

ALL
AMERICAN
LEAGUE OF
LOBBYISTS

October 28, 2009

President Barack Obama
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Mr. President:

We are writing on behalf of the American League of Lobbyists in response to a September 23, 2009 posting on the White House Blog by Norm Eisen, Special Counsel to the President for Ethics and Government Reform, entitled "Lobbyists on Agency Boards and Commissions."

In a meeting of the ALL Board of Directors held on October 19, a unanimous vote was taken to express our organization's concern with Mr. Eisen's pronouncement that your administration will be better served by precluding industry experts from serving on Federal advisory groups simply because they are legally required to comply with provisions contained in the Lobbying Disclosure Act of 1995 (Public Law 110-81, as amended, or "LDA").

While developing this letter, ALL received a copy of correspondence to your office dated October 19 and signed by each of the sixteen people who chair various Industry Trade Advisory Committees created pursuant to section 135(c)(2) of the 1974 Trade Act (Public Law 93-618). We are also in receipt of Mr. Eisen's October 21 reply to the ITAC Chairs.

With regard to the September 23 blog posting and his October 21 reply to the ITAC Chairs, we take exception to Mr. Eisen's efforts to paint all LDA registrants with the same broad brush and demonize our profession. In addition, by taking the steps outlined in both of these communications, we are specifically concerned that your administration 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.

As you know, there is a broad array of formal advisory groups comprised of individuals in the private sector who work with government officials to craft public policy in the United States. Private sector participants to these advisory bodies are often sought by government officials based on the knowledge and expertise in specific policy areas that these individuals possess.

With regard to the ITACs, for instance, many of the advisors who serve on these committees are trade association representatives who work for organizations that have limited resources, and cannot afford to employ one person who is solely responsible for representing industry interests before Congress and another who is responsible for ITAC participation.

In such cases, and there are many, the irony is that trade association officials typically spend a large part of their careers developing unique and invaluable knowledge related to their specific industries, and often are called upon to craft consensus positions on issues which are contentious to various members within their industries. Many times it is this particular expertise that is most valuable to government officials who specifically seek trade association representatives to serve as formal advisors.

Indeed, far from using this expertise to "...traffic in relationships, working both the Congress and the federal agencies to bend legislation and policies on behalf of their clients," as Mr. Eisen characterizes, association representatives who participate in federal advisory panels – and also happen to be LDA registrants – volunteer their knowledge and insight from a macro perspective which, time and time again, has been invaluable to career government officials who also participate in the formal advisory process.

Many of the 130 ITAC advisors who are directly impacted by this pronouncement, in fact, do not represent individual "clients" at all, nor do they "bend" public policy by offering their insights and knowledge for consideration by government decision makers.

Similarly, Mr. Eisen's statement to the ITAC chairs that, "Your arguments that only lobbyists can bring the requisite experience to provide wise counsel, or that reaching beyond the roster of industry lobbyists for appointments will result in a 'lack of diversity,' are unconvincing on their face," is off point and inflammatory.

In their correspondence, the ITAC Chairs never claimed that LDA registrants are uniquely capable of providing "wise counsel," nor did they indicate it would be imprudent for your administration to look beyond the current roster of advisors for additional insight, knowledge, and perspective. Quite the contrary, the primary point made by the ITAC Chairs is that certain advisors are well recognized for their expertise on U.S. and global trade policies and have developed, in some cases, decades of experience in their particular fields. Nevertheless, under this nascent policy declaration these experts will be deprived from serving as formal advisors for no other reason than the fact that they are also LDA registrants.

Likewise, Mr. Eisen's statement, "We believe the [ITACs] will benefit from an influx of businesspeople, consumers and other concerned Americans who can bring fresh perspectives and new insights to the work of government" is completely irrelevant to the issue. Simply stated, if your administration believes a broader perspective should be applied to formal advisory processes because it will improve development of U.S. public policy, that belief does not justify excluding industry professionals from serving on the same panels due to the fact that they are legally required to register under the LDA.

Looking at the same position in another light, the question becomes: If a businessperson, consumer, or other concerned American is in a position to offer learned, knowledgeable, and reliable advice to government officials who are responsible for crafting U.S. public policy for your administration, shouldn't those same individuals be able to dedicate at least 20 percent of their time offering the same insights and perspective to the United States Congress?

Finally, ALL is concerned that Mr. Eisen's October 23 letter ignores the very legitimate point made by the ITAC Chairs regarding the lack of process associated with this sweeping policy change. That is, instead of offering some preliminary signal that this shift in long-standing policy was being contemplated

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and/or inviting debate on such a drastic change, it was delivered, seemingly fully formed and final, as a blog posting by Mr. Eisen.

In a timeline noted by the ITAC Chairs – and ignored by Mr. Eisen in his reply – the pronouncement that LDA registrants cannot serve on any advisory panel came well after the September 11 deadline for each ITAC members to indicate whether they intended to seek reappointment as part of the regular re-chartering process, and those who met this deadline were given no indication that they would be excluded from service based on their LDA status. In essence, therefore, ITAC members never got the chance to alter or discontinue their activities on Capitol Hill such that they might not continue to be subject to LDA requirements.

This move seems inconsistent with Constitutional principles that people should not be punished for engaging in activities that were not actionable prior to new rules being put into place, and does not seem to be in keeping with other Democratic principles on which you have based your administration. To some, in fact, this move could be seen as arbitrary, discriminatory, and/or generally unfair.

For all these reasons, we urge you to adjust this position so that individuals who serve on Federal advisory groups are not precluded from service based solely upon their LDA status. At the very least, we would also urge you to delay implementation of such policy so that current members of formal advisory groups have an opportunity to examine whether they are in a position to legitimately remove themselves from LDA registration requirements.

Most respectfully yours,

David G. Wenhold, PLC, CAE
President

Peter G. Mayberry
ALL Board of Directors
Former Member, ITAC 13 – Textiles & Clothing

cc: Rahm Emanuel, Chief of Staff, Executive Office of the President
Norm Eisen, Special Counsel to the President for Ethics and Government Reform