
REMAPPING DEBATE

Asking "Why" and "Why Not"

Beware of trade associations bearing gifts?

Story Repair | By Mike Alberti | Corporate influence, Regulation

Apr. 12, 2012 — A proposed regulation by the Office of Government Ethics (OGE) to tighten the restrictions on the ways that lobbyists are permitted to influence federal employees has ignited a firestorm of opposition from lobbyists and the trade associations that employ them.

WHAT IS STORY REPAIR?

In this feature, we select a story that appeared in one or more major news outlets and try to show how a different set of inquiries or observations could have produced a more illuminating article.

For repair this week: "[Limits on Lobbyists as Hosts? Simply Unworkable, They Say](#)" (The New York Times, Apr. 7).

The story is striking in that no public interest group supporting the proposed regulation to tighten ethics rules is heard from, and opponents — who have the run of the article — are not challenged as to any of their claims.

— *Editor*

"This rule is completely wrong-headed," said James Clarke, senior vice president for public policy at the Center for Association Leadership, which serves as a kind of trade association for trade associations. "It would stifle the communication between the government and the private sector, which is exactly what we need more of right now."

Under a long-standing federal restriction, executive branch employees are not allowed to accept gifts from so-called "prohibited sources" — people or groups who have business pending before the employee's agency, or members of an industry that is regulated by the agency — or any gifts given "because of the employee's official position."

There are a variety of exceptions to those rules, however, including one for free or reduced-price admittance to "widely attended gatherings," such as industry conferences and trade shows. The [new rule](#) would make that exception (and another that currently permits "de minimis" gifts with a value of less than \$20) unavailable if the source of the gift is a lobbyist or a lobbying organization.

It is the proposed limiting of the "widely attended gatherings" exception that has caused the most controversy. Many interest groups have used the exception in the past to offer federal officials free admittance to a range of events, from trade shows and conferences to gala balls and cocktail parties.

"It is no secret that social events of this type sometimes are used as 'lobbying tools,'" the OGE said. The concern of the Administration is that free invitations of certain social events may promote the "cultiva-

tion of familiarity and access that a lobbyist may use in the future to obtain a more sympathetic hearing for clients.”

“This is a rampant form of influence peddling,” said Craig Holman, the government affairs lobbyist for the public interest group Public Citizen. “The wealthy special interests are able to buy some sense of indebtedness with government officials, and that’s a type of indebtedness that the rest of us cannot afford.”

Benign educational events caught in the net?

But opponents claim that the event restriction would effectively prohibit federal employees from attending events that are meant to be educational. “By proposing the rule in this way, they are going to catch events that are purely educational in nature,” said Corey Henry, a spokesperson for the American Frozen Food Institute. “When we invite staff from federal agencies to our events, they are explicitly invited for educational purposes.”

In the proposed rule, the OGE took the position that federal officials “should not be precluded categorically” from accepting gifts of attendance to events that “would provide a legitimate educational or professional development benefit that furthers the interests of an agency.” For that reason, the limitations on the widely attended gathering exception would not apply to non-profit groups and scientific organizations. Trade associations would be covered by the proposed rule, because “the primary concern of such associations generally is not the education and development of members of a profession or discipline,” according to the OGE.

“The wealthy special interests are able to buy some sense of indebtedness from government officials,” said Public Citizen’s Craig Holman, “and that’s a type of indebtedness the rest of us cannot afford.”

Many opponents of the proposed rule, however, questioned the distinction between non-profit groups and trade associations, claiming that education is an essential part of the mission of many such associations.

While some supporters of the proposed rule acknowledged that there might be events hosted by trade associations that do serve a legitimate, educational purpose, they pointed out that often the educational purpose is merely a cover for the real purpose, which is to develop relationships that may come in handy in the future, or “soft lobbying.” (See box on next page on the Motion Picture Association of America.)

“What these trade groups want is not to provide officials with education,” Holman said. “What they want is to put them up in a luxurious hotel room and give them free dinners and drinks and make sure that everyone has a fun time.”

Any suggestions?

The distinction drawn by the OGE between trade associations and non-profit groups has been questioned by some supporters of the proposed rule, though for reasons very different from the challenges posed by opponents. “There are many examples of groups that purport to be acting for educational purposes but that have strong ties to industry groups, and that would not be covered by this rule,” said Michael Smallberg, an investigator at the Project on Government Oversight, a watchdog group. Some professional organizations that employ lobbyists, such as the American Medical Association or the American Bar Association, might be considered “learned societies,” and thus exempted from the rule.

“These lines are not so easy to draw,” Smallberg said. “We have urged [the OGE] to go farther and not provide these exemptions for other organizations.”

