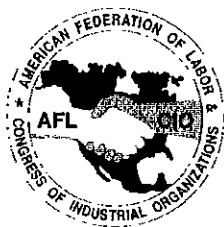


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December 2, 2010

Ms. Preeti D. Bansal
General Counsel and Senior Policy Advisor
Office of Management and Budget
Eisenhower Executive Office Building, Room 289
1650 Pennsylvania Avenue, N.W.
Washington, DC 20500

Re: Proposed Guidance on Appointment of Lobbyists to Federal Boards and Commissions

Dear Ms. Bansal:

We are writing on behalf of the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO") concerning the proposed Office of Management and Budget ("OMB") "guidance," 75 Fed. Reg. 67397 (Nov. 2, 2010), that would implement President Obama's Presidential Memorandum, "Lobbyists on Agency Boards and Commissions" (June 18, 2010).

The AFL-CIO is the national federation of 57 national and international unions representing over ten million working men and women throughout the United States. Employees and other representatives of the AFL-CIO and many of its affiliates routinely participate on federal advisory committees that are subject to the Federal Advisory Committee Act ("FACA"), 5 U.S.C. app. 2. In addition, employees and representatives of the AFL-CIO regularly participate in U.S. delegations to international bodies, in particular delegations to the International Labour Organization (ILO), whose constitution and bylaws require that members countries sending delegations to its annual Conference and other meetings include in their delegations independent worker and employer representatives chosen by the most representative labor and employer organizations in each country.

Historically, some of the individuals who have participated on advisory committees or in delegations, have been registered lobbyists under the Lobbying

Disclosure Act (“LDA”), 2 U.S.C. § 1601 *et seq.*, because the distinct work that they performed for the labor organization independently required that registration. (Service on a federal advisory committee or as part of a delegation to an international body is not a “lobbying activity.” 2 U.S.C. § 1602(8)(B)(vi).) And, in many instances, the same expertise that these individuals have applied to their lobbying activities prompted their participation on an advisory committee or as part of a delegation..

Our comments on the proposed guideline are divided into two parts. In the first part, we show that participation on Federal advisory committees by individuals whose function is to represent an organization or group that is directly affected by or interested in the matters as to which the advisory committee is to give advice is not only permitted by Federal law and regulation, but is in many cases specifically mandated. Such participation raises no ethical concerns, and the fact that the individual may happen to be a registered lobbyist should not change that analysis.

In the second part, while acknowledging that the November 2, 2010 Presidential Memorandum prohibiting service by federally registered lobbyists on advisory committees or boards is binding on OMB, we address three specific aspects of the proposed OMB guidance that, in our view, go well beyond what the President has directed and that we recommend be rejected or revised in the final guidance. These are (1) the proposed extension of the policy to participation in entities, very broadly defined, that are not advisory committees under FACA; and (2) the specific application of the policy to “delegations to international bodies” that, in some cases, would violate specific obligations by which the U.S. Government is bound as a member of those bodies; and (3) the declaration that no individual waivers from the policy are possible.

I. The Lobbyist Exclusion Policy Is Unjustified and Arbitrary

Although we realize that the Presidential Memorandum has issued and binds OMB as a practical matter, the current notice and comment period provides the first opportunity for the AFL-CIO or anyone else to place anything on a formal public record concerning the lobbyist exclusion policy that first emerged last year. For that reason, and in order that OMB may exercise informed discretion in choosing how to apply the lobbyist exclusion directive in particular circumstances, we first set forth some general points about the policy itself and then address several of OMB’s proposed guidelines for its implementation.

At the outset, we would observe that nothing in FACA authorizes the categorical exclusion from service on an advisory committee of federally registered lobbyists or any other class of individuals. FACA directs that the membership of advisory committees must be “fairly balanced in terms of the points of view represented,” 5 U.S.C. app. 2, § 5(b)(2), and further directs that any legislation that establishes an advisory committee “contain appropriate provisions to assure that the advice and recommendations of the advisory committee will not be inappropriately influenced by the appointing authority or by any special interest, but will instead be the result of the advisory committee’s independent judgment.” *Id.*, § 5(b)(3). Insofar as this provision means that Congress

should specify any restrictions on advisory committee composition in the particular instance, we are aware of no such legislation that excludes individuals from service on advisory committees because they are registered lobbyists. Nor do the federal regulations that govern advisory committee management exclude lobbyists or any other category of individuals from service; rather, agencies are directed to achieve a “fairly balanced membership,” that is, “a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the advisory committee.” 41 C.F.R. § 102-3.60(b)(3).

In fact, the lobbyist exclusion policy undermines the longstanding purposes and operations of the federal advisory committee program, which fundamentally differ from those of the executive departments and agencies that sponsor those committees. Advisory committees only *advise*; they do not exercise authority or make or implement government policy. Unless a statute or presidential directive provides otherwise, advisory committees “shall be utilized solely for advisory functions,” 5 U.S.C. app. 2, § 9(b), specifically as “a useful and beneficial means of furnishing expert advice, ideas and diverse opinions to the Federal Government.” *Id.*, § 2(a).¹ In contrast, “[d]eterminations of actions to be taken and policy to be expressed” on matters that advisory committees recommend “shall be made solely by the President or an officer of the Federal Government.” *Id.*, § 9(b).

We assume that it was due to these special characteristics that Executive Order No. 13490, “Ethics Commitments by Executive Branch Officials” (January 21, 2009) (“EO 13490”), did *not* include advisory committee members among the “appointees” who are subject to its various prohibitions concerning their dealing with particular matters, communicating with former employers and clients, and working for agencies that they had previously lobbied. *See id.*, Section 2(b) (defining “appointee” to include “every full-time non-career Presidential or Vice Presidential appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policy making character . . . in an executive agency”); DAEOgram DO-09-005 (February 10, 2009) (explaining that special government employees (“SGEs”) are not covered by EO 13490); DAEOgram DO-09-005 (Feb. 10, 2009) (same). Meanwhile, long-established government ethical rules apply in only a limited manner to some advisory committee members, and they nowhere distinguish between advisory committee members who are registered lobbyists and those who are not. *See generally* DAEOgram DO-05-012 (August 12, 2005).

Advisory committee members are ordinarily classified as either SGEs or “representatives,” and the proposed guidance explicitly would apply to both. *See* 75 Fed. Reg. at 67398. The inappropriateness of the lobbyist exclusion policy is particularly

¹¹ As then-Office of Management and Budget Director Peter R. Orszag acknowledged last year, “[i]n many cases, Federally registered lobbyists bring to bear helpful information that facilitates agencies’ evaluation of policies and projects on the merits.” Memorandum to the Heads of Executive Departments and Agencies, “Interim Guidance Regarding Communications with Registered Lobbyists About Recovery Act Funds” at 5 (April 7, 2009).

evident from consideration of “representative” advisory committee members.² Congress expected and intended that “persons or groups directly affected by the work of a particular advisory committee would have some representation on the committee.” *National Anti-Hunger Coalition v. Executive Committee*, 711 F.2d 1071, 1074 n. 2 (D.C. Cir. 1983). “[R]epresentative” advisory committee members, “unlike SGEs and other Federal employees..., are not expected to render disinterested advice to the Government. Rather, they are expected to ‘represent a particular bias’” because “they represent specific interest groups, such as industry, consumers, labor, etc.” OGE Mem. 00 x 1, quoting OGE Letter 93 x 14. “Representatives are not covered by the conflict of interest laws; otherwise the purpose of their services would be thwarted.” *Id.* And, this holds true whether or not a representative member is a lobbyist.

