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Congressional Gift Rules

Pursuant to the Federal Lobbying Disclosure Act of 1995, as amended by the Honest Leadership and Open Government Act of 2007 (the “LDA”), a registered lobbyist or an entity employing or retaining a registered lobbyist generally is independently liable for violations of the congressional gift rules. Thus, it is a violation of federal law for any hospital currently registered under the LDA to give a gift with the knowledge that it may not be accepted under House or Senate gift rules (whichever is applicable). These rules are not at all intuitive, and can create many traps for the unwary.

Note that this brief is intended as a reference guide and does not constitute legal advice or represent or otherwise address all applicable authority and guidance on the congressional gift rules. Additionally, the Senate Ethics Committee is in the process of revising and updating the Senate Ethics Manual, which could result in further clarification and guidance. In any event, you should consult the relevant laws, rules, and standards of conduct, or engage legal counsel and/or compliance personnel, should you have any questions about the congressional gift rules in connection with a specific situation.

House and Senate Gift Rules

Members, officers, and employees of the House and the Senate may only accept gifts that fall within one of the categories of acceptable gifts described in the House or Senate gift rules, respectively. Although the gift rules for each chamber of Congress contain many similarities, there are important differences. Additional restrictions further limit which types of gifts may be accepted from a registered lobbyist or a private entity, like a hospital, that retains or employs registered lobbyists.

Both House and Senate rules prohibit a Member, officer, or employee from accepting any gift from a (1) a registered lobbyist, (2) a private entity that retains or employs registered lobbyists, (3) an agent of a foreign principal, or (4) a private entity that retains or employs an agent of a foreign principal, regardless of dollar amount, unless the gift falls within one of the other categories of acceptable gifts (described further below).

Each rule lists over twenty categories of acceptable gifts to Members and staff in various circumstances. Some of the most common categories are generally discussed below.

Widely-Attended Event

- Generally, a Member, officer, or employee may accept an unsolicited offer of free attendance from the sponsor of a widely attended convention, conference, symposium, forum, panel discussion, dinner, viewing, reception, or similar event, if:
 - the Member, officer, or employee is speaking or performing a ceremonial function at the event, or

- attendance at the event is appropriate to the Member's, officer's, or employee's official duties or representative function.
- Events that are merely for the personal pleasure or entertainment of the Member, official, or employee, such as an outing to a ball game or a movie, will rarely be acceptable under the widely attended event provision.
- "Free attendance" may include:
 - waiver of all or part of a conference or other fee,
 - local transportation, and
 - food, refreshments, entertainment, and instructional materials furnished to all attendees as an integral part of the event;
- "Free attendance" does not include entertainment collateral to the event, or food or refreshments provided separately from a group setting with all or substantially all other attendees.
- "Widely attended" means:
 - there is a reasonable expectation of at least 25 non-congressional attendees (individuals from other branches or levels of government count toward the required minimum of 25, but spouses and others who accompany congressional members and staff do not); and
 - attendance is open to members from throughout a given industry or profession, or those in attendance represent a range of persons interested in a given matter.
- Generally, an individual or entity, including a hospital registered under the LDA, may be able to sponsor a "widely attended" event.
- *Source of Invitations:* All communications with Members and staff regarding an event should be made by the event sponsor only, and not by an event contributor. A communication from an event contributor may be deemed an impermissible invitation from the contributor.
 - The "sponsor" is the person, entity, or entities that is/are primarily responsible for organizing the event. It is possible that financial supporters of an event may not be considered to be "sponsors" of an event for purposes of the gift rule, if, for instance, they do not have a substantial role in organizing the event. Generally, an individual or entity that merely contributes money to an event (e.g., by purchasing a table) is not considered to be a sponsor of the event for purposes of the gift rule.
 - Contributors to a widely attended event (e.g., table purchasers) may request that the sponsor invite particular Members or staff to sit with them at the event; however, the sponsor must retain ultimate control of the guest list and the seating arrangements.