When Corey Henry of the American Frozen Foods Institute was asked whether his concern about the distinction would be satisfied if the OGE extended the restrictions to all organizations, however, he said,

Movie screenings: education or soft lobbying?

Prominent examples of the dispute over how to characterize some trade association events are the regular movie screenings hosted by the Motion Picture Association of America (MPAA) in its private theater on Capitol Hill. These screenings were cited specifically by the OGE in its published rationale for the rule.

According to a [2007 article in the Los Angeles Times](#), federal and Congressional officials and staff often receive free invitations to movie premiers and other events. That article quotes current and former executives in the MPAA admitting that the events were used for soft lobbying. After ethics rules were tightened to preclude serving dinner at the events, the association switched to serving cocktails and appetizers, and sometimes adds a short “educational” trailer before the film or distributes packets of “statistical information on the industry.”

The MPAA filed a public comment in opposition to the proposed OGE rule, in which it claimed that watching the movies it screens is itself an educational opportunity for government employees because the movies “serve as exemplars of work of the industry.”

“That’s absolutely ridiculous,” Holman said. “They’re trying everything they can to get around the ethics rules. I’m sure that the people who are going to watch those movies have no idea that they’re meant to be educational.”

The MPAA did not respond to a request for comment.

“Our position is that the best course of action is for them to remove the rule.”

But does he acknowledge that there are real issues with gift-giving and soft lobbying that should be addressed?

“It is not our place to say whether there is a problem,” he said. “It is incumbent on OGE to determine whether there is a problem, and if so, to find a suitable way to deal with it. Our position is that this rule is not suitable.”

Clarke said that he agreed with the OGE that free invitations to certain events, such as “gala balls and Christmas parties,” provide grounds for some concern, but when asked how he would suggest that the rule be modified, he said, “Right now our focus is on the rule that they’ve proposed, and my message is that this rule would totally isolate the federal workforce.”

A small battle in a larger war

Many other channels of communication with the government would remain open to trade associations, however. The proposed rule does nothing to limit direct lobbying, for example, nor does it impede the ability of groups to make their views known through telephone calls and written comments.

Nothing in the proposed rule would limit the ability of federal employees to attend *any* events, as long as they pay their own way.

When Clarke was asked why these channels of communication, which are also open to the general public, were insufficient for trade associations to inform the government of their views, he said, “We have found that face to face meetings are the most effective ways, and it can be difficult to get those meetings.”

But federal employees would still be allowed under the new rule to seek out the advice of the private sector. They would still be able to accept free attendance to events at which they were participating meaningfully in a professional capacity, and nothing in

the proposed rule would limit the ability of federal employees to attend any events, as long as they pay their own way. “If an agency feels that attending an event would be beneficial in a professional capacity, then I expect they would be willing to pay for admission to the event,” Holman said.

When Remapping Debate pointed this out to Clarke, he said, “The way the budgets are now, even if they could pay for themselves, I don’t think their supervisors would let them.”

According to Howard Marlowe, the president of the lobbying firm Marlowe & Company and the president of the American League of Lobbyists, however, the channels of communication that would remain open — including calling and meeting with federal employees, writing letters, and offering public com-

ment in writing or at hearings — offer ample opportunity for lobbyists and industry groups to make their views known.

Marlowe had a different concern: the fact that the rule would apply only to registered lobbyists, not to informal lobbyists.

“So all I would have to do is deregister. There are loopholes all over the place,” he said, citing as an example a provision that allows someone to spend up to 20 percent of their time lobbying before they must register as a lobbyist. “I’m sure a lot of members of the League would disagree with me, but I think that if we can’t give a reduced rate to government employees for attending our conferences, that’s fine, that’s totally appropriate. All I would urge is that the government close those loopholes so the lobbying does not go underground.”

Holman agreed that the government should extend its definition of a lobbyist, but said that that action, too, would likely elicit a fierce response from the private sector.

“Every time we have tightened the ethics rules, the opposition has been ferocious,” he said. “The scale of the response is a measure of how important these gifts are to these groups.”

A number of advocates for the rule point out that the proposed standards are more lenient in regards to lobbyists’ gifts than the [ethics standards](#) adopted by the legislative branch in 2007. And, while the OGE could have extended a blanket ban on gifts from lobbyists that currently applies to politically appointed employees — part of an [executive order](#) issued by President Obama in 2009 — to all employees, it instead took a narrower course.

For Michael Smallberg of the Project on Government Oversight, the rule is a step, albeit a relatively small one, towards the transparency and accountability the Obama Administration has promised it will bring to the federal government.

“This is one small battle in a larger war,” he said.

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