

Other kinds of sources may also raise special concerns. For example, gifts from intermediaries, including foundations and other organizations, may require additional analysis and evaluation. Although gifts generally should be made directly to OGE, the proposed rule would not preclude gifts from intermediaries. However, where a gift is made through an intermediary, it is relevant to the conflict analysis to consider both the intermediary and the ultimate source of the gift. In addition, the intermediary, such as a foundation or association, may itself be a prohibited source, as noted above, and call for the same degree of scrutiny. Gifts from intermediaries should also be examined in terms of the nature of the conditions that may be attached to the gift. However, rather than bar any source as a class, the proposed rule would resolve these special issues through application of the conflict of interest analysis.

Proposed § 2601.103(d) would state that acceptance of a gift should not in any way be construed to be an endorsement of the donor or the donor's products, services, activities or policies.

Proposed § 2601.103(e) would state that, with the exception of gifts of actual currency, OGE will not preclude the solicitation or acceptance of any kind of gift that is within its authority.

Although OGE's statutory authority does not bar gifts of currency, OGE believes that it is prudent to decline a gift in the form of actual currency. This approach is consistent with that taken by many agencies that have addressed the question in their policy guidelines. The reasons for this self-limitation are the greater risks that currency presents in terms of appearance problems and in terms of accountability of funds. Generally, there should be sufficient time to advise a donor to provide a gift by some alternative to currency, such as by check, by reimbursement of expenses, or by an in-kind gift. This should not unduly limit the use of this authority and will provide greater protection for OGE.

4. Proposed § 2601.104 would set forth the relationship of the authority implemented by this subpart to other authorities that provide for the acceptance of gifts either by OGE or by an OGE employee. The authority that would be implemented by this proposed regulation is general authority for OGE to accept gifts. There are other authorities that are more specific and that provide for the acceptance of gifts by either the agency or by an individual employee in a personal capacity. In some cases, an authority, by law, is the exclusive authority for agency acceptance of a gift. In such a case, that

authority would be the exclusive authority for acceptance by the agency. In other cases, a particular authority does not expressly state that it is exclusive. As a matter of policy, however, OGE will utilize the more specific authority for situations in which it is applicable. This would not, however, preclude use of OGE's authority for activities or purposes that are collateral to, or occur in conjunction with, but are not expressly covered by some specific authority.

Proposed § 2601.104(a)(1) would state the relationship of OGE's gift authority to the authority to accept payments made to the agency pursuant to 31 U.S.C. 1353. As mentioned, section 1353 is the exclusive authority by which executive branch agencies can accept certain travel reimbursements relating to an activity that is covered by that statute. Section 1353 applies to any payment "from non-Federal sources for travel, subsistence, and related expenses with respect to attendance of the employee (or the spouse of such employee) at any meeting or similar function relating to the official duties of the employee." 31 U.S.C. 1353(a). Implementing regulations of the General Services Administration define the term "meeting or similar function" as "a conference, seminar, speaking engagement, symposium, training course, or similar event that takes place away from the employee's official station, and is sponsored or cosponsored by a non-Federal source." 41 CFR 304-1.2(c)(3).

Where section 1353 is applicable, that statute preempts the use of agency gift acceptance authority. This is made clear by the rules implementing section 1353 at 41 CFR 304-1.8(a), which state that an agency "may not accept, under an agency gift statute or other similar authority, payment for travel, subsistence, and related expenses incurred by an employee and/or accompanying spouse to attend a meeting or similar function." In other words, OGE's gift authority could not be used to accept payments in connection with attendance at a meeting or similar function that is within the scope of section 1353. However, using OGE gift acceptance authority would not be precluded in situations that are not covered by section 1353 that might occur in conjunction with a section 1353 event. Section 1353 does not apply to certain peripheral activities that may occur in connection with a section 1353 activity. Use of OGE gift acceptance authority may be appropriate in such cases, provided there is a connection to some official activity.

Section 1353 does not cover a meeting or other event required to carry out the agency's statutory or regulatory functions. OGE could use its own gift authority to cover transportation and travel related expenses connected with carrying out such core functions. For example, OGE could use its gift authority in conducting a regional ethics training event which would be in furtherance of one of OGE's core functions. Section 1353 also does not cover gifts of transportation when the employee is not in a travel status. OGE could use its authority to accept local transportation for an employee on official duty.

Proposed § 2601.104(a)(2) would state the relationship of this authority to the receipt of gifts of volunteer service accepted by the agency pursuant to 5 U.S.C. 3111. Section 3111 provides for an exception from the prohibition on acceptance of voluntary services contained in 31 U.S.C. 1342. It permits the acceptance of the services of student volunteers who are participating in an agency program established for the purpose of providing educational experiences for the student. The statute and its implementing regulations at 5 CFR part 308 contain criteria that must be met in order to accept student volunteer services.

Proposed § 2601.104(a)(2) provides that the acceptance of services by student volunteers that comes within the authority of 5 U.S.C. 3111 shall be accepted by the agency under that authority. Unlike section 1353, section 3111 does not expressly state that it is the exclusive authority for the acceptance of student volunteer services. However, OGE will use that authority for student volunteer services that are covered by the terms of that statute. On the other hand, OGE authority may be used in cases where the services to be volunteered by a student do not meet the terms of section 3111. For example, a person with more than a five-month interim between school years who would not qualify under the student volunteer program could provide volunteer services under the OGE gift acceptance authority. More importantly, the OGE authority would be available for acceptance of a broad array of other volunteer services that are not covered by the limited scope of section 3111.

There are also a number of authorities under which employees as individuals may accept gifts, such as gifts of training, gifts received from certain foreign governmental entities, and gifts that may be accepted in accordance with the provisions in the Standards of Ethical Conduct. In some cases, a gift