prohibition on active and visible participation in the promotion and presentation of an event, sitting at a head table (unless giving an official speech) and standing in a receiving line. None of the enumerated exceptions apply to this event.

7. Endorsement. Pursuant to JER 3-209, attendees must refrain from endorsing or appearing to endorse any non-federal entity or activity, including the event host, any sponsoring organization, or the event itself.

8. Ethics Pledge. [If donor is a registered lobbyist and the invitee is an appointed official subject to the Ethics Pledge promulgated under Executive Order 13490:] Since the \_(NFE)\_ (is/is not) a 501(c)(3) non-profit entity, as a signatory of the Ethics Pledge, you (may/may not) accept gifts from the \_(NFE)\_ that are otherwise allowable under the Standards and the JER.

9. Transportation. Because attendance using the WAG exception is in a personal capacity, you may not use Government transportation to attend the event.

10. The foregoing analysis is based on the facts provided to our office. Different facts may result in a different conclusion concerning the applicability of this or any other exception to the general rule prohibiting acceptance of gifts. Please contact me at \_\_\_\_\_\_\_\_\_\_\_if you have any questions or if I may be of further assistance.