



NATIONAL  
ASSOCIATION of  
REALTORS®

Ron Phipps  
ABR, CRS, GRI, GREEN, e-PRO, SFR  
2011 President

Dale A. Stinton  
Chief Executive Officer

**GOVERNMENT AFFAIRS DIVISION**

Jerry Giovaniello, Senior Vice President  
Gary Weaver, Vice President  
Joe Ventrone, Vice President  
Jamie Gregory, Deputy Chief Lobbyist

500 New Jersey Ave., NW  
Washington, DC 20001-2020  
Ph. 202-383-1194 Fax 202-3837580  
www.REALTOR.org

November 8, 2011

Richard M. 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

[Transmitted by email to usoge@oge.gov]

Dear Mr. Thomas:

I am writing on behalf of 1.1 million members of the National Association of REALTORS® and its commercial affiliates, the CCIM Institute<sup>1</sup> and the Institute of Real Estate Management (IREM)<sup>2</sup>, to provide comments on the Office of Government Ethics (OGE) proposed rule published on September 13, 2011, which would modify the standards of ethical conduct for employees of the executive branch. OGE is proposing that elements of the gift rules that presently apply only to presidential appointees be applied to all career federal government employees. In addition, there are some common exceptions to these gift rules that the OGE proposes to narrow. The narrowed application of the “widely attended gatherings” (WAG) exception is of particular interest to NAR.

Traditionally, the WAG exception has permitted government employees to accept offers of free attendance at certain events where an agency employee has determined that attendance is in the interest of the agency. Under the proposed rule, as explained in the preamble, this exception would no longer be available

---

<sup>1</sup> The CCIM Institute confers the Certified Commercial Investment Member (CCIM) designation through an extensive curriculum of 200 classroom hours, as well as experiential requirements. The designation was established in 1969 and is recognized as the mark of professionalism and knowledge in the commercial real estate industry. More than 9,000 professionals currently hold the CCIM designation, with another 6,000 practitioners pursuing it. The mean value of commercial real estate transactions completed by a CCIM member in a 12-month period is \$44.6 million.

<sup>2</sup> The Institute of Real Estate Management (IREM®)—has been the source for education, resources, information, and membership for real estate management professionals for more than 77 years. Membership in this international organization includes more than 18,000 individual members and over 525 corporate members. IREM® promotes ethical real estate management practices through its credentialed membership programs, including the CERTIFIED PROPERTY MANAGER® (CPM®) designation, the ACCREDITED RESIDENTIAL MANAGER® (ARM®) certification, the ACCREDITED COMMERCIAL MANAGER (ACOM) certification, and the ACCREDITED MANAGEMENT ORGANIZATION® (AMO®) accreditation. Collectively, IREM® Members in the United States manage over \$1.5 trillion in real estate assets, including 9.37 million residential units and 8.4 billion net square feet of commercial space.



except for “nonprofit professional associations, scientific organizations and learned societies, at least with respect to the educational and professional development activities of those entities.”<sup>3</sup>

NAR understands the rationale for expanding the rules, and supports the laudable goal of a government free from unethical transactions. Abuse of the WAG exception could undermine ethics rules and create questionable means for some to cultivate access to government offices. When implementing rules to stave off such abuses, however, OGE should be careful not to erect unnecessary barriers between the government and its citizens. With this in mind, NAR respectfully offers its comments and concerns regarding the proposed rule.

### **Federal employees should be permitted to attend educational and professional development sessions held by trade associations.**

The OGE proposal places a ban on free attendance at widely-attended events, but carves out an exception for events that could be valuable for the educational or professional development of government employees within the scope of their agency employment. This is an important exception, and NAR appreciates its inclusion. However, the proposal makes an arbitrary distinction between educational events offered by a “nonprofit professional association” and similar programs offered by “trade associations.” Under the proposed rule, government employees may attend educational events held by “nonprofit professional associations” free of charge even if the association engages in federal lobbying activities. By contrast, federal employees must pay to attend training events offered by trade associations. OGE’s justification for disallowing free attendance at educational events held by trade associations is that “the primary concern of such associations generally is not the education and development of members of a profession or discipline, which is the focus of the proposed exclusion.”<sup>4</sup> Even if this assumption were true, it does not lessen the potential value to a federal employee of free attendance at a trade association educational event. The primary concern of the *event*, not the *association*, should be the determinative factor for the purposes of the exception.

Such a distinction frustrates the purpose of the educational exception. The preamble to the proposed rule states that “OGE does not believe that employees . . . should be precluded categorically from accepting offers of free attendance at substantive events that would provide a legitimate educational or professional development benefit that furthers the interests of an agency,”<sup>5</sup> yet section 2635.203(h)(4) of the proposed rule would categorically exclude from this exception a large class of organizations that can provide exactly these benefits to federal employees—namely trade associations. In our opinion, it is not possible to reconcile the statement in the preamble that “the exclusion is intended to cover a wide range of organizations devoted to various professions and

---

<sup>3</sup> Standards of Ethical Conduct for Employees of the Executive Branch; Proposed Amendments Limiting Gifts From Registered Lobbyists and Lobbying Organizations, 76 Fed. Reg. 56330, 56333, Sept. 13, 2011.