In fact, precisely because “representative” members of advisory committees represent private interests and views and are not “servant[s] of the government,” the U.S. Department of Justice Office of Legal Counsel (“OLC”) concluded that they were not “public officials” within the meaning of 18 U.S.C. § 219, which prohibits any “public official” from registering under the LDA (or acting as an agent of a foreign principal required to register under the Foreign Agents Registration Act). Memorandum from Daniel Koffsky, Acting Deputy Assistant Attorney General, OLC, to the Deputy General Counsel, Dept. of the Treasury, “Applicability of 18 U.S.C. § 219 to Representative Members of Federal Advisory Committees” (September 15, 1999), available at <http://www.justice.gov/olc/219new.htm>. The current lobbyist exclusion directive turns the rationale of OLC’s advice on its head by rendering LDA registrant status itself a disqualifier for advisory committee service.

The Administration’s policy also embraces a flawed and arbitrary distinction between lobbyists and others who serve the same organizations – including, of course, those who, unlike lobbyists, actually lead and set policy for them. Self-evidently, it is not the commercial interests or public policy preferences of “lobbyists” themselves that the Administration is concerned may be implicated by their service on advisory committees. Rather, it is the interests and preferences of *their employers or clients*, which direct them and for which they serve as advocates and experts. The popular use of the term “lobbyist” as an epithet is, at best, a shorthand for those organizations. If the Administration seeks to constrain and expose private influence in the advisory committees program, then its policies should be directed at the actual private decision-makers and beneficiaries of government spending, not their subordinate advisers and representatives. But the exclusion policy, as the proposed guidance states, “applies to Federally registered lobbyists and does not apply to non-lobbyists employed by

² We do not mean to suggest that the ban would be appropriate as to SGE advisory committee members. SGEs are federal employees who perform temporary or intermittent duties for no more than 30 days in a year. See 18 U.S.C. § 202(a). That limited employment status ordinarily entails the application of some of the usual federal employment ethics requirements, but even fewer apply to SGEs on advisory committees because of their purely advisory and non-operational roles. See generally U.S. Office of Government Ethics (“OGE”) Memorandum (“Mem.”) 00 x 1; OGE Informal Advisory Letter (“Letter”) 03 x 5; OGE Mem. 82 x 22. Again, in light of what advisory committee members actually do, banning all lobbyists from that service is simply unjustified.

organizations that lobby.” 75 Fed. Reg. at 67398. If the organizations themselves may continue to be represented on advisory committees, just not by their current lobbyists, then what, really, is the point of the exclusion?³

Moreover, lobbyists hardly dominate advisory committees as it is, and it will take a massive effort to screen them from advisory committees. While we find no information as to the number of lobbyists who serve on them, we do know that there are approximately 12,500 registered lobbyists, see <http://www.opensecrets.org/lobby/index.php>, and, according to the General Services Administration, during FY 2009 *there were approximately 924 active advisory committees with nearly 82,000 members*. See <http://government-policy.blogspot.com/2010/04/federal-advisory-committees-overview.html>. We wonder, in this period of extreme demands on federal resources and massive budget deficits, whether it is really worth the effort and expense to appoint and then monitor 82,000 people who occupy powerless, part-time and (as shown below) completely transparent positions in order to ensure that organizations participate through individuals who are not also their (or, for that matter, others’) registered lobbyists.

With all respect, the Administration has yet to articulate a persuasive distinction for governmental ethics enforcement purposes between registered lobbyists and others who represent or actually lead the lobbyists’ clients and employers. Nor has it pointed to any record to demonstrate that advisory committees have become policy-distorting agents of undue special interest influence, let alone that lobbyists among their members are responsible for such a phenomenon. To the contrary, the key Administration official himself has explicitly disclaimed the existence of any such evidence: In October 2009, when the Administration’s unwritten “policy” barring lobbyists first came to general public notice, the *National Journal* interviewed Norman Eisen, Special Counsel to the President for Ethics and Government Reform, and reported:

When *National Journal* asked Eisen if there was a particular situation where a scandal or problem of undue influence by lobbyists occurred at these federal boards and advisory panels, he said no and “we wanted to keep it that way.”

<http://undertheinfluence.nationaljournal.com/2009/10/lobbyist-ban-viewed-as-prevent.php>. While the Government may rationally adopt policies in order to prevent harms that have not yet befallen, when it does so it ought to have some basis to believe

³ We note that the Administration initially embraced, and then, to its credit, quietly abandoned that very distinction between lobbyists and their organizational colleagues in restricting and disclosing communications by private individuals and groups with the Executive Branch about the American Reinvestment and Recovery Act. Compare Memorandum from the President to Heads of Executive Departments and Agencies, “Ensuring Responsible Spending of Recovery Act Funds” (March 20, 2009), with White House Blog, “Update on Recovery Act Lobbying Rules: New Limits on Special Interest Influence” (May 29, 2009), <http://www.whitehouse.gov/blog/Update-on-Recovery-Act-Lobbying-Rules-New-Limits-on-Special-Interest-Influence>.

that the harm could occur and that its policy is actually geared to preventing that occurrence. There is no such basis for the lobbyist exclusion policy.

Moreover, advisory committees hardly provide a forum for privileged and private access to government officials. By law, advisory committees operate in a wholly transparent manner, unlike permanent governmental bodies. “Each advisory committee meeting shall be open to the public.” *Id.*, § 10(a)(1). All advisory committee materials are available for public inspection and copying. *Id.*, § 10(b). *See also* 41 C.F.R. Part 102-3, Subpart D. And, other rigorous procedures and openness safeguards apply to advisory committee operations, reflecting a steady progression of Executive Branch and congressional efforts to improve the committees, enhance their accountability and restrain their undue proliferation. *See generally* 2 U.S.C., App. 2, § 2; 41 C.F.R. Part 102-3; GSA, “Federal Advisory Committee Management; Final Rule,” 66 Fed. Reg. 37728 (July 19, 2001); Executive Order No. 12838, “Termination and Limitation of Advisory Committees” (1993); *Public Citizen v. U.S. Dept. of Justice*, 491 U.S. 440, 446, 459 (1989). In sum, advisory committees are not only powerless, they are also completely exposed to public scrutiny at all times.

The AFL-CIO is particularly concerned that the lobbyist exclusion policy will plainly most impede the union and nonprofit sector. Application of the policy to them is unjustified in any case, for they typically pursue public policy and not pecuniary goals. As OLC determined in interpreting 18 U.S.C. § 208, which bars a federal employee from participating in certain governmental matters if the employee is an officer or director of an organization that has a “financial interest” in the matter, “a nonprofit organization does not have such a ‘financial interest’ merely because it spends money on advocacy”; rather, a ‘policy interest’ is entirely distinct from a “financial interest” and does not implicate the conflict of interest statute. Memorandum from Steven G. Bradbury, Acting Assistant Attorney General, OLC, to the General Counsel, Office of Government Ethics, “Financial interests of Nonprofit Organizations,” (January 11, 2006), available at <http://www.justice.gov/olc/11106nonprofitboards.pdf>.

The lobbyists employed or retained by unions and other nonprofit groups are typically substantive experts – often their organizations’ only ones – about a particular area of concern, and their expertise is utilized to seek legislation and other government actions in order to achieve public policy rather than commercial goals. Due to the rigid and broad definition of a “lobbyist” under the LDA, registration is required of thousands of individuals who work directly for such organizations and do not resemble the “gun-for-hire” stereotype that fuels adverse public perception of the lobbyist profession. And, even with respect to lobbyists who do operate in a private consulting capacity and serve multiple clients, many and perhaps most are retained precisely because of their policy and technical expertise or because an outside consultancy is the preferred arrangement for their clients, many of which lack the resources to enable, or the regular engagement with the Government to justify, the hiring of permanent lobbying staff.

