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*Dedicated to a greater understanding of the widespread public benefits of our nation's water resources infrastructure.*

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November 14, 2011

Mr. Richard M. Thomas  
Associate General Counsel  
Office of Government Ethics  
1201 New York Avenue, NW  
Suite 500  
Washington, DC 20005-3917

Re: RIN 3209-AA04 – Proposed Amendments to Part 2635; Standards of Conduct for Employees of the Executive Branch; Proposed Amendments Limiting Gifts from Lobbyists and Lobbying Organizations.

Dear Mr. Thomas:

These comments are in response to the Notice of Proposed Rulemaking (NPR) published in the Federal Register on September 13, 2011, seeking comment on the proposed amendments to the regulation governing standards of ethical conduct for executive branch employees of the Federal Government.

The National Waterways Conference (NWC), a nonprofit 501(c)(6) trade association, would be directly impacted by the proposed amendments. Established in 1960, NWC is dedicated to a greater understanding of the widespread public benefits of our nation's water resources infrastructure. Our mission is to implement common sense policies and programs, recognizing the public value of our Nation's water resources and their contribution to public safety, a competitive economy, national security, environmental quality and energy conservation. As part of this, we facilitate active, robust, informed discussions among our membership, which includes representatives of the full spectrum of water resources stakeholders, such as flood control associations, levee boards, waterways shippers and carriers, industry and regional associations, port authorities, shipyards, dredging contractors, regional water supply districts, engineering consultants, and state and local governments.

The proposed changes, if implemented, would prove to be detrimental to the development of agency policies and procedures. These proposed rules would stifle the free exchange of ideas and expertise that is so crucial in our specialized industry. We urge OGE to withdraw the proposed rules so as not to create an environment where public policy is created in a vacuum.

At the outset, the apparent reasoning behind the proposed rule is fundamentally flawed. OGE asserts that adding a new lobbyist limitation to the existing limitations on the use of gift exceptions “would extend the ‘real’ benefits that OGE has already ‘perceived’ as a result of the gift ban on political appointees.” However, OGE does not provide any evidence or examples of actual benefits achieved from the “Ethics Pledge” signed by political appointees. Moreover, there is no indication that the current rules governing the standards of conduct of executive branch employees are in any way flawed or inadequate. Instead, the severe restrictions imposed by the proposed rule amount to regulatory overkill. Rather than achieve a benefit, these restrictions would erect a new barrier to the free flow of ideas between regulators and the regulated community.

The proposed elimination of the \$20 “de minimis” exception and “widely attended gathering” exception for a lobbyist or lobbying organization would prohibit agency employees from attending most lunch briefings, evening receptions, and other types of these events when hosted by an organization registered under the Lobbying Disclosure Act (LDA). In addition, an agency employee would no longer be able to accept free attendance from the event organizer at a conference hosted or organized by a registered lobbyist or lobbying organization, even if the lobbyist or lobbying organization have no matters pending before that agency, unless the agency employee is a speaker at the event. Nor would an agency employee be permitted to attend social events sponsored by any registered lobbyist. OGE contends that these broad prohibitions are necessary because “social events of this type sometimes are used as lobbying tools,” and while the lobbyist may not have pending matters before the employee’s agency, “[t]he potential for harm, while perhaps latent, is nonetheless real.”

OGE’s assertions are off the mark. First, of significant concern, the new rules would have the effect of distancing advocates registered to speak out on behalf of their clients from agency decision makers who consider and enact regulations that affect businesses and individuals across the country. Such an approach creates an environment where decision-makers are not provided with the full measure of relevant information necessary to a balanced, effective decision. This would be particularly detrimental to those small businesses far beyond the beltway whose voices would not be otherwise heard. Or, OGE’s proposed rules could result in *registered* advocates to tailor their activity in a way that permits them to *deregister*, leading to less transparent forms of advocacy.

On the other hand, those unregistered lobbyists who fall under the relevant registration thresholds would be subject to fewer restrictions than those registering and complying with existing federal law. Such a result seems contrary to the stated goals of the proposed ethics rules and the purported rationale behind the proposal. The existing regulations already provide effective standards that allow an individual Designated Agency Ethics Officer to determine whether an employee’s attendance at an industry-sponsored widely attended gathering is in the interest of the agency. These determinations allow officials with individual agencies to use their judgment on whether an employee’s participation in an event is appropriate, rather than broadly excluding federal agency employees from participating in an

event when the host lobbyist.

In addition, OGE's proposed limitations on those companies that utilize lobbyists are inconsistent and unfair. For example, large, profitable companies that use outside lobbying firms to communicate with federal covered officials would not be penalized by the proposed limitations, while those events hosted by small, non-profit, issue-focused trade associations like ourselves that are registered would be prohibited from important idea exchanges with federal agency employees. Such a result only penalizes those members of the small association who have banded together to get their voices heard in Washington.

#### Conclusion

OGE contends that one of the major goals of these proposed regulations is to make all federal ethics regulations, both from the legislative and executive branch, have a "consistent message." However, the proposed rules are more restrictive in significant ways than those issued by the House and Senate Ethics Committees. We urge OGE to withdraw the proposed rule. The existing regulations are fair and consistently applied among groups with interests pending before a federal agency. Moreover, OGE has failed to present any evidence that the existing regulations are not appropriately applied or otherwise do not achieve their desired intent.

Respectfully submitted,

*Amy W. Larson*

Amy W. Larson, Esq.

President

National Waterways Conference, Inc.