

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:** Proposed rule with request for comments.

SUMMARY: The Office of Government Ethics is issuing a proposed regulation that would implement 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. The proposed rule would state the policy regarding the use of this authority, provide definitions of key terms, establish guidelines for the solicitation and acceptance of gifts, state certain conditions for acceptance and use of gifts, and establish accounting requirements.

DATES: Written comments by executive branch agencies and other interested persons are invited and are due on or before August 4, 2003.

ADDRESSES: Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917, Attention: Ms. Allison C. George. Comments also may be sent electronically to OGE's Internet E-mail address at usoge@oge.gov. For E-mail messages, the subject line should include the following reference—"Comments Regarding Proposed Gift Acceptance Authority Regulations."

FOR FURTHER INFORMATION CONTACT: Allison C. George, Associate General Counsel, Office of Government Ethics, Telephone: 202-208-8000; TDD: 202-208-8025; FAX 202-208-8037.

SUPPLEMENTARY INFORMATION:**I. Background**

This proposed rule, to be codified once finalized in a new part 2601 of 5 CFR, 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).

Section 403(b)(1) of the Ethics Act as amended authorizes the Director of OGE to accept and utilize on behalf of the United States, any gift, donation, bequest or devise of money, use of facilities, personal property, or services, for the purpose of aiding or facilitating the work of OGE.

Section 403(b)(2) of the Ethics Act as amended prohibits the acceptance of any gift that attaches conditions inconsistent with applicable laws or regulations. It also prohibits acceptance of any gift that is conditioned upon or will require the expenditure of appropriated funds that are not available to OGE.

Section 403(b)(3) of the Ethics Act as amended requires the Director of OGE to establish written rules that set forth criteria for determining whether the acceptance of a particular gift is appropriate. The statutory standard for this determination is whether acceptance would "reflect unfavorably upon the ability of the Office of Government Ethics, or any employee of such Office, to carry out its 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."

The legislative history of the 1996 Reauthorization Act indicates that OGE sought this authority only "to support OGE's education and training program in carrying out its training mission." H.R. Rep. No. 104-595 at 7 (1996) (House Report). See also S. Rep. No. 104-244 at 5 (1996) (Senate Report). However, by its terms the law confers broad gift acceptance authority—similar to that bestowed upon other executive branch agencies—that may be used for any activity that furthers the work of the Office. The 1996 Reauthorization Act requires the Director to promulgate implementing regulations in order to ensure that this grant of broad authority is not used in a manner that would compromise the integrity of OGE or its employees. The House Report states:

It is the intention of the Committee that these rules will safeguard against not only conflicts of interest, but any appearance of a conflict of interest in the acceptance of gifts by OGE.

House Report at 7. See also Senate Report at 5.

The legislative history further notes that many executive branch agencies and departments that have statutory gift acceptance authority are not required to prescribe rules governing its use:

Moreover, those agencies and departments that have gift acceptance authority are not

required to prescribe regulations governing its use. While other agencies will not be required to follow the example of OGE's regulations in making determinations about their gift acceptance authority, OGE believes that its regulations will provide useful guidance to agencies.

House Report at 7-8. See also Senate Report at 6.

Finally, in the discussion of this legislation on the Senate floor, Senator William Cohen, a sponsor of the Senate bill, noted:

Currently, other agencies that have gift acceptance authority do not have to prescribe regulations governing its use. While other agencies would not be required to follow the example of OGE's regulations in making their own determinations about their gift authority, OGE's regulations would provide useful guidance to other agencies.

142 Congressional Record S8739, July 24, 1996.

Executive branch agency gift authorities differ widely in their terms. In some cases the authority may be agencywide, while in others it may be limited to a particular component or activity. Some agency authorities permit the acceptance of virtually any kind of gift; others limit gifts to a particular type. Some authorities permit the use of gifts for a broad range of purposes; others limit use of gifts to some particular purpose. The practice with regard to implementing regulations also differs widely among executive branch agencies. Some agencies have comprehensive directives, orders, or policy statements regarding the use of their gift acceptance authority. Other agencies have no written guidelines and make agency gift acceptance determinations on a case-by-case basis.

Although this proposed rule would implement 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. In order to develop a final rule that would have the greatest degree of utility in this regard, OGE invites comments by executive branch agencies and other interested persons on this proposed rule, in particular with respect to these issues of more general concern.

As noted above, however, there is great variation among existing agency gift acceptance authorities. Agencies also differ in terms of the frequency and amount of gifts they receive. Agencies also may have gift issues that are unique to their programs and missions. Thus, an agency that wishes to use the OGE rule as a model may need to modify the rule as proposed to meet its particular needs and circumstances.