Meanwhile, of course, the resources of unions and other non-profit groups are typically miniscule in comparison with those of the large commercial, industrial and

banking enterprises that spend by far the greatest resources on lobbying the government, and whose staff depth is much more likely to supply a knowledgeable non-lobbyist for advisory committee service. Exercising that easy alternative, of course, maintains whatever “influence” the lobbyist exclusion policy is assertedly intended to extinguish. The upshot of the lobbyist exclusion policy, then, is not to remove “influence” from advisory committees, but only to shift it away from policy-oriented groups toward the business and other large organizational entities that can most easily navigate around it.

II. Three Aspects of the Proposed Guidance Should Be Modified

Assuming, however, the continued maintenance of this ill-advised policy, there are three specific aspects of the proposed OMB guidance that we recommend be rejected or revised in the final guidance.

A. The Scope Exceeds That of the Presidential Memorandum

First, the scope of the proposed prohibition is both vague and beyond what the President has directed. The Presidential Memorandum states that it is “establishing as the official policy of [the] Administration” its previously announced “aspiration” to “keep Federal agencies’ advisory boards free of federally registered lobbyists,” so, “[a]ccordingly,” the President “direct[ed] the heads of executive departments and agencies not to make any new appointments or reappointments of federally registered lobbyists to advisory committees and other boards and commissions.” FACA defines the term “advisory committee,” see 5 U.S.C. app. 2, § 3(2), but the proposed guidance would apply the President’s directive well beyond the announced “official policy” to reach “any committee, board, commission, council, delegation, conference, panel, task force, or other similar group (or subgroup) created by the President, the Congress, or an Executive Branch department or agency to serve a specific function to which formal appointment is required, *regardless of whether it is subject to [FACA].*” 75 Fed. Reg. at 67398 (emphasis added). This plainly exceeds the authority conferred by the Presidential Memorandum, and it does so to a degree that is ill-defined and subject to arbitrary and unpredictable application. We urge that the final guidance align its scope to advisory committees that *are* subject to FACA.

B. Delegations to International Bodies Should Not Be Included

Second, and specifically, the proposed guidance would cover “non-Federal members of delegations to international bodies.” *Id.* But these positions are neither covered by FACA nor remotely like those of advisory committee members; and, neither the Presidential Memorandum nor the informal lobbyist exclusion policy that preceded it suggested any application to such delegations. Moreover, the governing rules of numerous international organizations, such as the ILO, whose constitution and bylaws require that member countries sending delegations to its annual Conference and other meetings include in their delegations independent worker and employer representatives chosen by the most representative labor and employer organizations in each country. These rules do not countenance interference in that choice by any government, either by

vetoing particular individuals or imposing categorical exclusions such as the one at issue here.

The proposed guidance states that this prohibition would apply even in circumstances where the individual has been designated to serve “in a representative capacity on behalf of an interested group or constituency” (which appears to contradict the immediately preceding language concerning “[d]elegations organized to present the United States’ position”). Application of the policy in this circumstance is particularly unwarranted on the merits, even assuming any delegations were or could be comprehended by the Presidential Memorandum. U.S. delegations routinely include individuals whom the Government specifically wants so that the expertise or viewpoint of the organization or interest that the individual represents may be presented.

Representatives of the AFL-CIO, for example, have been invited to participate in U.S. government delegations to the World Trade Organization (WTO) because members of the AFL-CIO’s affiliated unions are directly affected by U.S. trade policies and the organization has actively and publicly advocated certain positions on trade issues. In one instance, the employee who represented the AFL-CIO happened to be registered as a lobbyist at the time, which is not surprising since the expertise on trade issues that led him to be chosen to advocate labor’s positions to members of Congress and other federal government officials also made him the logical choice to represent the AFL-CIO on the delegation. Had he been barred from the delegation because of his lobbyist status, the AFL-CIO could have designated a non-lobbyist to represent it, so any “influence” the organization might have been able to exert by virtue of its representation on the delegation would have been the same. But the alternative representative would have been less knowledgeable about the issues, to the clear detriment of both the Government and the AFL-CIO.

With regard to at least one international body of which the United States is a member, the ILO, a refusal to allow a representative of the AFL-CIO to participate in an official government delegation because of the individual’s status as a lobbyist also would run directly afoul of the Government’s obligations as a member state. Under Article 3 of the Constitution of the ILO, delegations sent by member countries to the annual conferences of the ILO are required to be tripartite, consisting of representatives of the government, representatives of the country’s workers, and representatives of the country’s employers. The workers’ and employers’ representatives must be independent of the government and, although appointed by the government, they must be agreed to, in the case of the workers’ representatives, by the most representative workers’ organization in the country, and with respect to the employers’ representatives, by the most representative employers’ organizations. See www.ilo.org/ilolex/english/iloconst.htm.⁴ Similar requirements apply to delegations from member countries attending ILO regional meetings and other tripartite meetings. See, e.g., <http://www.ilo.org/public/english/bureau/leg/publ/reg/noteintro.htm>.

⁴ In the U.S. the AFL-CIO is the most representative workers’ organization and therefore selects who it wants to serve as the workers’ representatives on delegations to the ILO, while the U.S. Council for International Business (USCIB) performs the same function as to the employers’ representatives.

Worker and employer delegates to ILO Conferences and meetings, although part of their country's official delegations, do *not* act on behalf of their government. Rather, the government, the employers' representatives and the workers' representatives of each participating country function as three separate groups. Each group from each nation meets separately for informal discussions of strategy; caucuses separately, and votes separately. For purposes of conducting the official business of the conference or meeting, the workers' and the employers' respective representatives each designate a spokesperson to speak on their behalf; the government representatives of each country speak on their own governments' behalf, and they may agree or disagree with positions taken by the workers' or employers' groups. The requirement that worker and employer delegates be designated by agreement of worker and employer organizations without government interference is essential to the proper functioning of this tripartite system because it ensures that these delegates are true representatives of their respective groups. Any attempt by the U.S. government to set its own criteria for eligibility to serve as a workers' or employers' representative on a delegation to the ILO would clearly violate its responsibility to abide by the ILO constitutional provisions and rules cited above.

It should be noted, in addition, that as a member of the ILO the U.S. is required "to respect, to promote and to realize" the principles set forth in the ILO Declaration on Fundamental Principles and Rights at Work, which include the principle of freedom of association. See <http://www.ilo.org/public/english/standards/reim/ilc/ilc86/com-dtxt.htm>. Freedom of association encompasses the right of worker organizations, through their chosen representatives, to communicate their views on issues to government officials and to attempt to persuade them to take or refrain from particular actions. Thus, it would be particularly egregious for the U.S. Government to bar or attempt to bar an entire category of persons from being selected as the workers' (or employers') representatives on delegations to the ILO specifically *because* they exercised that right by lobbying in support of worker (or employer) interests.

The AFL-CIO is not sufficiently knowledgeable about requirements applicable to the composition of delegations to other international bodies to comment further on possible conflicts between those requirements and the proposed ban on participation by registered lobbyists. However, the example of the ILO demonstrates the risks inherent in arbitrarily expanding a policy that by its terms applies only to advisory boards and commissions to entities that have entirely different functions, such as delegations to international bodies. To avoid these and other presumably unintended consequence, we again urge that the final guidance be modified to limit the application of the policy to the relatively well-defined universe of Federal advisory committees covered by FACA.

C. There Should Be a Waiver Process

Finally, the proposed guidance states that because "the policy makes no provision for waivers, ... waivers will not be permitted." We acknowledge that the Presidential Memorandum is silent on the subject of waivers, unlike EO 13490, which explicitly authorizes them. But, it is surely a perverse result given the Administration's general approach to lobbyists that a lobbyist could be eligible for a special exemption in order to

secure a regular governmental position (from which, by the way, he or she could appoint advisory committee members) but could not be eligible for such an exemption in order to serve on an advisory committee, regardless of, for example, the individual's talents, the relatedness of the individual's lobbying activities to the subject matter of the advisory committee, or the particular agency's needs. The Presidential Memorandum nowhere precludes a waiver process and including one would make eminent sense.

