

November 14, 2011

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

Re: “Proposed Amendments Limiting Gifts From Registered Lobbyists and Lobbying Organizations” (RIN 3209-AA04)

Dear Mr. Thomas:

On behalf of the undersigned organizations, we would like to provide the following public comment regarding the Office of Government Ethics’ (OGE) “Proposed Amendments Limiting Gifts From Registered Lobbyists and Lobbying Organizations” (RIN 3209-AA04).

We are pleased that Congress and the Obama Administration have taken steps to curb the undue influence that lobbyists and special interest groups often exert on policy-making in the federal government. In a report accompanying the Honest Leadership and Open Government Act of 2007, the House Judiciary Committee highlighted the need to improve transparency and accountability in the federal lobbying industry:

Federal lobbying is a multi-billion dollar industry, and spending to influence Members of Congress and Executive Branch officials has continued to increase over the last decade. While the Lobbying Disclosure Act was intended to promote transparency and accountability in the Federal lobbying industry, it falls far short of a complete solution. Its shortcomings were highlighted during the 109th Congress by the conviction of a high-profile lobbyist, as well as a number of highly publicized incidents involving...the provision of privately-funded travel, free meals, and lavish entertainment by lobbyists to Members of Congress, congressional staff, and some Executive Branch officials in exchange for favorable treatment for clients with specific interests before the Government.¹

The Obama Administration has also recognized the need to reduce the “undue influence of special interests that for too long has shaped the national agenda and drowned out the voices of ordinary Americans,” noting that special interests “exert this disproportionate influence, in part, by relying on lobbyists who have special access that is not available to all citizens.”² From the outset, the President has required his appointees to sign the Ethics Pledge prescribed by Section 1

¹ 110th Congress, House Committee on the Judiciary, *Honest Leadership and Open Government Act of 2007*, May 21, 2007. <http://www.gpo.gov/fdsys/pkg/CRPT-110hrpt161/pdf/CRPT-110hrpt161-pt1.pdf> (Downloaded November 9, 2011)

² The White House, “Memorandum for the Heads of Executive Departments and Agencies – Lobbyists on Agency Boards and Commissions,” June 18, 2010. <http://www.edocket.access.gpo.gov/2010/pdf/2010-15414.pdf> (Downloaded November 9, 2011)

of Executive Order 13490 stating they will not accept gifts from registered lobbyists or lobbying organizations.³

We support OGE's intent to extend these initiatives to curb the influence of the lobbying industry throughout the executive branch. Among other things, OGE's proposed rule would 1) make the Administration's lobbyist gift ban for political appointees a permanent feature of executive branch ethics regulations; and 2) maintain the existing rules stipulating that non-political career employees in the executive branch cannot accept gifts from prohibited sources (including non-lobbyists) given on account of the employee's official position, while adding a new provision that carefully restricts the ability of career employees to claim an exception to the gift ban (e.g., for gifts of \$20 or less, social invitations, or free invitations to widely attended gatherings) if the prohibited source is also a registered lobbyist or lobbying organization.

Despite the exaggerated claims made by lobbying industry groups and their allies suggesting that the proposed rule would "probably impede the effective operation of government,"⁴ we believe it is appropriate for OGE to eliminate the gift ban exceptions for career executive branch employees when the prohibited source is also a registered lobbyist or lobbying organization.

This is particularly true in the case of widely attended gatherings and social invitations. OGE has correctly recognized that these exceptions are ripe for abuse, particularly when the gift is provided by a lobbyist. In the case of widely attended gatherings, for instance, "it is increasingly recognized that the...problem is not the brazen quid pro quo, but rather the cultivation of familiarity and access that a lobbyist may use in the future to obtain a more sympathetic hearing for clients."

Along these lines, lobbyists could easily exploit the exception that allows career employees to accept a social invitation from a non-prohibited source. OGE points out that "even though a lobbyist might not have any matters currently pending before a particular employee's agency, the lobbyist could use social events as a way to build general good will with a class of employees in case access is needed for a future issue or client."

