



November 10, 2011

Mr. Don W. Fox
Acting Director and General Counsel
Office of Government Ethics
1201 New York Avenue, N.W.
Suite 500
Washington D.C. 20005-3917

Re: RIN 3209-AA04
[Proposed Amendments Limiting Gifts from Registered
Lobbyists and Lobbying Organizations]

Dear Mr. Fox,

The Military Officers Association of America (MOAA) is pleased to have the opportunity to provide comments concerning OGE's proposed amendments to Subpart B of part 2635 of the Standards of Conduct for Employees of the Executive Branch dealing with restrictions on the solicitation and acceptance of gifts from outside sources. For the reasons stated more fully below, MOAA believes the proposed changes to the prohibition on accepting gifts are unnecessary and overly broad. However, in the event OGE continues to believe some additional restrictions are warranted for organizations registered under the Lobbying Disclosure Act (LDA), 2 U.S.C. 1603, we believe substantive programs sponsored by Section 501(c)(19) Veterans Organizations should be excluded from those restrictions and not be subject to a blanket prohibition on attendance by military personnel, federal employees and executive branch officials.

MOAA is a private association organized under Section 501(c)(19) of the Internal Revenue Code dedicated to maintaining a strong national defense and to preserving the earned entitlements of members of the uniformed services and their families and survivors. MOAA consists of approximately 370,000 individual members nationwide with over 400 local chapters and affiliated organizations throughout the country. Membership in MOAA is limited to current and former officers of the uniformed services, cadets and midshipmen, and widows and widowers of those veterans eligible for membership. While MOAA is registered as a lobbying organization under the LDA and advocates on behalf of the military community, it is also engaged in significant educational and professional development activities that are attended by active duty military personnel, federal civilian employees and officials, members of Congress, and the general public.

These programs have proven to be extraordinarily valuable during the past 10 years our country has been at war and the joint participation of military personnel, federal employees and officials, and the public has been critical. The

reintegration of our returning veterans in their civilian communities as been an exceptionally difficult task complicated by a poor economy, limited employment opportunities, and the physical and psychological wounds incurred by our veterans during their service. These programs are essential and cannot achieve success unless military personnel, federal civilian employees and officials, state and local community leaders, and representatives of the veterans organizations can come together to find solutions.

As we understand the proposed rule, OGE would limit the use of the “widely attended gathering” exception to the prohibition on accepting gifts so that military personnel, federal employees, and executive branch officials would be barred from accepting offers of free attendance at events sponsored by LDA-registered organizations, including MOAA. While we recognize OGE’s concern that the acceptance of certain gifts and social invitations from LDA-registered organizations may create the potential for ethical harm, existing OGE regulations already contain significant safeguards against such harm. These existing safeguards make a blanket prohibition applicable to virtually all LDA-registered organizations, such as that contemplated by OGE’s proposed rule, unnecessary.

As currently written and applied, the “widely attended gathering” exception to the gift prohibition is narrowly crafted and contains significant safeguards against unethical conduct. The exception states:

(2) *Widely attended gatherings.* When there has been a determination that his attendance is in the interest of the agency because it will further agency programs and operations, an employee may accept an unsolicited gift of free attendance at all or appropriate parts of a widely attended gathering of mutual interest to a number of parties from the sponsor of the event or, if more than 100 persons are expect to attend the event and the gift of free attendance has a market value of \$335 or less, from a person other than the sponsor of the event. A gathering is widely attended if it is expected that a large number of persons will attend and that persons with a diversity of views or interests will be present, for example, if it is open to members from throughout the interested industry or profession or if those in attendance represent a range of persons interested in a given matter. For employees subject to a leave system, attendance at the event shall be on the employee’s own time or, if authorized by the employee’s agency, on excused absence pursuant to applicable guidelines for granting such absence, or otherwise without charge to the employee’s leave account.

5 C.R.R. 2635.204(g)(2).

This existing rule provides significant safeguards by requiring that: 1) an advance determination be made that attendance at the gathering “will further agency programs and operations”; 2) the event be of “mutual interest to a number of parties”; 3) a “large number of persons are expected to be present”; and 4) it is open to persons from “throughout the interested industry or profession.” To the extent OGE is concerned that the “widely attended gathering” exception has been used to permit attendance at purely social events “where the nexus to the government’s interest was attenuated,” OGE can address that concern through specific guidance and policy direction to agency ethics officials and that guidance can be applied by agency ethics officials on an individual case-by-case basis. In view of the wide diversity of agency missions and the array of public interests potentially impacted by agency action, we believe it is more appropriate to address individual events on a case-by-case basis than to issue a blanket prohibition barring participation in virtually all events sponsored by LDA-registered organizations.

In exercising its rule-making authority, it is important for OGE to recognize that not-for-profit organizations registered under the LDA are engaged in a wide variety of activities that promote the public interest and contribute to achieving good government. These organizations bring a high level of specialized expertise and unique insight into policy issues based upon their experience and that of their members. It is a disservice to these organizations and honest government officials to presume that the acceptance of invitations for free attendance at substantive events will lead to undue influence and corruption so as to warrant a blanket prohibition barring military personnel and federal employees and officials from attending virtually all events and substantive programs sponsored by LDA-registered organizations. We believe the existing regulations achieve the proper regulatory balance and should be left alone.

