



AIPAC

THE AMERICAN ISRAEL PUBLIC
AFFAIRS COMMITTEE

America's Pro-Israel Lobby

November 10, 2011

Mr. Don Fox
Acting Director and General Counsel
Office of Government Ethics
1201 New York Avenue, Suite 500
Washington, DC 20005

Dear Mr. Fox:

The American-Israeli Public Affairs Committee (AIPAC) submits these comments to the proposed rules promulgated by Office of Government Ethics concerning the standards of ethical conduct for employees of the Executive Branch, particularly as they relate to limitations on "gifts" from registered lobbyists and lobbying organizations as set forth in proposed rule RIN 3209-AA04. In particular, AIPAC believes that the proposed limitations on the ability of Executive Branch employees to accept offers of free attendance at certain widely attended gatherings (WAG) is overbroad and ultimately deleterious to the interests of the Executive Branch and its employees' abilities to stay abreast of the most recent developments in their areas of expertise.

A. Introduction

AIPAC is non-profit, tax exempt 501(c)(4) membership organization of nearly 100,000 individuals dedicated to maintaining and improving the enduring bonds between the United States and Israel. These citizen activists directly meet with Members of Congress and Executive Branch officials to discuss and advocate on matters affecting the U.S.-Israel relationship. AIPAC also employs 11 persons who are registered to lobby under the Lobbying Disclosure Act.

AIPAC also has a 501(c)(3) charitable affiliate, the American Israel Education Foundation (AIEF), that sponsors educational programming on matters associated with the Middle East and the U.S-Israel relationship. These educational programs include trips to Israel, seminars, conferences and lectures.

AIPAC, as well as AIEF, pay scrupulous attention to the relevant ethics laws and regulations concerning interactions with legislative and executive branch employees and fully support both Congressional and Executive Branch efforts to foster the highest ethical standards in government. AIPAC, as well as AIEF support both the letter and the spirit of rules and regulations designed to promote transparency in government, particularly as they relate to dealings with all government officials. However, the OGE's proposed regulations concerning WAGs neither serve the purpose of the ethics rules or the functions of good government.

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B. The Proposed Rules Are Inconsistent with OGE's Intention of Harmonizing Legislative and Executive Ethics Rules and Promoting Good Government

The OGE maintains that its proposed rules are designed, in part, to harmonize the ethics rules governing the legislative branch with those governing the Executive Branch. Thus, in proposed section 2635.204(a), the OGE "is respectful of the 'Sense of the Congress' expressed in section 701 of the HLOGA [Honest Leadership and Open Government Act of 2007]], that similar restrictions should apply" to those that exist with respect to House and Senate ethics rules, such as those which eliminate any *de minimus* exception for the receipt of "gifts" by lobbyists. However, the OGE immediately departs from this effort at harmonization by proposing that Executive Branch employees not be permitted to avail themselves of the WAG exception to the gift rule that currently exists in House and Senate Rules. Worse yet, after imposing an outright ban on the WAG exception, the OGE then creates exceptions to the WAG ban by illogically carving out preferential treatment for certain favored categories of organizations, such as "nonprofit professional associations, scientific organizations and learned societies," "even if the offer of free attendance is extended by an organization that is registered under the LDA [Lobbying Disclosure Act]." Then, the OGE extends an extra special exemption for Executive Branch employees who wish to don their tuxedos and attend the annual press dinner, on the apparent belief that multi-billion dollar media companies have no business interests with the Executive Branch.

This disparate treatment of organizations is inconsistent, arbitrary and unwarranted.

First, it is inconsistent with the general intent to harmonize the ethics rules of the Executive Branch with those of Congress.

Second, it is completely arbitrary for the OGE to assume that the WAG exception is improper when applied to a membership organization, while at the same time concluding that the WAG exception is entirely proper when it is applied to those organizations upon whom OGE has conferred an unexplained special exemption that is neither grounded in fact or reality. This is particularly the case where membership organizations, trade associations and other non-profit groups, as the OGE acknowledges, actually provide some of the same "substantive core" of the WAG exception" as those provided by non-profit professional associations, scientific organizations and learned societies.

Finally, it is unwarranted for the simple reason that a membership organization like AIPAC provides substantive, educational forums, seminars, conferences and meetings where many dozens of leading scholars and policy makers gather to hear, share and debate issues affecting U.S. foreign policy in the Middle East. As a matter of merely promoting good governance and informed decision-making, to impose an outright ban on any Executive

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Branch attendance at such events because Executive Branch personnel may “become partial to the causes of [AIPAC] because they spend a lot of time in [AIPAC’s] company” is an inaccurate portrayal of the programming AIPAC provides, as well as an insult to those Executive Branch personnel who have the duty to keep abreast of both domestic and international events affecting the U.S.-Israel relationship. AIPAC is likely not unique in its involvement of citizen activists in its political advocacy, and therefore this rule could similarly burden the numerous other organizations who seek to have their voices heard in the Executive Branch.