Food and Refreshments Other than as Part of a Meal

Generally, Members and staff may accept food and refreshments of nominal value offered as other than part of a meal. This includes a reception where the attendees consume food (typically, hors d'oeuvres) or drink while standing up, as opposed to a sit-down meal. It also includes a “continental” style breakfast at a morning meeting, where coffee, juice, donuts, bagels, etc. are served, as opposed to a waffle or omelet station, or some other type of hot breakfast service. Note that this exception does not extend to a drink or free cup of coffee during a one-on-one-meeting. The Senate has issued guidance in the past to make certain allowances for a Member, officer, or employee to accept a cup of coffee or other beverage or food of nominal value “at an organized event, media interview, or other appearance where such items are customarily provided to speakers, panelists, and participants.”

Charitable Fundraising Event (Senate)

- Generally, a Senator, officer, employee, or spouse or dependent, may accept an unsolicited offer of free attendance from the sponsor of a charitable fundraising event. The primary purpose of the event must be to raise money for a 501(c)(3) organization. Such offer of free attendance may include the immediate family member of the Senator, officer, or employee.
- The offer may include a meal that is offered to all attendees as part of the event.
- This category of acceptable gifts only applies to events that are charitable fundraisers. Dinner at a charity’s board meeting, for example, would not fall within this category.
- The invitations must come directly from the organization that is putting on the charitable fundraiser. This organization is the “sponsor” for purposes of this exception. The organization holding the charitable fundraiser may designate groups underwriting the event (e.g., by donating money or refreshments, or buying tickets) as “sponsors” in their invitations and promotional materials. However, these financial supporters are not considered “sponsors” for purposes of the Senate gift rules, and may not extend invitations to Senators, staff or their families.
- Reimbursement for travel may be acceptable if it is from the sponsor of the charitable fundraising event and if the event is not recreational in nature and is not a sporting event.

Charitable Fundraising Event (House)

The following restrictions apply to a House Member or staff’s free attendance at a charity event:

- The primary purpose of the event must be a bona fide fundraiser for a section 501(c)(3) organization (e.g., an event for which invitations are issued and for which individuals are charged set rates to attend). VIP dinners held before or after a charitable fundraising event do not qualify for this category of acceptable gifts. An event will likely be deemed a charity event for purpose of the rule when participants or attendees pay an admission fee, and more than half of the fee paid is tax deductible as a charitable donation.
- Members and staff may only receive and accept an invitation from the sponsor of an event (the actual organizer of the event, as opposed to one of its financial supporters).

- The invitation must be unsolicited.
- Food, refreshments, entertainment, and instructional materials furnished to all attendees as an integral part of the event generally are permissible gifts from the charitable organization.

Books, Periodicals or Other Informational Materials

- A Member, officer, or employee may accept informational materials that are sent to his or her office (as opposed to his or her personal residence) in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication.
- The purpose of this provision is to ensure that Members have access to information sources or reference tools useful in the conduct of official duties. It is not intended to permit a third party to provide to a Member a gift subscription to his or her favorite magazine (a Member may only accept a subscription to a periodical from the publisher or distributor of the periodical).
- The House Ethics Committee has stated that a Member may accept multiple copies of informational materials, provided that the copies are intended for distribution to a particular audience (as opposed to the Member’s unrestricted use), and the item was not created especially for the Member.

Training in the Interest of the Senate

- Senate gift rules permit a Senator, officer, or employee to accept “training that is in the interest of the Senate,” and food and refreshments that are offered to all attendees as part of the training. Reimbursement for transportation or lodging is not permitted, but local transportation may be permissible under certain circumstances.

Training in the Interest of the House

- Similar to the Senate rule, training is acceptable for House Members and staff “if such training is in the interest of the House.” The House Ethics Committee advises that training may implicate the prohibition against private subsidy of official activity, however, and advises Members and staff to consult with the House Ethics Committee before accepting training under this provision of the gift rules.
- A House Member, officer, or employee may accept food and refreshments furnished to all attendees as an integral part of the training, but this provision does not extend to meals in connection with presentations made by lobbyists or advocacy groups, or to meals in connection with briefings or discussions relating to issues before Congress.

Gifts Based on Personal Friendship

Generally, gifts of any value may be provided to Members, officers, and employees from relatives and personal friends (though any gift from a personal friend valued at over \$250 must be specifically approved by the applicable committee). To determine whether an individual’s gift is based on personal friendship, a number of factors may be considered, including:

- the historical relationship between the giver and the recipient, including any previous exchange of gifts;
- whether to the recipient’s actual knowledge the expense was submitted for reimbursement or was treated for tax purposes as a business expense; and
- whether the donor at the same time gave the same or similar gifts to other Members or staff.