Thank you for your consideration of these comments.

Yours truly,

A handwritten signature in cursive script that reads "Laurence E. Gold".

Laurence E. Gold
Associate General Counsel

Sarah Fox
Legal Counsel and
AFL-CIO ILO Representative



The Jewish Federations
OF NORTH AMERICA
Washington Office

December 3 , 2010

Preeta D. Bansal
OMB General Counsel and Senior Policy Advisor
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Dear Ms. Bansal

The Jewish Federation of North America (JFNA) represents the 157 Federations and 400 independent Jewish communities across North America. JFNA's Washington office brings the federation's voice to Capitol Hill and the White House by advocating for life-saving and live-enhancing humanitarian assistance in nearly 800 locations in the United States, Israel and 60 other countries around the world. Seven individuals who work within the JFNA's Washington office work as lobbyists and are registered with Congress under the Lobbying Disclosure Act of 1995 (LDA). We are writing in response to the "Proposed Guidance on Appointment of Lobbyists to Federal Boards and Commissions (Presidential Memorandum)" published in the November 2, 2010 edition of the Federal Register.

JFNA believes that the Presidential Memorandum is arbitrary, discriminatory and does a disservice to both the Federal government and lobbyists and government because it precludes the opportunity for subject matter experts who happen to be registered lobbyists to provide knowledge and insight to policy makers. The policy seems to derive from an oversimplification regarding the negative misconceptions about lobbying over the actual substance that these individuals can lend to the policy making process. Deprive career officials of knowledge, perspective, and insight offered voluntarily and free of charge from industry experts due solely to their LDA status. The acknowledged purpose of the policy underlying the Presidential Memorandum "is to prevent lobbyists from being in privileged positions in government. The policy is arbitrary and discriminatory because individual can qualify for service on advisory committees or boards if they have filed a bona fide lobbying de-registration or has been de-listed by his or her employer. Further, state lobbyists are exempt from the ban. It is at best a distinction without a difference that permits an individual to merely alter their work and reporting habits so 20 percent of time engaging in activities covered by LDA to 19 percent somehow makes board service acceptable. Such practices will result in less transparency as more individuals de-register, a pattern that is already becoming established over the last several reporting cycles.

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CHAIR, BOARD OF TRUSTEES

Michael C. Gelman
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Lobbying is about sharing expertise and information. Public interest groups and other nonprofits often employ lobbyists to help with their organization's work in support of policies that broadly benefit the public interest. There is a fundamental difference between civic engagement for public purposes and lobbying to advance pecuniary self-interests. As others have stated "when citizens work for better public policies, whether seeking to end torture, promote affordable health care, fight for equality under the law regardless of race, gender or national origin, demand action on climate change or to achieve other vital goals in the broad public interest, they can and should "lobby" the government. The interests of ordinary Americans are under-represented in the public policy arena and such advocacy should be fostered rather than penalized or discouraged." The difference between such organizations and for-profit entities is apparent as so-called Internal Revenue Code 501(c)(3) charities are not allowed to make campaign contributions, nor endorse political candidates for office. Just as individuals within these organizations can exercise their First Amendment rights when acting as individuals, they should be able to exercise such rights to serve as members of boards and commissions, even though they are registered under LDA on behalf of their organizations.

Many nonprofit organizations who are critical partners to government in delivering vital services to people in need employ individuals to assist them in sharing their experience and expertise with government officials. Such individuals are essential to the mission and to give a voice before government to assure that federal programs address those of greatest need and deliver the strongest results. When such individuals meet the relevant criteria established under the Lobbying Disclosure Act as amended by the Honest Leadership and Open Government Act (HLOGA), they register and file reports with Congress detailing their activities and contacts. Such individuals who meet the criteria for registering and reporting under LDA often have substantial program responsibilities and are frequently the most knowledgeable and capable representatives to communicate the organizations concerns, questions and recommendations to the relevant government officials. The Presidential Memorandum will have the affect of precluding such individuals from serving on boards and commissions. For example, lobbyists employed by JFNA could provide vital knowledge and experience on a variety of Federal advisory boards or commissions including those such as the United States Holocaust Memorial Council, the to-be-formed CLASS Independence Advisory Council, which will provide guidance on general policies administering the recently-enacted CLASS Act, the White House Conference on Aging, the National Council on Disabilities, the Homeland Security Advisory Council, and the Internal Revenue Service Advisory Committee on Tax Exempt and Government Entities, among others.

JFNA has been a strong advocate for transparency and accountability within the nonprofit community but are equally committed to protecting the rights of individuals and nonprofit organizations working on their behalf to speak to government about their concerns and ideas. We believe there are several outcomes that are apparent if the Presidential Memorandum is permitted to stand as drafted: (1) it will drive talented individuals away from public interest organizations, making it more difficult to recruit and retain such professionals; (2) it will cripple and perhaps stem the flow of valuable information to the government from public interest organizations; (3) it will cause a

precipitous drop in information available to the public regarding lobbying as more and more previously covered individuals chose the path of de-registration; and (4) it will further limit the engagement of nonprofit organizations from participating in public interest information exchange at a time when there is a paramount need for such expertise.

We respectfully request that the Presidential Memorandum be rescinded or modified to permit all individuals and organizations including those registered as federal lobbyists under the LDA to be permitted to participate on advisory boards or committees. At a minimum we urge that the current Presidential Memorandum be redrafted so that the current ban from participation by individuals lobbying on behalf of section 501c3 organizations be replaced with common sense disclosure via enhanced public records of meetings and contacts with Executive branch officials and an expanded system of individual recusal when there may be the perception of a direct conflict of interest.

If you have any questions regarding these comments, please feel free to contact Steven Woolf, Senior Tax Policy Council, Jewish Federations of North America , at 202-736-5863 or steven.woolf@jewishfederations.org.

Sincerely,



William C. Daroff
Vice President for Public Policy &
Director of the Washington Office



ADMINISTRATIVE OFFICE
National Truck Equipment Association
37400 Hills Tech Drive
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(248) 489-7080, fax (248) 489-8690
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Buyers Products Company
(Mentor, OH)

NTEA.com
The Industry's Trusted Source

December 1, 2010

Sent via electronic-mail to ogc@omb.eop.gov

Office of General Counsel
Eisenhower Executive Office Building
Room 289
1650 Pennsylvania Avenue, NW.
Washington, DC 20500

The National Truck Equipment Association (NTEA) appreciates this opportunity to comment on the Office of Management and Budget's (OMB) proposed guidance to Executive Departments and agencies concerning the appointment of federally registered lobbyists to boards and commissions.

We believe that the proposed guidance would eliminate the availability of significant knowledge and expertise to the government as they develop policies affecting all Americans. The manner in which specified individuals are prohibited from participating in the development of government policies would likely have the unintended consequence of enhancing the influence of those companies and organizations portrayed as already having undue influence.

The NTEA represents some 1,500 companies throughout the United States. These companies produce work trucks, truck bodies and equipment. Many of these companies are small and family owned.

We understand the goal to enhance transparency and to engage the American public in the development of government policy. Many federal registered lobbyists do just that, represent the views of hard-working Americans and endeavor to engage them in the process.

The "zero-tolerance" goal of this policy is likely, in certain instances, to reduce the input from average Americans and increase the ability of large organizations to participate.

The organizations or corporations most likely to have "undue influence" will not be significantly affected by this policy. These entities have the resources to shift personnel and responsibilities such that they can maintain numerous

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lobbyists and still have the ability to offer for nomination whomever they wish for an advisory committee. It is the smallest organizations or companies that could lose their voice (while the government loses that perspective and expertise). Small entities that may have only one registered lobbyist – who often wears many hats, would now be precluded from serving. If that one registered lobbyist is the person at the organization with the appropriate knowledge and experience the small organization will be forced to choose whether it is more important to educate congress or to offer expertise and perspective to an advisory committee. There often is no option in a small organization to shift responsibilities among employees.

