

conference room, auditorium, seminar or classroom, banquet room or other meeting or training space. It would also include the use of exhibit space, storage facilities, and broadcast or production studios. Use of facilities would also encompass use of the equipment associated with the facility, such as video production equipment and satellite broadcasting equipment.

B. Guidelines for Acceptance

1. Proposed § 2601.201 would provide for delegation of the OGE Director's general authority to solicit, accept, and utilize gifts.

2. Proposed § 2601.202 would set forth the procedures for handling gift offers.

Proposed § 2601.202(a) would provide that only an authorized agency official shall have the authority to solicit, accept, refuse, return or negotiate the terms of a gift.

Proposed § 2601.202(b) would provide that OGE employees who are not authorized to accept a gift are to forward all gift offers to an authorized agency official. Agency employees could respond to potential donors and inform them of OGE's gift authority but they should not engage in further discussions of the possibility of a gift without direction from an authorized agency official. OGE employees may also put a potential donor in touch with an authorized agency official. In any event, employees must not make any commitments to extend preferential treatment to any potential donor in connection with a gift offer.

Proposed § 2601.202(c) would provide that while gifts generally may be solicited or accepted only after an evaluation has been made under the conflict of interest standard of § 2601.203 as proposed, in exceptional circumstances, a gift in-kind could be accepted prior to an evaluation under the conflict standard. An example of such a situation might be an employee on official travel in a remote location who is offered a gift of local transportation. Although it would be preferable to anticipate such situations and make appropriate arrangements in advance, exceptional circumstances may warrant subsequent authorization. If subsequent authorization is determined not to be appropriate, then it may be necessary to return the gift, or make reimbursement to the donor.

Proposed § 2601.202(d) would provide that gifts may be acknowledged in writing in the form of a letter of acknowledgment, and describes the contents of such a letter to a donor or an intermediary. Gifts to the agency are considered gifts to the United States for

the purposes of Federal tax laws. Sections 170(c)(1), 2055, and 2522, respectively, of title 26 of the United States Code establish the status of such gifts for purposes of Federal income, gift, and estate taxes. The tax consequences or implications of any gift transaction are the responsibility of the donor. Therefore, donors should consult their own tax professionals for specific advice on permissible deductions. OGE will not estimate or place any value on a nonmonetary gift, for tax purposes.

Proposed § 2601.202(e) would provide that gifts may be declined orally or in writing. Donors generally may be advised of the reason for declining the gift but a gift may be declined solely as a matter of discretion.

Proposed § 2601.202(f) would provide that gifts of money (other than currency) and proceeds shall be placed in an OGE trust fund account. The Act does not specify where funds should be held when they are not being utilized. But following the practice of other executive branch agencies, OGE would establish the trust fund account through the Department of the Treasury. Disbursements would be available from the account upon order of OGE without fiscal year limitations.

3. Proposed § 2601.203 would set forth the analysis to be used for making the determination required by the Act as to whether the solicitation or acceptance of a gift 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.

Proposed § 2601.203(a) would restate the language of the Act that sets forth the standard for determining whether it is appropriate for OGE to solicit or accept a gift.

Proposed § 2601.203(b) would provide a list of factors to be considered in making the determination as to whether solicitation or acceptance of a gift would be appropriate under this standard. The first of these factors, at proposed § 2601.203(b)(1), would require an evaluation of the identity of the source of the gift. As noted above, the proposed rule does not prohibit the solicitation or acceptance of gifts from any particular type of source, including persons who would be considered "prohibited sources" of gifts to agency employees. Evaluation of the source of the gift nonetheless is a critical element in the analysis of whether a gift may be solicited or accepted.

The second factor, in proposed § 2601.203(b)(2), would require an evaluation of the estimated market value or cost to the donor of a gift, or the amount if it is a gift of money.

The third factor, in proposed § 2601.203(b)(3), would require an evaluation of the donor's stated purpose of the gift.

The fourth factor, in proposed § 2601.203(b)(4), would require an evaluation of any other expected recipients of the gift on the same occasion. This may be particularly relevant in activities with a number of sponsors. Identifying other recipients can avoid situations that might reflect unfavorably upon the agency.

The fifth factor, in proposed § 2601.203(b)(5), would require an evaluation of the timing of the gift, to avoid situations that might reflect unfavorably upon OGE. Evaluation of timing is also necessary in order to avoid any impression that the agency is pressuring a potential donor to make a gift.

The sixth factor, in proposed § 2601.203(b)(6), would require an evaluation of any matter pending at OGE that might affect the interests of the donor. In addition to actual pending matters, it is relevant to consider any anticipated dealings between the agency and the donor and the significance of those dealings to a potential donor's revenues or business.

The seventh factor, in proposed § 2601.203(b)(7), would require an evaluation of the significance of an individual employee's role in any matter affecting the donor, if benefits of the gift will accrue to that employee.

The eighth factor, in proposed § 2601.203(b)(8), would require an evaluation of the nature or character of a gift. If it is a gift in-kind, then the nature of the gift must be evaluated. Because this part as proposed would not prohibit any particular type of gift (other than gifts of currency), evaluation of the nature of the gift is important.

The ninth factor, in proposed § 2601.203(b)(9), would require an evaluation of the frequency of gifts from the same source. Frequent gifts could create an appearance of a relationship between the agency and the donor as part of which favors might be granted.

The tenth factor, in proposed § 2601.203(b)(10), would require an evaluation of whether the purpose of the gift aids or facilitates the work of OGE, consistent with the terms of the statutory authority for OGE to accept gifts.

Proposed § 2601.203(c) would note that the agency may request additional information from the donor to assist in