



we wear<sup>SM</sup> transparency

November 14, 2011

Office of Government Ethics  
Suite 500  
1201 New York Avenue, NW  
Washington, DC 20005-3917

Attn: Richard M. Thomas, Associate General Counsel

REF: RIN 3209-AA04 (76 FR 56330).

[Proposed Amendments Limiting Gifts from Registered Lobbyists and Lobbying Organizations]

Dear Mr. Thomas:

On behalf of the American Apparel & Footwear Association (AAFA) - the national trade association of the apparel and footwear industries, and their suppliers - I am writing to express deep concerns with the Office of Government Ethics (OGE) proposal to restrict Executive Branch employees from attending trade association events. AAFA co-signed a letter early last month that was sent by the American Society of Association Executives (ASAE). Below we lay out additional thoughts specific to AAFA.

While we support the overall objective that OGE is trying to pursue – namely to promote high ethical standards – we believe the proposal is an unacceptable result of this policy.

As you know, current regulations already prohibit the giving of gifts to executive branch officials. The changes proposed by the OGE add an additional layer of restriction by limiting the application of a number of existing exceptions to the current regulations, including attendance at widely attended events associated with registered lobbyists or the organizations, including trade associations, which employ them.

This approach is problematic in several respects.

First, it singles out a group of individuals, and the organizations that employ them, because of their efforts to comply with a Federal law - the *Honest Leadership and Open Government Act* (HLOGA). Such targeting not only fails to advance the goals sought by OGE, but it also undermines the goals of the HLOGA. For example, individuals who lobby but who are not registered under HLOGA, either because they are out of compliance with HLOGA or because they have made a subjective self-determination that they are not required to comply, are not affected. Nor are their employers affected. Moreover, targeting federally registered lobbyists provides further incentives to individuals to structure their activities so they do not trigger HLOGA registration. Such an outcome has already been observed as a result of several previous efforts by the Administration to target registered lobbyists. Among other things, this results in less transparency as more individuals' activities occur outside of disclosure requirements.<sup>1</sup>

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<sup>1</sup> A further concern occurs given the fact that the Obama Administration has pledged to NOT accept campaign contributions from registered lobbyists. The new OGE proposals tighten gift rules only with respect to those individuals from whom the Obama Administration will not accept campaign contributions. This suggests that individuals from whom the Obama Administration will accept campaign contributions are still permitted to operate under the less restrictive requirements.

Second, notwithstanding the focus on registered lobbyists and the organizations that employ them, the OGE proposal specifically targets trade associations that employ federal registered lobbyists. The OGE grants a broad exemption to the new limitations to a variety of organizations for educational reasons. The exemptions include the following provision listed in section 2635.203(h)(4): “nonprofit professional associations, scientific organizations, or learned society, with respect to any gift made in connection with the entity’s educational and professional development activities.” However, in the *Federal Register* notice proposing this rule, OGE states that, “OGE does not intend that proposed section 2635.203(h)(4) would cover trade associations, such as associations of manufacturers of particular products.”

Such a limitation entirely misses a key educational focus of many trade associations.

At the AAFA, educational activities make up a major part of our annual activities. Indeed educational activities are called out as one of the four pillars of our mission statement, which tasks us with “creating a favorable environment for the advancement and exchange of best practices and technological innovations.”

Each year, our association stages dozens of webinars, conferences, and seminars to educate members on wide range of matters. These programs help employees of AAFA member companies achieve professional development goals (including the provision of continuous legal credits (CLC)) while helping those companies learn about critical industry or government initiatives that make them more competitive so they can create jobs. Some of these programs are credentialed or endorsed by other groups (including groups who are not registered lobbying organizations). Government officials participate in many of these programs as speakers, participants, and attendees. Such government officials participate, not only to provide the industry with important information they need in order to understand key government policies or compliance initiatives, but also to better understand the industry government officials are hoping to regulate, do business with, partner with, or rely upon for key government initiatives. In a time of scarce federal government revenues, AAFA is often encouraged to partner with government agencies to extend discounted or free entry for such programs. Further, in the interest of maintaining a healthy and ethical working relationship, our association requires government officials attending our events to pay for their meals or beverages, although they do not pay full registration fees.

For example, our two annual fall and spring Government Contract Committee meetings are important events for our membership and Department of Defense (DoD) contracting officers to be able to communicate in person to discuss upcoming procurements and other needs of the armed services in Clothing & Textiles (C&T). In fact, at our last fall meeting, the DoD sent most of their contracting officers in Clothing & Textiles office because the DoD understands the value of both the educational and networking opportunities that our events present. Prohibiting these DoD employees from attending our events will create a terrible disconnect between manufacturer and customer that will lead to additional costs to the department and slower deliveries of critical gear to our servicemen and women.

Our concern is that the OGE proposal, as applied in the strictest form, would discourage participation of industry officials at these and other important educational events. Likewise, the proposal would impair the ability of businesses, including small businesses that often rely upon their trade associations as a major way to understand federal legislative and regulatory developments, to learn key information they need in order to comply with a variety of federal mandates. Moreover, because the prohibition is focused on trade associations, and not equally on other groups, such as unions or universities, which employ registered lobbyists or have aggressive advocacy programs, the OGE proposal discriminates against trade associations. Such discrimination is unfounded.

While we believe that further restrictions on lobbyists or the organizations that employ them should be avoided, at a minimum we urge you on the strongest terms to make sure that such restrictions do not apply to the educational efforts and activities of trade associations. In this regard, we would propose adding the word “trade association” to section 2635.203(h)(4) so that it reads:

“Nonprofit professional associations, **trade associations**, scientific organizations, or learned society, with respect to any gift made in connection with the entity’s educational and professional development activities.”

Thank you in advance for your consideration of these views. If you have additional questions, particularly about AAFA's educational programming, please contact Steve Lamar, Executive Vice President, by phone at 703-797-9041 or via email at [slamar@wewear.org](mailto:slamar@wewear.org).

Sincerely,

A handwritten signature in black ink that reads "Kevin M. Burke". The signature is written in a cursive style with a large, stylized 'K' and 'B'.

Kevin M. Burke  
President and CEO