Senior Executives Association

the voice of career federal executives since 1980

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November 11, 2011

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

RE: Proposed Amendments to 5 C.F.R. Part 2635

Dear Mr. Thomas:

The Senior Executives Association (SEA) represents the interests of career federal executives in the Senior Executive Service (SES), and those in Senior Level (SL), Scientific and Professional (ST), and equivalent positions. We write to share our comments on the Office of Government Ethics (OGE) proposed amendments to 5 C.F.R. Part 2635 which would impose limits on the use of gift exceptions relating to federal employees.

As proposed, the proposed rule would prevent federal employees from using the current exemption for widely attended gatherings and de minimis gifts if they are provided by registered lobbyists or lobbying organizations. However, the proposed rule does provide for several categories of exclusions from this ban, including 501(c)(3) organizations, media organizations, higher education institutions and certain non-profit professional associations. The general basis for the proposed rule appears to be that lobbyists, whether they have direct issues in front of a federal agency or not, might benefit from the "cultivation or familiarity and access that [they] may use in the future to obtain a more sympathetic hearing for clients."

While SEA appreciates OGE's attention to ensuring transparency and establishing strong ethical standards for federal employees, we believe that this rule is a solution in search of a problem and would have the unintended consequence of hampering good government. In absence of documented problems with the existing rules governing the solicitation and acceptance of gifts from prohibited sources, we ask that you reconsider amending the rules to create further restrictions on federal employees.

Although under the proposed rules SEA would be an exempt association (as an organization that is not registered under the Lobbying Disclosure Act), this new rule would nevertheless affect SEA's members – career Senior Executives across the federal government. Throughout the course of their careers, federal employees are invited to many widely attended gatherings that may or may not have an overt educational or career development component. These events provide a forum for federal employees to share information, make connections to others both within federal government and from the private sector, and to generally build the relationships that make government work better.

Whether events are purely social or held in conjunction with a training or conference, we can conceive of receptions that would benefit a federal employee, and by extension, their agency, by allowing the federal employee to meet subject matter experts or other federal employees in their field in a relaxed setting where a similar opportunity might not be available at a formally structured event. Decisions should be made on a case-by-case basis about whether an event is being used to gain untoward influence over the federal employee, not by the type of organization holding the event or whether they have connections to registered lobbyists. Furthermore, the use of dictionary definitions to exclude trade associations, while allowing professional associations to hold widely attended gatherings, is somewhat arbitrary and does not account for the useful information and connections that such organizations provide to the federal government.

Of greater concern to SEA are the complexities and grey areas inherent in this proposed ruling that might lead federal employees to unwittingly break the rules. The proposed rule suggests that federal employees and their Designated Agency Ethics Official (DAEO) must check the LDA database to ensure whether an invitation is coming from a registered lobbyist or lobbying organization. Then, an employee or DAEO must be aware of whether an organization is a trade association, a professional association or other designated entity that might or might not be considered exempted from the rules. Finally, the employee or DAEO must determine whether an event has an educational or professional development component, although it is unclear from the rules what activities are considered as such. Not only is this a potentially large administrative burden for DAEOs, but it would be easy for a federal employee to unintentionally accept an invitation that is in fact prohibited by these rules.

Furthermore, the proposed rule is likely to have a chilling effect on federal employees and their attendance on acceptable events. Rather than go through the process of determining the legitimacy of an event, it is likely that federal employees will err on the side of not attending any events. This will decrease opportunities for federal employees to receive the information and create the relationships that help them in their daily jobs.

If there were a strong argument for prohibiting the activities that this rule proposes or if documented problems or difficulties had actually occurred under the existing rule, SEA might have a different view of OGE's proposed rule. However, as written, the rule regulates federal employees without justification and will hinder employee development. Due to these concerns, SEA urges you to keep 5 C.F.R. Part 2635 as is and instead provide further guidance to employees on acceptable gifts.

Thank you for your consideration of these concerns. We look forward to working with you to ensure a strong federal workforce.

Sincerely,

CAROL A. BONOSARO
President

WILLIAM L. BRANSFORD
General Counsel