

UNITED STATES OFFICE OF GOVERNMENT ETHICS (OGE)

5 CFR Part 2635

Standards of Ethical Conduct for Employees of the Executive

Branch; Proposed Amendments Limiting Gifts From Registered Lobbyists and Lobbying Organizations

RIN 3209-AA04

COMMENTS OF THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES (AFGE), AFL-CIO

On behalf of AFGE, the largest federal employee union, representing over 600,000 federal and D.C. government workers nationwide and overseas, with members in virtually all functions of government at every federal agency, we file these comments on the Office of Government Ethics proposed regulation, proposed amendments to Part 2635 of 5 CFR (September 13, 2011).

AFGE in its primary activity, which is not lobbying, is to serve as the exclusive representative for hundreds of thousands of federal employees in collective bargaining and labor relations. In this capacity, hundreds of thousands of federal employees pay dues, which is the primary source of funding for the union. Those funds are then used to provide education and training to assist the elected leaders, federal employees, in their duties to bargain and otherwise represent federal employees. In that capacity, as union representatives, they may be given a variety of material, from training manuals to pens and stationary to fulfill their statutory duties under chapter 71 of title 5. Under 5 USC 7102, the union has a statutory right and obligation to present federal employee labor relations concerns to Congress, and thus it does engage in a level of lobbying that requires registration as a lobbying organization.

Thus a strict application of this proposed regulation would impose severe burdens on the ability of the union leaders, who are federal employees, to actively and freely exercise their rights without fear of penalty under the proposed regulation as described in 5 U.S.C. 7102:

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of penalty or reprisal, and each employee shall be protected in the exercise of such right. Except as otherwise provided under this chapter, such right includes the right—

(1) to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization to heads of agencies and other officials of the executive branch of the Government, the Congress, or other appropriate authorities, and

(2) to engage in collective bargaining with respect to conditions of employment through representatives chosen by employees under this chapter.

Under a strict application of this extension of this regulation, as currently drafted, to all federal employees, AFGE, its officers, and its members, could be unable to provide cost free training to its members or possibly even refreshments at a union meeting or convention. Our local union affiliates, using the dues provided by our federal employee members, routinely pay the cost of travel and registration for local union officers, who are federal employees, to attend training on labor relations and collective bargaining and to perform representational duties. If union funds were used to hold a purely social event, such as a Labor Day family picnic, it is not clear if our members/federal employees could attend. It appears that the application of this regulation to exclusive representatives would frustrate the ability of exclusive representatives in effectuating statutory obligations and that such application could be contrary to federal law.

AFGE, an organization of federal employees, and a representative of federal employees would request that the regulation be amended so that statutory exclusive representatives of federal employees be noted as an exception in the same manner as the proposed regulation treats professional organizations. The nature of a non-profit organization such as a professional association is similar to that of an exclusive representative defined under the statute, which is also a non-profit organization. We believe such treatment would allow AFGE, and other exclusive representatives, to fulfill their statutory rights and obligations.

To assist the OGE we provide the following amendment to the proposed regulation as a new section (5):

Sec. 2635.203 Definitions.

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(h) Registered lobbyist or lobbying organization means a person (including an organization) currently registered pursuant to 2 U.S.C. 1603 (Lobbying Disclosure Act) or listed as a lobbyist in such registration, as found in the databases maintained by the Secretary of the Senate and the Clerk of the House of Representatives, but it does not include:

(1) An organization exempt from taxation pursuant to 26 U.S.C. 501(c)(3);

(2) An institution of higher education as defined in 20 U.S.C. 1001;

(3) A media organization as defined in 2 U.S.C. 1602(11), with respect to any gift made in connection with the information gathering or dissemination activities of the organization;

(4) A nonprofit professional association, scientific organization or learned society, with respect to any gift made in connection with the entity's educational or professional development activities; or

(5) An organization which serves as an exclusive representative of federal employees as defined in 5 U.S.C. 7103.

To further support our request to be exempted as a federal employee labor organization, and that this is in the public interest, we would ask that the OGE review the findings of Congress enacted into law as 5 U.S.C. 7101:

§ 7101. FINDINGS AND PURPOSE

(a) The Congress finds that—

(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.

Since a primary purpose of ethics laws and regulations is to further the public interest, we believe our request furthers that aim and also would clarify that the regulation is not one that could otherwise be found in violation of chapter 71 of title 5.

Thank you for your attention to this matter.

Sincerely,

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