The NTEA is representative of many small trade associations. We represent many small businesses that operate in a highly regulated atmosphere (EPA, NHTSA and OSHA). Many of these small and medium sized companies are also trying to establish export footholds or maintain their domestic market share against imports.

These are not the kind of companies that could afford their own representation in Washington, DC yet due to the nature of their business, such representation is critical. The NTEA recognized many years ago that the perception in Washington of the motor vehicle industry was of a few multi-national corporations building hundreds of thousands of mass-produced cars. NTEA members build specialized trucks in an almost infinite number of body, chassis and equipment configurations, generally to order. As such, the NTEA invested in placing one employee in Washington.

Under the Administration's proposed policy an organization that might have only one employee would be prohibited from serving on an advisory committee if that employee happened to be a registered lobbyist. The smaller an organization, the more hats an employee is likely to wear. One of those hats in a trade association is likely to be government relations oriented. While a large organization with numerous lobbyists can shift responsibilities around in order to maintain a position on an advisory commission, a small organization representing small businesses may have no such option.

De Minimus Exemption

The White house certainly could work within the Federal Advisory Committee Act (FACA) to enhance transparency. FACA already requires information about agendas, hearings and members to be disclosed and publicly accessible. Increased disclosures about potential conflicts of interest and prior and current lobbying activities by members of these advisory

Office of General Counsel
December 1, 2010
Page Two

committees would seem a reasonable approach rather than a total ban on one class of people.

If OMB pursues the approach of banning certain individuals from participation there should at least be some type of de minimus exemption such that the smaller organizations do not end up being banned while the largest organizations can continue their participation.

Sincerely,

A handwritten signature in cursive script that reads "Michael Kastner".

Michael Kastner
Senior Director of Government Relations
NTEA Washington, DC Office

Exposing Corruption Exploring Solutions

Project On Government Oversight

December 1, 2010

Office of Management and Budget
Office of General Counsel
Eisenhower Executive Office Building
Room 289
1650 Pennsylvania Avenue, NW
Washington, DC 20500

To Whom It May Concern:

The Project On Government Oversight (POGO) provides the following public comment on the Office of Management and Budget's (OMB) "Proposed Guidance on Appointment of Lobbyists to Federal Boards and Commissions" (75 Fed. Reg. 67397, November 2, 2010). The proposed rule seeks input from interested parties on OMB's final guidance regarding the implementation of a Presidential Memorandum signed by President Obama on June 18, 2010, which directs executive departments and agencies not to appoint or re-appoint any federally registered lobbyists to advisory committees, boards, or commissions (hereinafter "committees").¹ As an independent watchdog that champions good government reforms, POGO supports any efforts to limit the pervasive influence of special interests on federal advisory committees, which have been called the "fifth arm of government" because of the powerful role they play in advising agencies, Congress, and the President on a wide range of public policy issues.

In recent years, the Government Accountability Office (GAO) and various outside watchdog groups have raised concerns about a lack of balance, both real and perceived, between private and the public's interests on federal advisory committees across the government.² The undue influence of industry on many committees raises questions about the quality of advice being provided to the government, and could undermine the public's confidence in policies that are

¹ The White House, "Presidential Memorandum—Lobbyists on Agency Boards and Commissions," June 18, 2010. <http://www.whitehouse.gov/the-press-office/presidential-memorandum-lobbyists-agency-boards-and-commissions> (Downloaded November 30, 2010)

² Government Accountability Office, *Federal Advisory Committees: Additional Guidance Could Help Agencies Better Ensure Independence and Balance* (GAO-04-328), April 2004. <http://www.gao.gov/new.items/d04328.pdf> (Downloaded November 30, 2010); OMB Watch, "Detailed Recommendations: Integrity and Accountability," December 9, 2008. <http://www.ombwatch.org/node/3852> (Downloaded November 30, 2010); Center for Public Integrity, "The Shadow Government: An investigation of federal advisory committees." <http://projects.publicintegrity.org/shadow> (Downloaded November 30, 2010); and Union of Concerned Scientists, "Ensuring the Independence of Scientific Advisory Committees," August 5, 2009. http://www.ucsusa.org/scientific_integrity/solutions/big_picture_solutions/scientific-advisory-committees.html (Downloaded November 30, 2010)

implemented based on the committees' recommendations. Especially since committee members designated as representatives are not subject to federal ethics laws, there is a concern that certain members could be serving with an undisclosed financial interest in the committee's work.

OMB's proposed rule would prohibit the appointment or re-appointment of federally registered lobbyists on federal advisory committees after June 18, 2010. Federally registered lobbyists who are currently serving on committees can finish out their term, but cannot be re-appointed so long as they remain federally registered lobbyists.

POGO supports many aspects of OMB's proposed rule. For instance, the proposed rule would apply to "any committee, board, commission, council, delegation, conference, panel, task force, or other similar group (or subgroup) created by the President, the Congress, or an Executive Branch department or agency to serve a specific function to which formal appointment is required, *regardless of whether it is subject to the Federal Advisory Committee Act*" (emphasis added). This broad application is important because some committees are not explicitly governed by the Federal Advisory Committee Act (FACA), even though they advise the federal government on significant public policy issues.

In addition, the proposed rule would apply to all committee members who are not full-time federal employees, including members designated as representatives and special government employees (SGEs). It is important to cover both representatives and SGEs because federally registered lobbyists could potentially serve in both positions, and different committees use different criteria in determining how to designate their members. Similarly, the proposed rule would apply to federally registered lobbyists serving on subcommittees and working groups, which will ensure that the rule is applied consistently across the various entities that contribute to the work of the main advisory committee.

POGO also supports the provision in the proposed rule requiring appointing officers or their delegates to ensure, on at least an annual basis, that no federally registered lobbyists are serving on advisory committees. If members on certain committees are required to certify that they are not federally registered lobbyists, we recommend that these certifications be posted on the committee's website and in the online FACA database.

OMB's proposed rule also states that "[t]he policy makes no provisions for waivers, and waivers will not be permitted under this policy." Although POGO believes that waivers to the rule should be limited to the greatest extent possible, an outright ban on waivers could have negative unintended consequences. For instance, an outright ban would prevent federally registered lobbyists representing public interest groups from serving on advisory committees. We recommend that OMB revise this provision to allow for waivers only in cases where committee members and the entities they work for have no pecuniary interest in the work of the committee or the agency. Any waivers to the rule should be posted on the committee's website and the online FACA database.

Another concern is that OMB's rule may simply result in lobbyists de-registering and serving on advisory committees in other capacities. In order to address these and other concerns, we encourage OMB and the Obama Administration to take additional steps to make federal advisory

committees more transparent, balanced, and accountable. We urge OMB to issue additional rules and guidance to ensure that the following reforms are implemented:

- Agencies that use contractors to form advisory committees should manage these committees under FACA
- Agencies should not designate members as representatives in order to circumvent federal ethics laws
- Agencies should solicit suggestions from the public for new members to serve on advisory committees
- Agencies should publicly disclose information about each member's qualifications, background, former employers, and funding sources
- When conflicts of interest arise related to a particular matter before the committee, agencies should require members to recuse themselves from voting. Any recusal statements should be made publicly accessible on the committee's website and in the online FACA database.
- Designated ethics officials should obtain signed and dated confirmation from all members that they understand their designation on the committee and the obligations they have under that designation
- Agencies should also be required to post additional information on the committees' websites, including:
 - The committee charter
 - The process used to identify prospective members
 - The process used for selecting members
 - The designation of each member
 - In the case of representatives, the group or entity that is represented
 - The committee's decision-making process
 - The name of the designated ethics official
 - Any agency actions taken in response to the committees' recommendations
 - An explanation when the agency decides to reject a committee's recommendation
 - Notices of meetings, posted at least 15 calendar days before the meeting
 - A full transcript or audio recording of each meeting, posted no later than 30 calendar days after the meeting
 - Any written determination to close a meeting and the reasons for doing so.

