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Part 1 (2:41)**UPCOMING WEBINARS**[Form ADV: Timely Tips to Satisfy Your Annual](#)**How to handle gifts and entertainment when there's no regulatory standard**

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An easy out for many compliance staff given the duty to train firm employees on gifts and entertainment rules is to adopt the lowest regulatory threshold – FINRA's [\\$100 gift limit](#) – within your P&Ps.

It's simpler for staff to understand if you go with "the lowest common denominator," suggests **Medina Jett**, president of **Integrated Compliance Solutions Group** in West Hartford, Conn.

FINRA is weighing whether to revise its G&E rules. In [comments](#), the **Financial Services Institute** pleads for a higher threshold. "Firms and advisors recommend raising this threshold to \$250 or as high as \$500," writes the FSI. "The current low threshold becomes particularly bothersome in instances where advisors want to provide gifts to their clients for such things as anniversaries and weddings, or send flowers to clients as a get well or sympathy gesture."

The **SEC** doesn't set a threshold. Neither the Advisers Act nor the compliance program rule mention G&E. However, an IA's duty stems from its required code of ethics and concerns G&E could damage an adviser's fiduciary duty to clients.

The **Department of Labor's** ERISA threshold is an aggregate annual value of \$250.

The simplest solution

Given the differences among regulators and the risk inherent in the practice, **Mike Hadley**, a partner with **Davis and Harmon** in Washington, D.C., concludes that "if you are a fiduciary, it makes your life easier to avoid any gifts and entertainment."

"There is not really any simple way to line up the different thresholds for compliance purposes," is how **Michelle Kennedy**, president of **Compass Compliance Services** in Greenville, S.C., puts it.

So as to not confuse staff and to achieve simplicity "most firms go with the FINRA limit," says **Irshad Karim**, managing director of **SEC3 Compliance Consultants** in Phoenixville, Pa.

Whatever you do, start with your compliance P&Ps, counsels **Tom Clough**, president/COO of **Pension Resource Institute** in Prairie Village, Kan. Make sure your P&Ps "address the spirit and intent of the rules," he adds.

"It's simply bad business" to permit G&E to create a perception of improper influence, continues Clough. Spread the word about your P&Ps through training (consider a firm-wide webinar). Set up a reporting mechanism so compliance can evaluate a potential gift or an entertainment event.

Schedule training

The advent of the holiday season, say in November, makes for an ideal time to hold a refresher. "Right before the big gifting season," says Jett. Remind staff to come to you if they're uncertain about any item or event.

Having a pre-approval policy can work well, she adds. You could limit the pre-approval to "special categories," says Karim. For instance, depending on your business model, you could dictate that pre-approval is mandatory for any G&E including government officials (pay-to-play), foreign officials (for FCPA compliance), corporate officials (if you're subject to the UK Bribery Act) and pension plan representatives (ERISA), he suggests.

More scrutiny may be deserved if it's a gift lacking a business purpose or the donor won't be accompanying the staffer to the entertainment event, says Jett.

Apply a "reasonable test," she adds. A tab of \$100 won't go as far in New York City as it does in Laramie, Wyo. Perhaps it's an annual event the staffer must attend and it just happens to come with an expensive dinner. "There's more discretion involved on the entertainment side," agrees Karim. You may grant more leeway if the donor joins the staffer at the event. "It just needs to be reasonable and customary," he adds, noting that the \$100 FINRA threshold applies only to gifts, not entertainment.

A dual-registrant provides a \$100 gift card to a company's HR staff to give out as a door prize at an event for their employees to learn about the adviser and possibly hire it to manage their 401(k) funds. The adviser would have no way of knowing who actually won the gift card. Still, the gift should be reported internally in accordance with the firm's P&Ps, says Clough. The broker-dealer would record the gift as part of its books and records as required by rule 17a-4, he adds.

Managing pensions

The \$250 ERISA annual threshold includes "meals, gifts, entertainment, or expenses associated with educational conferences," according to the DOL's fiduciary enforcement [guide](#). "It is an area that the [DOL] is interested in from an enforcement standpoint," states Hadley. "That's why many advisers ...

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simply prohibit any gifts" in connection with ERISA plans, just to be safe, he adds.

Others say G&E interest has cooled on the SEC side. It's even rare for an investment adviser to run into ERISA trouble unless "the meals and entertainment were viewed as a compensatory payment for services provided," says **Joan Neri**, a partner with **Drinker Biddle** in Florham Park, N.J. Like Hadley, she finds more IAs steer clear of G&E under ERISA.

The DOL could be alerted to G&E through mandatory reporting that plan sponsors must make with the regulator.

Some firms will return a gift "along with a very nice" note, says Jett. An alternative is to share the gift with the entire firm. For example, a box of expensive chocolates could be left out for all to sample. That way, it would be hard to argue the sweets produced any client favoritism.

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