

§ 2601.104

5 CFR Ch. XVI (1–1–11 Edition)

(e) *Type of gift.* The agency may solicit or accept any gift that is within its statutory authority. However, as a matter of policy, OGE will not solicit or accept gifts of currency pursuant to this part. Donors who offer currency should be advised that the gift may be made by check or money order payable to the U.S. Office of Government Ethics.

§ 2601.104 Relationship to other authorities.

(a) This part does not apply to gifts to the agency of:

(1) Travel and travel-related expenses made pursuant to the authority set forth in 31 U.S.C. 1353; or

(2) Volunteer services made pursuant to the authority set forth in 5 U.S.C. 3111.

(b) This part does not apply to gifts to an individual agency employee, including:

(1) Gifts of contributions, awards or other expenses for training made pursuant to the authority set forth in the Government Employees Training Act, 5 U.S.C. 4111;

(2) Gifts made by a foreign government or organization, or representative thereof, pursuant to the authority set forth in 5 U.S.C. 7342;

(3) Gifts made by a political organization that may be accepted by an agency employee who, in accordance with the terms of the Hatch Act Reform Amendments of 1993, at 5 U.S.C. 7323, may take an active part in political management or in political campaigns; or

(4) Gifts made directly or indirectly that an employee may accept in a personal capacity pursuant to the authority set forth in 5 CFR part 2635, subpart B or subpart C.

§ 2601.105 Definitions.

For the purposes of this part:

Administration Division means the Administration Division of the Office of Government Ethics.

Agency means the Office of Government Ethics (OGE).

Authorized agency official means the Director of the Office of Government Ethics or the Director's delegatee.

Director means the Director of the Office of Government Ethics.

Employee means an employee of the Office of Government Ethics.

Gift means any gift, donation, bequest or devise of money, use of facilities, personal property, or services and may include travel reimbursements or payments for attendance at or participation in meetings or events.

Money means currency, checks, money orders or other forms of negotiable instruments.

Personal property means all property, tangible or intangible, not defined as real property, and includes stocks and bonds.

Prohibited source means any source described in 5 CFR 2635.203(d).

Services means all forms of voluntary and uncompensated personal services.

Use of facilities means use of space, equipment and all other facilities.

Subpart B—Guidelines for Solicitation and Acceptance of Gifts

§ 2601.201 Delegation.

(a) The authority to solicit, accept, and utilize gifts in accordance with this part resides with the Director.

(b) The Director may delegate this authority.

(c) Authorities delegated in accordance with paragraph (b) of this section may be redelegated only through a written delegation authorizing an agency employee to solicit or accept specific types of gifts, or a gift for a specific purpose, function, or event.

§ 2601.202 Procedure.

(a) The authorized agency official shall have the authority to solicit, accept, refuse, return, or negotiate the terms of acceptance of a gift.

(b) An employee, other than an authorized agency official, shall immediately forward all offers of gifts covered by this part regardless of value to an authorized agency official for consideration and shall provide a description of the gift offered. An employee shall also inform an authorized agency official of all discussions of the possibility of a gift. An employee shall not provide a donor with any commitment, privilege, concession or other present

or future benefit (other than an appropriate acknowledgment) in return for a gift.

(c) Only an authorized agency official may solicit, accept or decline a gift after making the determination required under the conflict of interest standard in § 2601.203. An authorized agency official may find that, while acceptance of an offered gift is permissible, it is in the interest of the agency to qualify acceptance by, for example, limiting the gift in some way. Approval of acceptance of a gift in-kind after receipt of the gift may be granted as deemed appropriate by the authorized agency official.

(d) Gifts may be acknowledged in writing in the form of a letter of acceptance to the donor. The amount of a monetary gift shall be specified. In the case of nonmonetary gifts, the letter shall not make reference to the value of the gift. Valuation of nonmonetary gifts is the responsibility of the donor. Letters of acceptance shall not include any statement regarding the tax implications of a gift, which remain the responsibility of the donor. No statement of endorsement should appear in a letter of acceptance to the donor.

(e) A gift may be declined by an authorized official orally or in writing. A donor may be advised of the reason why the gift has been declined. A gift may be declined solely as a matter of agency discretion, even though acceptance would not be precluded under the conflict of interest standard in § 2601.203.

(f) A gift of money or the proceeds of a gift shall be deposited in an appropriately documented agency fund. A check or money order should be made payable to the "U.S. Office of Government Ethics."

§ 2601.203 Conflict of interest analysis.

(a) A gift shall not be solicited or accepted if the authorized agency official determines that such solicitation or acceptance of the gift would reflect unfavorably upon the ability of the agency, or any employee of the agency, to carry out OGE responsibilities or official duties in a fair and objective manner, or would compromise the integrity or the appearance of the integrity of

its programs or any official involved in those programs.

(b) In making the determination required under paragraph (a) of this section, an authorized agency official may be guided by all relevant considerations, including, but not limited to the following:

- (1) The identity of the donor;
- (2) The monetary or estimated market value or the cost to the donor;
- (3) The purpose of the gift as described in any written statement or oral proposal by the donor;
- (4) The identity of any other expected recipients of the gift on the same occasion, if any;
- (5) The timing of the gift;
- (6) The nature and sensitivity of any matter pending at the agency affecting the interests of the donor;
- (7) The significance of an individual employee's role in any matter affecting the donor, if benefits of the gift will accrue to the employee;
- (8) The nature of the gift offered;
- (9) The frequency of other gifts received from the same donor; and
- (10) The agency activity, purpose or need that the gift will aid or facilitate.

(c) An authorized agency official may ask the donor to provide in writing any additional information needed to assist in making the determination under this section. Such information may include a description of the donor's business or organizational affiliation and any matters that are pending or are expected to be pending before the agency.

§ 2601.204 Conditions for acceptance.

- (a) No gift may be accepted that:
- (1) Attaches conditions inconsistent with applicable laws or regulations;
 - (2) Is conditioned upon or will require the expenditure of appropriated funds that are not available to the agency;
 - (3) Requires the agency to provide the donor with some privilege, concession or other present or future benefit in return for the gift;
 - (4) Requires the agency to adhere to particular requirements as to deposit, investment, or management of funds donated;
 - (5) Requires the agency to undertake or engage in activities that are not related to the agency's mission, programs or statutory authorities; or