Thank you for your consideration of this comment. If you have any questions, please contact POGO Director of Public Policy Angela Canterbury at (202) 347-1122.

Sincerely,



Danielle Brian
Executive Director

If lobbyists want to contribute to the national conversation, let them do it in the light of day. No one's forcing them to serve on the boards, and becoming a registered lobbyist is by choice. No lobbyists on federal advisory boards without clear, open, and transparent waivers. The powerless and voiceless don't get special access; neither should the well-connected.

"Take what you want, and pay for it." - Old Proverb

--

David Pardo

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<http://agcwhistleblower.wordpress.com>

ALL
AMERICAN
LEAGUE OF
LOBBYISTS

November 23, 2010

Preeta D. Bansal
OMB General Counsel and Senior Policy Advisor
C/O Office of the General Counsel
Eisenhower Executive Office Building
Room 289
1650 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear Ms. Bansal:

We are writing on behalf of the American League of Lobbyists in response to the "Proposed Guidance on Appointment of Lobbyists to Federal Boards and Commissions" published in the November 2, 2010, edition of the *Federal Register* (75 FR 211).

The American League of Lobbyists (ALL) is the preeminent national organization that represents government relations and public affairs professionals. Our mission is to "enhance the development of professionalism, competence and high ethical standards for advocates in the public policy arena, and to collectively address challenges which affect the First Amendment right to 'petition the government for redress of grievances.'"

As professional lobbyists, we perform a tremendously important service not only to our employers and clients but also to the public at large, in an ethical, legal and Constitutional manner. ALL members adhere to a principled Code of Ethics that focuses on promoting the highest level of ethical lobbying in the country. Additionally, the League stresses the importance of continued education of the lobbying community by promoting the Lobbying Certificate Program which helps those of all skill levels improve their knowledge of the legislative process and lobbying profession.

Lobbyists serve as educators, conduits of information, and experts in governmental process and procedure who help government officials make informed and logical decisions. Lobbyists represent every walk of life in an effort to make sure the views, knowledge, and concerns of those they represent are properly expressed to decision makers in both the Executive and Legislative branches of government.

ALL membership is open to any full-time, professionally employed lobbyist, at either the state or federal level, and we currently have over 1,000 members who are involved in a vast array of issues and advocacy efforts. A small percentage of our members have been directly impacted by the Obama Administration's policy on which the proposed guidance is based.

ALL leadership has been following the Obama Administration's stance on our profession continuously, and has repeatedly expressed our tremendous concern that the Executive Office of the President has needlessly and incorrectly demonized our entire industry.

In correspondence sent to the White House on October 28, 2009, for example, we pointed out that the Obama Administration's prohibition on lobbyists who are registered with Congress under the Lobbying Disclosure Act of 1995 (Public Law 110-81, as amended, or "LDA") serving on Federal Boards and Commissions "...will deprive career public officials of the knowledge, perspective, and insight offered voluntarily and free of charge from many of the industry experts who will be precluded from serving as formal advisors under this policy, due solely to their LDA status."

ALL maintains that this sweeping prohibition is discriminatory, arbitrary, and harmful to members of our industry and government officials alike because it eliminated the rights of subject matter experts, who happen to register as lobbyists, of their ability to provide knowledge and insight to decision makers in the Obama Administration while simultaneously depriving decision makers in your Administration of accurate, reliable, and unique sources of information.

We also take specific issue with the repeated claims by members of the Executive Office of the President that service on Federal Boards and Commissions by registered lobbyists provides "undue influence" on deliberative governmental undertakings.

The reality, in fact, is that every person who serves on a Federal Board or Commission -- registered lobbyist or not -- is almost universally selected for that role based on their expertise, knowledge, and/or insights and, as individuals, typically have little influence over final policy adopted by decision makers in the Executive Branch of our government. Ultimately, as the Obama Administration must surely realize after nearly two years in office, final decisions rest with the governmental officials who oversee all Federal Boards and Commissions based only in part by the breadth and diversity of opinion presented during deliberative processes.

To proclaim that any private-sector member of any Federal Board or Commission has "undue influence" over decisions made by officials in your own Administration strikes us as somewhat disingenuous. Moreover, the repeated claims by your Administration that this "undue influence" is solely based on a person's LDA status have never been substantiated.

Indeed, the arbitrary and discriminatory nature of this prohibition is clearly spelled out in the November 2 *Federal Register* notice under section A10 which notes, "The purpose of this policy is to prevent lobbyists from being in privileged positions in government," and section A1 which states, "Any individual who previously served as a Federally registered lobbyist may be appointed or re-appointed only if he or she has either filed a bona fide de-registration or has been de-listed by his or her employer...."

Under this proposed policy, in other words, it is completely acceptable for any person who has been engaged as a registered lobbyist since as early as 1995 to alter their activities on Capitol Hill such that they are no longer legally required to register with the Clerk of the House and/or














the Secretary of the Senate under the LDA and -- by that act alone -- be free to serve in "privileged positions in government."

If, for instance, a government relations professional has historically spent twenty percent of their time engaging in one or more of the specific activities listed in the LDA -- but is able to alter his or her affairs such that only 19 percent of their time is spent on the exact same activities -- that person has somehow been transformed from being unacceptable to serve on any Federal Board or Commission to being acceptable for such service.

Similarly, as noted in section A1 of the November 2 *Federal Register* notice, anyone who spends the vast majority of his or her time lobbying at the State level of government is, for reasons unstated, acceptable to serve on a Federal Board or Commission while those who engage in the exact same activities on Capitol Hill are, somehow, unacceptable.

ALL further notes that this policy has already resulted in diminished transparency and, over time, will likely reduce transparency even further.

According to the Center for Responsive Politics, for example, as of July 26 this year, the number of "unique, registered lobbyists who have actively lobbied" has diminished from 14,216 in 2008, the year President Obama was elected, to 12,488 in 2010 -- a reduction of more than twelve percent after a decade of nearly uninterrupted annual increases (please see table below taken from opensecrets.org, November 18, 2010):

1998		10,404
1999		12,943
2000		12,541
2001		11,845
2002		12,131
2003		12,923
2004		13,158
2005		14,070
2006		14,516
2007		14,869
2008		14,216
2009		13,664
2010		12,488

While it is unknown exactly how many of the 1,728 registered lobbyists who were counted as being actively involved in lobbying during 2008, but not in 2010, are still doing pretty much the

exact same things that they were doing two years ago, based on anecdotal evidence we contend that the percentage is fairly high.

Similarly, while it is unknown exactly how many of these people de-registered as a direct result of the Obama Administration's policy regarding service on Federal Boards or Commissions and/or divisive rhetoric about our profession, we note that 552 people came off the registration list between 2008-2009, whereas 1,176 (more than twice as many) came off between 2009 *and the first seven months* of 2010 -- shortly after the Obama Administration issued its blog posting announcing this new policy on September 23, 2009.

One way or the other, however, these de-registrations are clearly counterproductive to the Administration's oft-stated goals of increased transparency in governmental operations.

One could also argue, in fact, that by removing a person with years of experience from service on a Federal Board or Commission simply because he or she is a compliant, law abiding, registered lobbyist and replacing them with corporate executives or other individuals who have little or no government relations experience would be more dysfunctional because these replacements would not likely understand the complex and often arcane processes of the government.

