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November 14, 2011

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 Limiting Gifts from Registered Lobbyists and Lobbying Organizations

Dear Mr. Thomas:

The Federal Communications Bar Association (FCBA)[1] appreciates the opportunity to comment on proposed rule RIN 3209-AA04, which would extend to all Executive Branch employees certain key restrictions currently imposed only on political appointees. More specifically, the proposed rule would extend to all Executive Branch employees the current rule that prohibits political appointees from accepting invitations to widely attended gatherings (WAGs) whenever those invitations are extended by registered lobbyists or lobbying organizations, subject only to certain limited and narrow exceptions.

The FCBA writes to support the comments submitted by ASAE – The Center for Association Leadership, which noted the importance of allowing Executive Branch employees to accept invitations extended by trade associations to widely attended educational and professional gatherings. The FCBA often partners with trade associations to develop and host continuing legal education (CLE) programs and professional networking events. We are concerned that applying the WAG rule to trade associations in the manner proposed would diminish the educational and professional development programming available to our members and leave the FCBA with fewer partners with whom it can share in the organizational and financial burdens of developing and hosting these events. The likely result of extending the proposed WAG rule to all Executive Branch employees will be that fewer Federal employees will be able to attend WAGs, which generally are perceived as beneficial not just to private organizations but also to the Federal employees because they provide significant educational benefits to them in their areas of employment or policy expertise. The negative impact of the proposed rule is

[1] FCBA Executive Committee members Tom Power and Parul Desai did not participate in the development of the FCBA's position on the proposed rule and in the preparation of this submission.

likely to be particularly acute now, a time of increasing government fiscal austerity, where educational opportunities for entry-level and other Federal employees may be especially difficult for government to provide.

The FCBA also writes to identify an additional burden that extending the WAG rule would have on small, nonprofit professional associations such as the FCBA. The FCBA is a volunteer organization of attorneys, engineers, consultants, economists, government officials and law students involved in communications and information technology law and policy. We host numerous professional, educational and social events designed to help our members interact with and learn from their peers and other thought leaders and decision-makers in the communications field. These events are a core part of our mission and a vital service to our members, which include individuals employed by the private sector, academia, and the Federal government. Many professionals employed in the communications law and policy field rely exclusively on the FCBA to provide them with relevant and timely professional programming, as other bar associations and programs do not specialize in communications regulatory matters.

OGE recognized the value of these types of programs by proposing to retain the exemption from the WAG rule for educational and professional development activities of professional associations (such as the FCBA). However, while the FCBA technically may retain its exemption, the proposed rule would have a substantial, adverse impact on the FCBA because others on whom the FCBA relies for the success of these programs would not be exempt if they happen to be registered lobbyists or lobbying organizations.

The FCBA organizes a number of professional networking receptions, luncheons, and similar programs throughout the year. These programs often include featured speakers from the government or industry, but the majority of attendees employed by the Federal government (including the Executive Branch) participate for their own benefit, and the wide diversity of professional backgrounds among attendees enhances the overall value of these programs for everyone. Dozens — and in some cases, hundreds — of Federal government employees attend some of these events. Today, the FCBA relies on its members (some of whom may work at a company or law firm that happens to employ registered lobbyists) to identify appropriate attendees and extend to them invitations. This enables the FCBA to limit its invitation-related responsibilities to political appointees and to focus its energies on the organization and logistics of these events. The proposed rule, if enacted, would shift the burden of identifying and inviting all attendees onto the FCBA and would prevent the FCBA from relying on the resources of its members to share in this responsibility.

This result would have a meaningful, adverse outcome on the FCBA. The FCBA employs only three full-time staff members — an executive

director, a deputy director, and a receptionist — and only a part-time bookkeeper. These individuals already support a full workload, and the finances of the FCBA prevent us from making additional hires without substantially increasing our cost structure. Taking on additional responsibilities, which is what we expect the proposed rule would require of us, likely would force us to implement increases in membership dues and other prices, such as the price of the programming on which our members have come to rely. And if we were to raise prices in this manner, there is no doubt we would see a decline in our membership, including government members, and a commensurate diminution in our ability to provide the level of programming that we provide today.

We understand that the proposed rule would apply not only to Executive Branch employees but also to employees of certain independent agencies such as the Federal Communications Commission (FCC). Even if this were not the case, independent agencies such as the FCC tend to harmonize their rules with those of OGE. Thus, we believe that the proposed rule, if enacted, would as a practical matter reach all FCC employees. And even if it did not, a sufficient number of Executive Branch employees who participate in our events and programming clearly would be affected.

For these reasons, we urge OGE not to extend the proposed rule to all Executive Branch employees. The proposed rule would only add to the burdens that today are borne by professional associations such as the FCBA and would, in our view, unnecessarily deny Federal employees from attending WAGs. Thank you for your consideration.

Respectfully submitted,

Stanley D. Zenor
Executive Director