

ALL
AMERICAN
LEAGUE OF
LOBBYISTS

November 4, 2011

Mr. Richard 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 American League of Lobbyists (ALL) appreciates the opportunity to comment on proposed rule RIN 3209-AA04, which restricts all executive branch employees of the Federal Government from using certain exceptions to accept gifts from registered federal lobbyists and lobbying organizations, including invitations to widely attended gatherings (“WAGs”).

The American League of Lobbyists is a section 501(c)(6) individual membership organization of more than 1400 lobbyists representing a broad range of corporations, associations and non-profit entities. The League is the only national professional association dedicated exclusively to representing the educational and professional interests of all public policy professionals.

Any Administration has the right to set rules for its officials, but the public has the right to expect that they will be evenly applied. That is not the case either with regard to this Administration's original executive ethics guidelines, or with the proposed amendment as outlined in the referenced rule. While the League fully supports OGE's goals of promoting high ethical standards for executive branch employees, it is our view that the proposed amendments are excessive for a number of reasons:

First, the focus of the proposal is “limit(ing) the ability of (Federal) employees to rely on certain gift exceptions when a prohibited source – or a person giving a gift because of the employee's official position – also happens to be a registered lobbyist or lobbying organization”. As in previous actions taken by this Administration, we note that only those lobbyists or lobbying organizations that are registered as such under the Lobbying Disclosure Act are affected by the proposal. That leaves uncovered all those who, legally or otherwise, have not registered.

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Second, there is no basis for placing these restrictions on lobbyists rather than on other groups such as lawyers with matters pending before agencies or political contributors of the incumbent President who may be using their advisory committee position to gain some private advantage. Nor is there any basis for excluding organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and institutions of higher education, many of whom have significant lobbying operations with policy and regulatory interests. In fact, the lobbyist restriction takes no account of whether the lobbyist is even engaged in Executive Branch lobbying. It applies to trade associations, but not to professional and scientific associations or "learned societies" which are excluded from the ban to the extent the gift is made in connection with educational or professional development activities. [For full disclosure, ALL is such an organization that conducts professional development and educational activities.]

Third, even within the lobbyist ban irrational distinctions are made by the OGE proposal. It applies to corporations or trade associations engaged in de minimis lobbying activities. It does not cover corporations or trade associations that retain an outside lobbyist. Further, OGE states that it issued its proposal "after considering the myriad issues that have arisen under the lobbyist gift ban...." However, there is not the slightest shred of documentation offered in support of that claim. This raises the issue of whether the proposal is based on substance or politics. Regrettably, should they be implemented, future Administrations will be bound by these overly restrictive rules regardless of the true motivation.

Similarly, in the case of WAGs, the OGE proposes to prohibit officials from accepting offers to attend widely attended events, but would nevertheless allow government employees to accept invitations to attend educational and professional development activities held by Section 501(c)(3) organizations, institutions of higher education, and nonprofit professional associations, scientific organizations and learned societies. In explaining the WAG exception, OGE correctly cites the valuable educational and professional development opportunities at these types of programs, but does not extend the exception to all associations or organizations.

The artificial distinction therefore allows executive branch officials to participate in educational events such as conferences and seminars with selected organizations that retain lobbyists, but not others. That structure leaves the impression that the Administration is playing favorites, encouraging continued dialogue and interchange with a "favored" group or groups, while discouraging communication with others.

Fourth, in our view, as currently structured, one of the practical impacts of the amendments will be to dampen exchanges of all types with all groups. At a time when the focus should be on jobs and the economy, encouraging the exchange of ideas, and soliciting a dialogue as to how best to resolve the country's deepening problems, the OGE proposals will serve only to stifle dialogue and discussion, with no apparent benefit.

Finally, ALL is concerned over the real prospect that the actual effect of the proposed amendments will be to undermine the very transparency that the Administration has advocated since taking office.

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We have already witnessed some levels of de-registration by lobbyists in reaction to revised House and Senate Lobbying Disclosure rules. Not only could one easily envision a similar reaction on the part of trade associations to deregister as lobbyists so as not to fall under the restriction that applies to widely attended gatherings, but the proposed rule may actually encourage such behavior in that it provides a de facto guide to an acceptable procedure for doing so. That would be a regrettable situation, as ALL has strongly advocated for increased lobbying and advocacy transparency, regardless of registration status.

For those reasons and others, ALL strongly believes that the proposed rules are excessive and urges that they be withdrawn. In the event a specific documented problem were to be identified, ALL would encourage that OGE formulate a measured and appropriate rule that serves the best interests of this and future Administrations and the American public.

Thank you in advance for your consideration. Should you have any questions, I am available to discuss this issue at your convenience.

Sincerely,

A handwritten signature in black ink that reads "Donald G. Masch" with a stylized flourish at the end.

Donald G. Masch
Chairman, Professional Standards and Ethics Committee
American League of Lobbyists