<sup>4</sup> Id. at 56338.

<sup>5</sup> Id. at 56333.

disciplines” with the idea that “OGE does not intend that proposed section 2635.203(h)(4) would cover trade associations . . . .”<sup>6</sup>

This distinction between nonprofit professional associations and trade associations is both confusing and, in this context, ill-advised. The National Association of REALTORS<sup>®</sup> meets both definitions in footnote 4 of the preamble description of proposed section 2635.203(h)(4).<sup>7</sup> NAR is a “voluntary association of business firms” in the real estate industry that “promote[s] and develop[s] commercial and industrial opportunities” and “voice[s] publicly the views of members on matters of common interest,” while it simultaneously serves to “maintain standards, and represent the profession in discussions with other bodies.”<sup>8</sup> The same concern would apply to many other organizations as well, including scientific and technical organizations such as the American Health Care Association and the American Pharmacists Association<sup>9</sup> that, like NAR, engage in both lobbying and educational activities.

Rather than relying on this illusory distinction, NAR proposes that the exception be modified to apply also to educational or professional events held by trade associations. Forcing federal employees to pay to attend the educational and professional development meetings of trade associations erects yet another barrier between regulators and those they regulate, and perpetuates the problem of the “Beltway Bubble,” where regulators grow out of touch with the industries and individuals whose professions are affected by federal regulation.

### **Excessively rigid rules will create a chilling effect on agency-industry relations.**

A good working relationship between a regulator and the industry it regulates should be encouraged. Where a good working relationship is abused, such as by undue influence, the regulatory system is undermined, but relations between the government and industry need not be icy or distant to prevent such problems. The OGE proposal would have a chilling effect on relations between federal employees and trade associations by threatening discipline on those federal employees who run afoul of an inflexible set of ethics rules.

Even if federal employees are allowed to attend events or meetings, excessively rigid ethics rules may cause many government employees to decide not to attend worthwhile events. Excessive caution to avoid the risk of negative consequences would generate a climate where government employees are instinctively wary of engaging with critical stakeholders. This weakens communication between the government and the governed, and results in incomplete or ill-advised regulation. The on-the-ground perspective that both trade and professional associations provide is an important part of the

---

<sup>6</sup> Id. at 56338.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> These organizations are examples chosen from *A – Z Index of Trade Associations*, available at <http://www.usa.gov/directory/tradeassoc/index.shtml>

democratic process, and OGE should be careful to allow flexibility in implementing and enforcing an expanded set of gift rules.

**The proposed rules may deter registration of lobbyists.**

Erecting more walls between federal regulators and organizations that conduct lobbying activities could have the inadvertent effect of deterring organizations from registering their employees as lobbyists. Some individuals who currently conduct lobbying activity as a relatively small portion of their professional activity, but who nevertheless register as lobbyists, would find the new proposed rule disruptive to the portions of their activities that are not lobbying-related and decide to scale back lobbying activities and terminate their registration. Where registration may have been an effective preemptive tool to ensure compliance with federal rules, more onerous restrictions on organizations that register can change the calculus and make the risks of registration outweigh the benefits. This could effectively reduce the percentage of lobbying activity that is reported, and even push more lobbying activity underground. In this environment, it would be even more difficult for OGE to conduct effective oversight of federal employees, which would undermine the purpose of the proposed rule.

**When a federal employee attends an event to speak or present of behalf of the agency, the rule should allow support staff to attend as well.**

The preamble explains that OGE's proposed rule would continue to allow federal employees to attend events free of charge where the federal employee is speaking or presenting on behalf of the agency.<sup>10</sup> This is a valuable and well-advised exception to the proposed restrictions on attendance at widely attended events, as government speakers are an important resource for information on industry regulation.

Many of these speakers, however, would require support staff when coming to speak at a trade association event, as resources or to assure follow-up from questions raised by the audience. NAR suggests that the OGE rule be clarified to allow limited support staff attendance. Allowing these staff to attend industry events without charge will ensure that speakers are well-prepared for their speaking engagements, promote follow-up on issues raised in connection with the presentation, and make this vital channel of government-industry communication as effective as possible.

**Conclusion**

NAR appreciates the value of good government and the dangers of uninhibited outside influence on government officials, but these goals should be balanced with the need for a democratic government to remain in touch with its citizens and the groups that represent them. Forcing government employees to pay for attendance at legitimate educational events held by trade associations places a significant obstacle between regulators and the industries they regulate, and puts government employees out of touch with the consequences and implications of their decisions.

---

<sup>10</sup> Id. at 56333.

Erecting these barriers further chills the government's relationship with the private sector and risks pushing lobbying activity into the shadows where undue influence will be harder to detect and eliminate. Finally, as OGE continues to tighten lobbying rules, it must be sure to allow common-sense exceptions, such as allowing government employees who are speaking or presenting on behalf of their agency to bring along needed support staff.

If you have any questions please feel free to let me know, or contact Kenneth Bledsoe, NAR Legislative Analyst, 202.383.1150 or [kbledsoe@realtors.org](mailto:kbledsoe@realtors.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Phipps". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Ron Phipps, ABR, CRS, GRI, GREEN, e-PRO, SFR  
2011 President, National Association of REALTORS®