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Part IV

Office of Government Ethics

5 CFR Part 2601

**Implementation of Office of Government
Ethics Statutory Gift Acceptance
Authority; Final Rule**

OFFICE OF GOVERNMENT ETHICS**5 CFR Part 2601**

RIN 3209-AA21

Implementation of Office of Government Ethics Statutory Gift Acceptance Authority**AGENCY:** Office of Government Ethics (OGE).**ACTION:** Final rule.

SUMMARY: The Office of Government Ethics is adopting as final a proposed regulation implementing the agency gift acceptance authority contained in section 2 of the Office of Government Ethics Authorization Act of 1996, which authorizes OGE to accept gifts and certain other items for the purpose of aiding or facilitating the work of the agency and which requires the Director of OGE to issue regulations establishing criteria for determining whether the exercise of this gift acceptance authority is appropriate. This rule states the policy regarding the use of this authority, provides definitions of key terms, establishes guidelines for the solicitation and acceptance of gifts, states certain conditions for acceptance and use of gifts, and establishes accounting requirements. Although this rule implements authority that is specific to OGE, it addresses several agency gift acceptance issues of general concern to executive branch agencies. Therefore, it could provide guidance to other agencies in administering their gift authority.

EFFECTIVE DATE: This rule will become effective November 21, 2003.

FOR FURTHER INFORMATION CONTACT: Allison C. George, Associate General Counsel, Office of Government Ethics, Telephone: (202) 482-9300; TDD: (202) 482-9293; FAX (202) 482-9237.

SUPPLEMENTARY INFORMATION: In this rulemaking document, OGE is adopting final agency gift acceptance authority regulations, for codification at 5 CFR part 2601. On May 5, 2003, at 68 FR 23875-23883 (as separate part VII), OGE published a proposed rule that would implement section 2 of the Office of Government Ethics Authorization Act of 1996 (the 1996 Reauthorization Act), Pub. L. 104-179, 110 Stat. 1566, which amended the Ethics in Government Act of 1978 (the Ethics Act), as codified at 5 U.S.C. app. § 403(b). The proposed rule invited comments from the public to be received by OGE on or before August 4, 2003. No comments were received. Therefore, OGE is finalizing this rule without change. For additional background information and a

discussion of the regulatory provisions, interested parties may consult the preamble to the proposed rule, which was published in the **Federal Register** at 68 FR 23875-23883.

Executive Order 12866

In promulgating this final regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation as set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has not been reviewed by the Office of Management and Budget under that Executive order since it is not a significant regulatory action within the meaning of the Executive order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because it primarily affects OGE itself and OGE employees.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this regulation would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain information collection requirements that require the approval of the Office of Management and Budget.

Congressional Review Act

The Office of Government Ethics has determined that this regulation involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law at the same time this rulemaking document is

sent to the Office of the Federal Register for publication in the **Federal Register**.

List of Subjects in 5 CFR Part 2601

Conflict of interests, Government employees, Government property.

Approved: October 10, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

■ Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending subchapter A of chapter XVI of title 5 of the Code of Federal Regulations by adding a new part 2601 to read as follows:

PART 2601—IMPLEMENTATION OF OFFICE OF GOVERNMENT ETHICS STATUTORY GIFT ACCEPTANCE AUTHORITY**Subpart A—General Provisions**

Sec.

- 2601.101 Authority.
- 2601.102 Purpose.
- 2601.103 Policy.
- 2601.104 Relationship to other authorities.
- 2601.105 Definitions.

Subpart B—Guidelines for Solicitation and Acceptance of Gifts

- 2601.201 Delegation.
- 2601.202 Procedure.
- 2601.203 Conflict of interest analysis.
- 2601.204 Conditions for acceptance.

Subpart C—Accounting Requirements

- 2601.301 Accounting of gifts.

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978).

Subpart A—General Provisions**§ 2601.101 Authority.**

Section 2 of the Office of Government Ethics Authorization Act of 1996, amending the Ethics in Government Act of 1978, as codified at 5 U.S.C. app. 403(b), authorizes the Office of Government Ethics (OGE) to accept and utilize gifts for the purpose of aiding or facilitating the work of OGE.

§ 2601.102 Purpose.

The purpose of this part is to establish guidelines governing the implementation of OGE's gift authority by defining its scope and application, by prescribing the policies, standards and procedures that govern the solicitation, acceptance and use of gifts, and by setting forth accounting requirements related to the use of this authority.

§ 2601.103 Policy.

(a) *Scope.* The Office of Government Ethics may use its statutory authority to solicit, accept and utilize gifts to the agency that aid or facilitate the agency's

work. The authority to solicit, accept and utilize gifts includes the authority to receive, administer, spend, invest and dispose of gifts. Gifts to the agency from individuals or organizations can be a useful adjunct to appropriated funds and may enhance the agency's ability to fulfill its mission, as well as further mutually beneficial public/private partnerships, or other useful arrangements or relationships. Such uses of this authority are appropriate provided that solicitation or acceptance of a gift does not compromise the integrity of OGE, its programs or employees.

(b) *Use of gifts.* Gifts to OGE may be used to carry out any activity that furthers the mission, programs, responsibilities, functions or activities of the agency. Gifts may be used to carry out program functions whether or not appropriated funds are available for that purpose, provided that such expenditures are not barred by law or regulation. Gifts may also be used for official travel by employees to events or activities required to carry out the agency's statutory or regulatory functions. Gifts to the agency may also be used for the travel expenses of spouses accompanying employees on official travel, if such travel could be paid for by appropriated funds.

(c) *Sources.* Generally, gifts may be solicited or accepted from any source, including a prohibited source, provided that the standards of this part are met. Gifts generally should be made directly to the agency and not through intermediaries. However, where a gift is offered by an intermediary, both the intermediary and the ultimate source of the gift should be analyzed to determine whether acceptance would be appropriate.

(d) *Endorsement.* Acceptance of a gift pursuant to this part shall not in any way be deemed to be an endorsement of the donor, or the donor's products, services, activities, or policies. Letters to a donor expressing appreciation of a gift are permitted.

(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

(6) Would reflect unfavorably upon the ability of the agency, or any of its employees, to carry out its responsibilities or official duties in a fair and objective manner, or would compromise or appear to compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.

(b) [Reserved].

Note to § 2601.204: Nothing in this part shall prohibit the agency from offering or providing the donor an appropriate acknowledgment of its gift in a publication, speech or other medium.

Subpart C—Accounting Requirements

§ 2601.301 Accounting of gifts.

(a) The Administration Division shall ensure that gifts are properly accounted for by following appropriate internal controls and accounting procedures.

(b) The Administration Division shall maintain an inventory of donated personal property valued at over \$500. The inventory shall be updated each time an item is sold, excessed, destroyed or otherwise disposed of or discarded.

(c) The Administration Division shall maintain a log of all gifts valued at over \$500 accepted pursuant to this part. The log shall include, to the extent known:

- (1) The name and address of the donor;
- (2) A description of the gift; and
- (3) The date the gift is accepted.

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