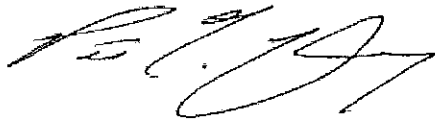
Simply stated, by pursuing this policy, the Obama Administration is potentially removing people who understand the responsibilities and needs of Federal Boards/Commissions, and replacing them with neophytes who may not understand these complex processes of the government and might be primarily motivated by their individual self interests. We further contend that it is illogical and counter-intuitive to believe that the information and insights the Administration would get back in this scenario will be of greater value than those provided by government relations professionals who also happen to be registered lobbyists under the LDA.

It is for all these reasons that we urge you to repeal the proposed guidance as well as the ill-conceived policy on which it is based. If the Administration is concerned about certain aspects of Federal Board or Commission composition, we welcome an opportunity to engage in direct discussion to create a solution that does not eliminate the subject matter experts the government needs to make educated and well-reasoned decisions.

On behalf of the American League of Lobbyists, we thank the Administration for this opportunity to express our concerns.



David G. Wenhold, PLC, CAE
ALL President



Peter G. Mayberry
All Board of Directors
Former Member, ITAC 13 -- Textiles and Clothing

AAEI American Association of Exporters and Importers

The Voice of the International Trade Community Since 1921

November 22, 2010

Via E-Mail: ogc@omb.eop.gov

Office of General Counsel
Office of Management and Budget
Room 289
Executive Office Building
1650 Pennsylvania Avenue, NW
Washington, DC 20500

Re: Proposed Guidance on Appointment of Lobbyists to Federal Boards and Commissions

Dear Sir or Madam:

We are writing to submit comments in response to the above-captioned Federal Register Notice, which specifically seeks public comments to advise the Office of Management and Budget ("OMB") concerning the President's memorandum concerning "Lobbyists on Agency Boards and Commissions." See, 75 Fed. Reg. 67397 dated November 2, 2010. The American Association of Exporters and Importers ("AAEI") greatly appreciates the opportunity to submit these comments, and we fully support OMB's effort to engage with the public on this important issue. We hope that our comments below assist OMB in developing guidance to Executive Departments and Agencies.

Introduction

AAEI has been a national voice for the international trade community in the United States since 1921. Our unique role in representing the trade community is driven by our broad base of members, including manufacturers, importers, exporters, retailers and service providers, many of which are small businesses seeking to export to foreign markets. With promotion of fair and open trade policy and practice at its core, AAEI speaks to international trade, supply chain, product safety, export controls, non-tariff barriers, and customs and border protection issues covering the expanse of legal, technical and policy-driven concerns.

As a representative of private sector participants engaged in and impacted by federal regulations pertaining to international trade, product safety and supply chain security, AAEI represents a large cross-section of the stakeholders in the trade industry, and thus, AAEI is deeply interested in the federal regulatory process. Our comments below relate to the corresponding sections of the notice.

1. Membership Organizations Expect their Association Representatives to Participate on Department and Agency Bodies

As noted above, AAEI has been a membership organization since its founding in 1921. The Association was formed after the recodification of U.S. anti-dumping laws adopted in 1916 because U.S. Importers had no representation before the U.S. government. These anti-dumping laws impose additional customs duties on imported merchandise where the government determines that foreign companies sell goods for less than fair market value in the U.S. to gain market share by driving U.S. manufacturers out of the marketplace. These

determinations require highly complex economic analysis and interpretation of U.S. and international trade law.

For most of its 90-year history, AAEI maintained its office in New York City since its membership was centered around the Port of New York as the bulk of U.S. trade transactions were with Europe. As global trade increased with Asia and Latin America, AAEI's membership became dispersed throughout the country often near major maritime ports and airports in the United States.

Around the time of 9/11, AAEI made the decision to relocate its office to Washington, D.C. because the leadership of AAEI determined that the Association could no longer adequately represent the interest of its members so far away from the federal government which increasingly dictated the trade operations processes to U.S. Importers and exporters as part of "homeland security." The transfer of the U.S. Customs Service from the Department of Treasury to the new Department of Homeland Security dramatically increased the level of intrusion from the federal government into international trade transactions and the global supply chain.

As a result of this vast expansion of federal power, AAEI members expected its full-time paid staff to participate in any and every federal body which was created to develop new rules and regulations as part of the "War on Terror." Since these rules increased the compliance responsibilities of AAEI member company representatives (e.g., corporate trade directors, trade managers, logistics managers, etc.), AAEI members relied upon AAEI's professional staff to provide the "subject matter expertise" to U.S. Customs which became the primary federal agency regulating the global supply chain – a responsibility it did not have since its found on July 4, 1789.

2. Transparency Matters

After AAEI moved its office to Washington, D.C., the Association registered its representatives in conformity with the amendments to the Lobbying Disclosure Act. The decision to do so was not just to comply with the letter of the law, but also support the spirit – paid representatives of private sector interests should be disclosed to the public. As an organization dedicated to corporate compliance, AAEI believes that transparency matters in the development of public policy.

The perverse result of the proposed guidance is that it provides enormous incentive for representatives to de-list as registered lobbyists which is precisely the opposite of the law's intended goal to bring more transparency to the policy making process.

3. Federal Boards and Commissions Cost U.S. Companies Money

International trade has traditionally been a niche field with representatives of a few key stakeholders – importers/exporters, customs brokers and freight forwarders, and carriers. As global trade becomes a larger percentage of the U.S. economy, the federal government has increased the regulatory regime governing corporate compliance, trade facilitation, supply chain security and product safety. Nearly 30 Congressional committees and subcommittees exercise some oversight authority over "homeland security." Moreover, each federal agency (over 40) with some responsibility for international trade has a "Trade Advisory Committee" (TAC or ITAC). Often these TACs play a critical role implementing legislation or Administration policy which affects the bottom line profitability of a U.S. corporation. These TACs were developed for the very purpose of consulting with industry before adopting final regulations which may have the unintended consequence of harming

U.S. industry. Barring registered lobbyists from representing U.S. corporations on TACs increase costs to U.S. corporations – either by forcing them to pay for travel costs for their employees to participate on the TACs or depriving them of representation on the very boards and commissions shaping the regulatory environment in which the company must operate. Finally, AAEI is concerned that non-governmental organizations with diffuse public missions will be able to place its representative on board and commissions (such as TACs) without having a financial stake in the outcome of the decision made by these entities.

4. Ignorance Begets Bad Public Policy

AAEI believes that the ultimate impact of the proposed guidance will be bad public policy. The reason companies join membership organizations which employ registered lobbyists is because that person has the requisite understanding of the industry he represents and can convey critical information to policy makers so that they do not unintentionally harm U.S. industries simply because they are not experts on the subject matter that they are writing legislation. Many members of the U.S. Congress have not worked in the private sector for many years and do not have the experience to regulate global corporations. Moreover, most executive department and agency employees have been public servants for a significant portion or their entire career. As a result, they are often oblivious to the economic costs associated with proposed regulations despite federal statutes requiring cost/benefit analysis before such rules become final.

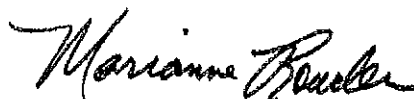
Conclusion

AAEI believes that OMB's proposed guidance must balance the interests of those Americans, both individuals and corporations, directly affected by the actions of federal boards and commissions with the larger good government goal of how best to achieve transparency in public policy development.

AAEI would be happy to discuss any of the matters raised in these comments or any other matter germane particularly to the international trade community.

Thank you for the opportunity to submit these comments on behalf of our members.