Personal Hospitality

Generally, a Member, officer, or employee may accept personal hospitality at a host’s own expense, unless the individual providing the hospitality is a lobbyist or an agent of a foreign principal.

“Personal hospitality” generally refers to enjoying a meal or lodging for a non-business purpose in any personal residence the host owns, whether or not the host is present. The House Ethics Committee also permits use of a personal residence the host leases, provided that the lease is unrelated to the host’s employment. A stay at a hotel, resort or other commercial establishment, for instance, will not qualify for this exception, nor will a stay on property the host rents out to others. Note that meals for the purpose of discussing pending legislation are not considered a “non-business purpose.”

Site Visits (House Only)

A Member, officer, or employee of the House may be permitted to accept food and refreshments offered by the management of a site being visited under certain circumstances. Among other things, such food and refreshments would need to be offered on the business’s premises and would need to be offered in a group setting with employees of the organization.

A Member, officer, or employee also may be able to accept local transportation, outside of the District of Columbia, depending on the circumstances. This exemption does not extend to, among other things, a car service made available from the same source on a regular basis, transportation in the District of Columbia, or meals at the Washington, D.C., area offices of lobbying or law firms.

Constituent Events (Senate Only)

Generally, a Senator or an officer or employee of the Senate may accept an offer of free attendance in the Senator’s home state at a conference, symposium, forum, panel discussion, dinner event, site visit, viewing, reception, or similar event, provided by a sponsor of the event if:

- the value of any meal provided is less than \$50;
- no lobbyists or foreign agents are present;
- the event is sponsored by constituents of, or a group that consists primarily of constituents of, the Senator (or the Senator by whom the officer or employee is employed);

- the event will be attended primarily by a group of at least 5 constituents of the Senator (or the Senator by whom the officer or employee is employed); and
- the Senator, officer or employee participates as a speaker or panel participant, by presenting information related to Congress or matters before Congress, or by performing a ceremonial function appropriate to the Senator's, officer's, or employee's official position, or
- attendance at the event is appropriate to the performance of the official duties or representative function of the Senator, officer, or employee.

Widely Available Opportunities and Benefits

Generally, Members, officers, and employees may accept opportunities and benefits that are similarly available to individuals outside Congress. Among the benefits specifically permitted by this exception are:

- Opportunities available to the public, whether or not restricted on the basis of geographic consideration;
- Opportunities available to a class consisting of all federal employees, whether or not restricted on the basis of geographic consideration; and
- Opportunities to a group or class that is not defined in a manner that specifically discriminates among government employees on the basis of rank, rate of pay, branch of government or type of responsibility.

Other Acceptable Gifts

Other gifts that may be acceptable depending on the circumstances include:

- Awards or prizes won in a contest or event that is open to the public, honorary degrees, and non-monetary awards given in recognition of public service.
- Items of "nominal" (in the House) or "little intrinsic" (in the Senate) value, such as greeting cards, baseball caps, or t-shirts.
- Items valued at less than \$10.

Gifts to a Member's, officer's or employee's family and friends may count against the gift limit if the Member (or officer or employee) knows about and acquiesces to the gift and the Member (or officer or employee) has reason to believe it was given because of his or her official position.

Valuation of Gifts

A gift is generally valued at its fair market value: that is, what the recipient would have had to pay for it had he or she purchased it himself or herself, except that neither tax nor tip is generally included in the valuation. For example, the value of a meal purchased by the hospital for a Member, officer, or employee is the value of the food and drink he or she actually consumes (not including tax or tip).

Tickets to sporting events, performances, and the like are generally valued at their face value price. If no face value exists, then the ticket with the highest face value for the event is the cost of the ticket. In the Senate, in advance of the event, a ticketholder may seek approval from the Senate Ethics Committee to value a ticket as equivalent to another ticket with a face value. The Senate Ethics Committee may make a determination of equivalency only if provided with information in advance about the seat location, access to parking, availability of food and refreshments, and access to private venue areas. Food and beverages consumed at an event, as well as parking privileges, must be aggregated with the price of the ticket for purposes of the gift limits.

Gift Disclosure

Members and certain congressional employees must file annual financial statements on which they disclose the donor, description, and value of all gifts from a single source aggregating to \$335 or more in a calendar year.