



## GOVERNMENT CONTRACTS UPDATE

### **Office of Government Ethics Proposes To Severely Restrict Registered Lobbying Organizations From Hosting Free Educational and Social Events for Government Employees**

The Office of Government Ethics (OGE) plans to amend its ethics regulations to extend certain restrictions on the acceptance of gifts by political appointees to career executive branch employees. The current restrictions regarding political employees are contained in Executive Order 13490, issued by President Obama in January 2009, which also instructed OGE to apply the restrictions as “necessary or appropriate . . . to all executive branch employees.”

The proposed amendments to the OGE gift restrictions, 5 CFR part 2635, will severely restrict, if not entirely preclude, companies and trade associations registered as lobbying organizations from sponsoring a range of free educational and other events for government employees. *See* Standards of Ethical Conduct for Employees of the Executive Branch; Proposed Amendments Limiting Gifts From Registered and Lobbying Organizations, 76 Fed. Reg. 56330-56339 (Sept. 13, 2011). For example, many registered lobbying organizations likely will no longer be able to offer free receptions or dinners to government employees, even if the purpose of such an event is educational or otherwise furthers the public interest, such as a charity fundraiser or a lecture to publicize a new law or product innovation.

The proposed regulations apply to all career employees and will impact all companies and many trade associations that are registered under the Lobbying Disclosure Act of 1995, as amended. According to OGE, the effect of the proposed new limitations are “not inconsiderable” and will impact “among the most widely used exceptions” to the OGE gift regulations. In that regard, our understanding is that OGE has been fielding numerous inquiries from the press and trade associations concerning the application of the proposed amendments.

Under current ethics rules, executive branch employees are prohibited from accepting gifts given by a “prohibited source” or that are made because of an employee’s official position. A prohibited source includes, among other persons, anyone seeking official action from the employee’s agency or doing or seeking business with the employee’s agency. 5 CFR § 2635.203(d).

Gifts of free attendance at “widely attended gatherings” (WAGs), however, currently are generally excepted, for career employees, from the OGE gift prohibitions. 5 CFR § 2635.204(g).

The proposed OGE rules would extend Executive Order 13490 to career employees by adding a similar lobbyist limitation to the current gift regulation exceptions. In so doing, OGE seeks to eliminate the “sometimes questionable” WAGs, “social invitations,” and other gifts that might have been permissible under applicable exceptions in [5 CFR] 2635.204 had the gifts not been extended by registered lobbyists or lobbying organizations.” In addition, as applied to

lobbyist gifts, proposed section 2635.206(c) would eliminate not only the WAG exception and the social invitation exception, 2635.204(h), but also the “\$20 *de minimis*” gift exception, 2635.204(a).

The amended regulation, however, would contain a categorical exception for 501(c)(3) tax exempt organizations. 5 CFR § 2635.203(h)(1) (proposed definition of “[r]egistered lobbyist or lobbying organization”).

In addition, because OGE does not believe that government employees – either political or career – “should be precluded 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[.]” OGE proposes a separate exclusion for nonprofit professional associations, scientific organizations, and learned societies from the new WAG limitations “at least with respect to the *educational and professional development activities* of those entities.” 76 Fed. Reg. 56333 (emphasis added). Thus, the exclusion for nonprofit professional associations (and similar organizations) will not apply “in connection with invitations to purely social events” and, in that sense, is more limited than the 501(c)(3) exception. 76 Fed. Reg. 56337.

The proposed regulation also does not expressly address how the new rules would apply to other tax exempt organizations, such as those qualifying for such status pursuant to 26 U.S.C. §§ 501(c)(4) and 501(c)(6). Of particular note (although not explicitly codified in the proposed amendments), OGE’s comments reflect that the agency “does not intend” the nonprofit professional association exception to cover “trade associations, such as associations of manufactures of particular products” because “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.” 76 Fed. Reg. 56338. Our discussions with OGE suggest that the agency’s intent is to distinguish between two types of 501(c)(6) entities – professional associations and trade associations – with professional associations qualifying under the exception contained in proposed § 2635.203(h)(4). We expect that, in the absence of a bright line rule, there will be some confusion regarding both OGE’s distinction between the two types of associations and also the events that government employees may attend.

Finally, we note that the new rules will not alter the current rule, 5 CFR § 2635.204(g), permitting a government employee’s free attendance at events at which he or she is speaking or presenting information on behalf of the government, nor will the new rule restrict agencies from paying the cost of educational events for government employees.

OGE has invited comments, which must be received before November 14, 2011. Comments may be provided via email at [usoge@oge.gov](mailto:usoge@oge.gov) with “Proposed Amendments to Part 2635” in the subject line.

If you have any questions regarding this update, please contact  
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