Sincerely,



Marianne Rowden
President & CEO

cc: Karl Riedl, Chair, AAEI
Yuko Hanada, Co-Chair, AAEI Trade Policy Committee
Jessica Libby, Co-Chair, AAEI Trade Policy Committee



November 18, 2010

ASAE is appreciative of the opportunity to comment on the Office of Management and Budget's (OMB) proposed guidance to Executive Departments and agencies concerning the appointment of federally registered lobbyists to boards and commissions.

The American Society of Association Executives ("ASAE") is a section 501(c)(6) individual membership organization of more than 22,000 association executives and industry partners representing nearly 12,000 tax-exempt organizations. Its members manage leading trade associations, individual membership societies, and voluntary organizations across the United States and in 50 countries around the globe. We advocate for voluntary organizations so that they may continue to improve the quality of life in the United States.

ASAE believes strongly that the Presidential Memorandum issued by President Obama on June 18, 2010 and the subsequent proposed guidance from OMB will eliminate many positive contributions and qualified, reasoned voices from the advisory boards and commissions that help the government shape policy on thousands of issues.

President Obama stated in the June 18 Memorandum that his Administration "is committed to reducing the undue influence of special interests that for too long has shaped the national agenda and drowned out the voices of ordinary Americans ... Although lobbyists can sometimes play a constructive role by communicating information to the government, that service in privileged positions within the executive branch can perpetuate the culture of special interest access that I am committed to changing."

While we can certainly appreciate the administration's commitment to enhance transparency and engage more Americans in the governing process, it should be noted that many federally registered lobbyists do speak for ordinary Americans and are eminently qualified to contribute to the formation of policies that benefit American citizens.

As the premier advocacy voice for the association community, ASAE can attest to the unique resources associations bring to bear to solve many of the nation's most pressing issues. Among those resources, of course, are the millions of skilled professionals and experts in different fields who can share valuable perspectives, raise important questions and help formulate strategies for approaching difficult, complex issues. By leveraging these resources to address complex issues like disease prevention and research, consumer and product safety and disaster relief – just to name a few – associations directly benefit the public and improve the quality of life Americans enjoy.

Many of these skilled association professionals are registered lobbyists so that they can share their expertise with legislators and government officials and contribute to the development of informed, effective policy. It is those “broader voices” of ordinary Americans referenced in the White House statement that associations represent.

Moreover, the policy established by the Presidential Memorandum applies to individuals who register as federal lobbyists in accordance with the Lobbying Disclosure Act (LDA). It specifically states that individuals may be appointed or re-appointed to an advisory board or commission if they de-register as an active lobbyist. The acknowledgement that these individuals are desirable for commission appointments as long as they are not registered lobbyists suggests a fixation with negative misconceptions about lobbying over the actual substance that these individuals can lend to the policymaking process.

ASAE believes the White House’s stated goal of “reducing the influence of special interests” could be accomplished with modifications to the existing Federal Advisory Committee Act which governs the activities of these approximately 1,000 such committees in existence. FACA already requires information about FAC agendas, hearings and members to be disclosed and publicly accessible. Increased disclosures about potential conflicts of interest and prior and current lobbying activities by members of these advisory committees would seem a more sensible and preferable reform than a total ban on lobbyist appointments.

If ASAE can provide clarification or additional information to OMB on this matter, please contact us at 202-626-2703 or email publicpolicy@asaenet.org.

Sincerely,

A handwritten signature in black ink that reads "John H. Graham IV". The signature is written in a cursive, flowing style.

John H. Graham IV, CAE
President and CEO

**JOHN BULLOCK
ATTORNEY**

November 9, 2010

Preeta D. Bansal
General Counsel and Senior Policy Advisor
Office of Management and Budget

Re: Proposed Guidance on Appointment of Lobbyists, 75 FR 67397, November 2, 2010

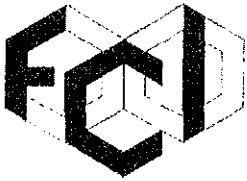
Dear Ms. Bansal,

I am a member of two federal advisory committees: the Industry Trade Advisory Committee for Non-Ferrous Metals and Building Materials (ITAC 9) to the Department of Commerce and the U.S. Trade Representative, since 2002, and the Bank Secrecy Act Advisory Committee to the Department of the Treasury, since 2007. I regularly attend meetings of these committees, traveling from Connecticut to do so. I participate to assist these committees to provide federal government officials with a better understanding of the activities and communities that they regulate, to provide a source of information based upon my actual participation in regulated commercial activity, and to advise as well as learn how regulation and government programs might advance common goals. If, in doing so, I have had any influence, I do not believe it to have been undue, or in any way objectionable.

I am not a registered federal lobbyist; I am well aware of the rules regarding such activity, and my status as a non-lobbyist is not mistaken or an evasion. I have recently come to understand, however, that some fellow members of these advisory committees are registered lobbyists. I know this only because of their mandated removal; I would not have known by their conduct in committee meetings, by positions that they put forward, or by responses of other committee members or of government officials to these persons or to their advocacy. It has been my consistent impression that they bring value to committee discussions, as I hope that I have.

I understand and agree with the goal of President Obama to restrict the undue influence of lobbyists on federal government. I am aware of stories of such undue influence, of its means and ends, and of the apparent vulnerabilities of very high level government officials to it. However you should understand that federal advisory committees do not schmooze, golf, wine or dine, or funnel money. I do not see any undue influence, or opportunity for undue influence, through membership in advisory committees. These are not privileged positions; they do not provide special access. Perhaps exactly the opposite. A registered lobbyist's participation in an advisory committee is only as one of a group of equals, whose members contribute a broad spectrum of backgrounds and experiences. Any member's advocacy must persuade other members, including non-lobbyists from outside of Washington, before it might prevail even as a committee position. This is not an avenue of undue influence on federal government, and President Obama is mistaken in his order. I recognize that your role is to implement that order, but suggest that you might convey a wish that it be revoked in the case of federal advisory committees.

Sincerely,
John Bullock



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November 8, 2010

Ms. Preeti D. Bansal
Office of General Counsel
Eisenhower Executive Office Building
Room 289
1650 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Ms. Bansal:

I have reviewed the "Proposed Guidance on Appointment of Lobbyists to Federal Boards and Commissions as reported in the November 2 edition of the Federal Register, starting on page 67397.

I believe that this proposal is misguided and needs to be revisited. The "sound bites" that it generates are hard to argue with, but the best interests of the USA are compromised by this initiative.

I speak to this issue as a long-term member of ITAC 3, the Industry Trade Advisory Committee for Chemicals, Pharmaceuticals, Health/Science Products and Services as well as its predecessor, ISAC 3. As you know, the ITACs are charged with advising the Department of Commerce and the United States Trade Representative on technical trade issues.

It is highly appropriate that lobbyists serve on the ITACs. The mission of these committees, as mandated by the Trade Act, is to help these two agencies understand the circumstances under which US businesses can grow and prosper in the international market place. The advice that the agencies seek is highly technical in nature. In many instances the individuals that hold this information are registered lobbyists for the companies they work for.

I can attest to you from the experience of ITAC 3 that we lost the services of a number of highly talented, uniquely qualified members of our committee simply because they were registered lobbyist. This included several members from very large companies in our sector whose input is crucially important especially as we strive to meet the goals of the President's export initiative.

I have no knowledge of the other Boards and Commissions that might be covered by this guidance. There may be reasons to ban lobbyists from policy-making committees and boards. However, the ITACs are not involved in policy making.

Also, from a practical standpoint, I find the fact that there are no provisions for exceptions very naive. There are many individuals with unique qualifications in many fields of study. To

unilaterally ban their participation in this manner is a serious error that will result in significant harm to the USA.

Now, more than ever, we need to be sure that the most qualified individuals available are focused on solving problems for our country. Any policy that compromises this goal needs to be rejected.

I'd be pleased to further pursue this discussion with you at your convenience.

Very truly yours,

V.M. (Jim) DeLisi