We are also pleased to see that in its proposal to exempt certain types of organizations from the definition of "registered lobbyist" or "lobbying organization," OGE has decided not to exempt "trade associations, such as associations of manufacturers or particular products." It would be highly unusual for a trade association to provide educational services to an executive branch employee without any consideration of the association membership's private commercial interests. Therefore, we call on OGE to reject the argument made by lobbying industry groups that trade associations should be given a blanket exemption from the definition of "registered lobbyist" or "lobbying organization" under the proposed rule.⁵

³ The White House, "Ethics Commitments by Executive Branch Personnel," Executive Order 13490, January 21, 2009. <http://www.gpo.gov/fdsys/pkg/FR-2009-01-26/pdf/E9-1719.pdf> (Downloaded November 9, 2011)

⁴ D. Mark Renaud and Robert L. Walker, "'Good government' rules that aren't," *The Washington Post*, October 2, 2011. http://www.washingtonpost.com/opinions/good-government-rules-that-arent/2011/09/28/gIQAs8nIGL_story.html (Downloaded November 9, 2011)

⁵ Letter from The American Society of Association Executives to the Office of Government Ethics regarding "Proposed Amendments Limiting Gifts from Registered Lobbyists and Lobbying Organizations" (RIN 3209-AA04),

At the same time, we believe there is some room for OGE to strengthen the proposed rule.

Rather than maintaining the existing exceptions to the gift ban, we believe it would be simpler and more effective for OGE to ban all gifts provided to executive branch employees by prohibited sources that are also registered lobbyists or lobbying organizations. However, if OGE retains any exceptions to the general ban with regards to a specific gift, employees should be required to seek approval from an agency ethics officer, and all granted approvals or waivers should be posted online. This transparency would at least allow for greater oversight and accountability.

The proposed rule maintains several existing exceptions for both political and career employees, which may be inappropriate with respect to gifts provided by prohibited sources that are also registered lobbyists or lobbying organizations. For instance, the proposed rule maintains an existing exception that would allow both political and career employees to receive “gifts based on a personal relationship,” which could be a “family relationship or personal friendship.” This loophole could potentially enable political and career employees to receive gifts from a registered lobbyist with business before the agency as long as the lobbyist is considered a “personal friend.”

In addition, it appears the proposed rule does not explicitly address the issue of lobbyist-funded travel by executive branch employees. Especially given the fact that lobbyist-funded travel played a major role in the Abramoff lobbying scandal, leading to significant reforms in the gift rules for Members of Congress and their staff, we urge OGE to further restrict the ability of registered lobbyists and lobbying organizations to pay for trips by both political and career employees in the executive branch.

Furthermore, while we appreciate that OGE has decided not to exempt trade associations from the definition of “registered lobbyist” or “lobbying organization,” we are concerned that the proposed rule would create additional exemptions for “institutions of higher learning” and “nonprofit professional associations, scientific organizations and learned societies engaging in educational or professional development activities.” Although OGE has correctly acknowledged that “certain widely attended events provide legitimate educational and professional developments that may further agency interests,” there is often a cozy relationship between these organizations and industry groups,⁶ creating a potential for registered lobbyists and lobbying organizations to exploit this loophole.

If anything, the definition of “registered lobbyist” or “lobbying organization” should be greatly expanded for all ethics laws and rules. Rather than further narrowing its application and creating new loopholes, we urge OGE not to create additional carve-outs to the existing definition of

October 5, 2011. [http://oge.gov/Laws-and-Regulations/Federal-Register-Issuances/Proposed-Rules-and-Comments/Lobbyist-Gift-Ban/54--Center-for-Association-Leadership-\(PDF\)](http://oge.gov/Laws-and-Regulations/Federal-Register-Issuances/Proposed-Rules-and-Comments/Lobbyist-Gift-Ban/54--Center-for-Association-Leadership-(PDF)) (Downloaded November 9, 2011)

⁶ David J. Rothman, Ph.D., et al., “Professional Medical Associations and Their Relationships With Industry,” *The Journal of the American Medical Association*, Vol. 301, No. 13, April 1, 2009, pp. 1367-1372. <http://jama.ama-assn.org/content/301/13/1367.abstract> (Downloaded November 9, 2011)

“registered lobbyist” or “lobbying organization” as it applies to the Obama Ethics Pledge, in which the exemptions are limited to 501(c)(3) organizations and media organizations.

Finally, we appreciate that OGE has taken a significant step towards greater transparency by posting the proposed rule and related public comments on its website.

In conclusion, we strongly support OGE’s ongoing efforts to curb the influence of the lobbying industry on the executive branch, and we urge OGE to adopt the proposed rule with our suggested improvements.

Thank you for consideration of these comments.

Sincerely,

Angela Canterbury
Director of Public Policy
Project On Government Oversight (POGO)

Beatrice Edwards
Executive Director and International Director
Government Accountability Project (GAP)