Events like AIPAC’s annual policy conference provide a particularly good opportunity for executive branch officials to efficiently learn the views of scholars and foreign officials – something that can only benefit our public officials’ ability to better serve our nation. For decades, executive branch officials and Members of Congress and their staffs have taken the opportunity to hear major foreign policy addresses at the AIPAC Policy Conference by leading Members of Congress, Israeli and other foreign officials, as well as key Executive Branch officials, such as the President, Vice President and Secretary of State.

A mere glance at the speaker list for the AIPAC Policy Conference in 2010 – which enjoyed the attendance of 6500 AIPAC members from across our nation -- demonstrates the real value of attendance at this conference for executive branch officials. Speakers included current and former ambassadors to the region, members of the intelligence community, local, state and national public officials, leading academic scholars and even journalists (that unique profession whose mere presence appears to confer some special privileges on WAG events). Indeed, the AIPAC Policy Conference, held every year in Washington, DC precisely to encourage government officials to interact with American citizens concerned about U.S. foreign policy in the Middle East, is heavy with educational seminars involving distinguished panelists discussing, debating and answering questions on the most recent developments in the Middle East.

In addition, the Policy conference also displays contemporary, informative exhibits of U.S.-Israel cooperation in arenas like foreign assistance, defense, homeland security, and energy that might be difficult for executive branch officials to see in another context. Not surprisingly, these and other educational programs are appropriately funded by AIPAC’s charitable, 501(c)(3) affiliate, AIEF, notwithstanding the fact that such events take place in connection with AIPAC’s Policy Conference. Thus, OGE’s new guidelines would also impinge upon activities deemed wholly educational under federal tax law.

Rather than disadvantaging membership and advocacy organizations like AIPAC, OGE should facilitate the opportunity of government officials’ to openly meet and field questions from American citizens concerned about U.S. foreign policy in the Middle East and the U.S.-Israel

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relationship. While AIPAC recognizes that nothing in the OGE's proposed regulations would preclude Executive Branch officials from speaking at AIPAC events, the proposed rule would deny Executive Branch officials the opportunity to enhance their own educational and professional development absent a speaking invitation. In short, the AIPAC Policy Conference and events similar to it, are precisely the type of WAGs government officials should be attending, rather than purely social gatherings the OGE proposals are aimed at eliminating.

As stated from the outset, AIPAC supports the OGE's efforts to promote ethics and transparency in government. The OGE's proposed rules both demonstrate inconsistency and inflexibility – at the expense of good governance.

C. OGE Can Ensure Full Ethics Compliance By Adopting The Educational Exception Used By Congress

Notably, the proposed rules continue to place a burden on Executive Branch employees and their ethics counselors to ascertain whether the invitation to a WAG has been sent by a registered lobbyist or lobbying organization. AIPAC believes that the substantive core of the WAG exception can similarly be maintained by permitting Executive Branch employees, in consultation with their respective ethics counselors, to ascertain whether an invitation from a membership group to attend a WAG actually provides a significant training and/or educational activity, or is merely a prohibited "social function." Indeed, the existing rule governing WAGs recognizes that an executive branch employee, in consultation with his or her designated ethics officer is perfectly capable of weighing whether an executive branch employee's attendance at a WAG is in furtherance of agency interests. There is no need to depart from such a reasoned approach. Moreover, such flexibility is particularly appropriate in circumstances where a membership organization, for tax and liability purposes, may well employ a registered lobbyist, but nevertheless sponsors a WAG that not only is educational, but can also be appropriately funded by the membership organization's 501(c)(3) charitable affiliate. In fact, the proposed regulations recognize that form shall not always trump the substance, particularly where the organization (i.e. educational institutions, news gathering organizations, and scientific societies) has legitimate reasons for not following certain corporate or tax designations. Maintaining some flexibility for Executive Branch employees to determine the purpose of an event will continue to insure that such persons may continue to participate in legitimate educational and professional development programs that further the interests of the agency and the government for which they serve.

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D. Conclusion

On behalf of its 100,000 citizen-activist members, AIPAC respectfully requests that the OGE reconsider its proposed ban on the WAG exemption. In its stead, AIPAC urges the OGE to adopt a more reasoned, case by case approach, to determining whether Executive Branch employees, in consultation with their respective ethics counselor, may properly attend a WAG sponsored by a membership organization whose programming and purpose meets the substantive core of both the existing and proposed WAG exemption.

If you have any questions or need additional information, please do not hesitate to call.

Sincerely,

Philip Friedman

General Counsel for AIPAC

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