In the event OGE concludes that additional restrictions on LDA-registered organizations are in order, we believe that the unique status of Section 501(c)(19) Veterans Organizations warrants that they be excluded from the definition of “lobbyist” or “lobbying organization” in proposed Section 2635.203(h). As presently drafted, the proposed definition of lobbyist or lobbying organization exclude four categories of LDA-registered organizations; 1) Section 501(c)(3) Charitable Organizations; 2) Institutions of Higher Learning; 3) Media Organizations; and 4) Nonprofit Professional Associations, Scientific Organizations, and Learned Societies Engaging in Educational or Professional Development Activities. The rationale for excluding these categories of LDA-registered organizations from the new restrictions applies with equal force to Section 501(c)(19) Veterans Organizations.

MOAA sponsors and extends invitations to government officials and military personnel to attend without charge several educational and professional programs each year. These events are designed to draw public attention to issues affecting the military community, to recognize the contributions of federal

personnel and local community members in support of the military community, and to recognize the leadership of members of Congress, congressional staff, and members of the general public for significant contributions to veterans and military personnel. These programs also play a key role in assisting veterans returning from combat and extended military careers with their reintegration into civilian communities. We have learned through experience that separately stove-piped efforts with government officials and community leaders working in isolation from veterans organizations do not work. Success can only be achieved through extensive public education and close on-going working relationships between federal officials and veterans organizations.

MOAA has developed and currently sponsors the following programs to assist military personnel, veterans, and their families:

Defense Forums. These annual programs have been conducted over the past five years and have addressed issues relating to the physical and psychological care and well-being of our military personnel, wounded warriors, veterans and their families. For example, the September 2011 Defense Forum focused on reintegration of our Guard and Reserve forces and the transition of separating active duty members back to civilian life. This year's forum was attended by more than 650 leaders from Congress, executive branch employees and officials, non-government organizations, and the media. The participation of executive branch employees and active duty military personnel was possible because of the widely attended gathering exception to the gift prohibition in Section 2635.204(g)(2).

Community Heroes Appreciation Nights. MOAA sponsors an annual dinner and awards program for the purpose of recognizing caregivers from military installations and civilian communities who exemplify service to the wounded military and veterans' populations. This year, MOAA recognized caregivers at the individual and group levels with eight separate awards. The event was attended by over 500 individuals including active duty military personnel, federal civilian employees and officials, and senior military and community leaders. Their attendance was possible because of the widely attended gathering exception to the prohibition on accepting gifts.

Career Fairs. MOAA hosts three career fairs each year for the purpose of assisting active duty military personnel, retirees, and former military members obtain civilian employment. These career fairs are open to all military personnel and civilian employees without charge. The career fairs offer free advice on developing resumes, provide introductions to prospective

employers, and otherwise assist attendees in preparing for a job search. These events are conducted solely for the purpose of assisting current and former military personnel and their spouses in obtaining employment with both civilian and governmental employers. Participating employers include a many federal agencies, the Office of Personnel Management, Department of Labor, Department of Defense, as well as state and local governments and private sector employers. Those military personnel and federal civilian employees who were not participating as part of their official duties were authorized to attend because of the widely attended gathering exception to the prohibition on accepting gifts.

Annual MOAA Awards Ceremony and Reception. MOAA recognizes outstanding contributions to the national defense and military community through its annual awards program. The awards include: the Arthur T. Marix Leadership Award, presented to a member of Congress; MOAA Distinguished Service Award, given to an organization or a person not in Congress who has aided people who service in the U.S. Armed Forces; and the Paul W. Arcari Meritorious Service Award honoring Congressional staff members who have made significant contributions to the uniformed services community. The ceremony and reception are held on Capitol Hill in April of each year and invitations are extended to several hundred Members of Congress, Congressional staff members, military personnel, and federal civilian employees and officials. Executive branch personnel and military members can attend by virtue of the widely attended gathering exception.

Local Activities. In addition to MOAA's activities at the national level, there are significant activities conducted at the local level by MOAA's affiliated chapters. These include fund-raising events to support veterans' programs and scholarships for the children of service members; programs focused on assisting homeless veterans; and programs to enhance veteran employment opportunities. These programs depend upon a regular interaction of military personnel, federal employees and officials, and MOAA volunteers. Those executive branch employees and military personnel who are not performing official duties at these events can only participate because of the widely attended gathering exception to the prohibition on accepting gifts.

If the proposed rule eliminating the widely attended gathering exception for LDA-registered organizations is implemented, the attendance of military personnel and federal civilian employees and officials at these MOAA-sponsored events will end. Since these events do not present the opportunities for ethical

harm that the proposed rule changes are intended to address, we believe OGE should make it clear that the substantive activities of Section 501(c)(19) Veteran Organizations are excluded from the rule change. In this regard, we were pleased to see that OGE's proposed rule excluded four categories of LDA-registered organizations from the rule change. We believe that the substantive programs sponsored by Section 501(c)(19) Veterans Organizations are indistinguishable from the proposed exceptions and that an additional exception should be made for programs of Section 501(c)(19) Veterans Organizations.

Finally, we feel compelled to point out that the problems facing veterans returning from Afghanistan and Iraq are complex and difficult and can only be addressed by the combined effort to government officials and dedicated Veterans Organizations working together to arrive at solutions. Imposing blanket prohibitions that force those interested in solving these problems into separate camps will have a significant adverse impact on our returning military personnel, our veterans, and our country.

Thank you for the opportunity to comment on the proposed rule and for your consideration of our concerns. If you have any questions or would like any additional information regarding the impact of the proposed rule on MOAA and similar Section 501(c)(19) Veterans Organizations, please contact Major General Joe Lynch, General Counsel, at 703-838-8166 or JoeL@moaa.org.

Sincerely,

/s/ Joseph G. Lynch
Joseph G. Lynch, Major General, USAF (Ret.)
General Counsel