



Acceptance of Gifts by Members and Employees of the House of Representatives Under New Ethics Rules of the 110th Congress

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Summary

On January 4, 2007, the House adopted new internal rules to prohibit the receipt of most gifts by Members and staff from lobbyists, foreign agents, and most of their private clients. Additionally, the new House Rules placed more restrictions and requirements on the acceptance from outside private sources of travel expenses for “officially connected” travel by Members and staff. Such restrictions are designed specifically to further limit the participation and involvement of lobbyists, foreign agents, or their clients in such travel events, and to provide for more transparency and disclosures of any such travel. With the passage of the “Honest Leadership and Open Government Act of 2007” (P.L. 110-81, September 14, 2007), further ethics provisions applicable to House Members and staff were adopted.

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The House of Representatives amended its internal Rules on January 4, 2007, with the adoption of H.Res. 6, to apply greater restrictions, more transparency, and further regulation concerning the acceptance by Members and staff of “gifts” from outside, private sources, including specifically “gifts” of travel-expense reimbursements or payments provided by lobbyists, foreign agents, or their clients.¹ Additional changes to internal House Rules on “ethics” were made by the “Honest Leadership and Open Government Act of 2007,” P.L. 110-81, September 14, 2007 (S. 1, 110th Congress).

Under the new House Rules, in a similar manner as under the former Rules, no gifts from outside, private sources may be accepted by Members and staff unless expressly permitted by one of the provisions of the House Rules. Thus, gifts from all outside, private sources continue to be restricted and limited, with several important exceptions. Gifts with a value of under \$50 may still be accepted, other than from lobbyists, foreign agents and their clients; and gifts from relatives and personal friends may continue to be accepted and exchanged. In addition, the 23 specific exceptions to the gift prohibition listed in the House Rules continue to be in force. The exception for reasonable and necessary expenses for some “officially connected” travel is also still provided, and Members and staff may continue to accept such travel expenses from many private sources, *other* than lobbyists, foreign agents, and certain of their clients, but with several additional restrictions, including more detailed disclosure of such travel. All private reimbursement or payment of “officially connected” travel expenses, however, must now receive *prior* approval from the House Committee on Standards of Official Conduct.

Gifts from Lobbyists: Under-\$50 Gifts

The House Rules now provide a restriction on accepting most gifts from registered lobbyists, agents of foreign principals, and private organizations that employ lobbyists or foreign agents.² Additionally, unlike previous rules and laws, lobbyists themselves are now expressly prohibited from *offering* gifts which they know should not be accepted by Members or staff under internal House Rules, and must certify in required reports to the federal government that no such gifts were offered.³

There still exists under House Rules a general exemption allowing the receipt of most gifts of under \$50 from private sources, but this exception now applies only to gifts *other* than from lobbyists, foreign agents, and their private clients.⁴ Under the former Rules, this exemption had allowed Members and staff to receive a gift, such as a meal, a bottle of liquor or wine, or a ticket for entertainment, that did not exceed \$49.99, even if such gift was from a lobbyist. Under the *new* House Rules, however, the under-\$50 exception for gifts no longer applies if the gift is from a “registered lobbyist or agent of a foreign principal or from a private entity that retains or

¹ The House in the 110th Congress adopted the Rules of the previous Congress, and then amended them concerning gifts and travel, H.Res. 6, 153 CONG. REC. H19-H38 (daily ed. Jan. 4, 2007). Subsequent revisions were adopted in H.Res. 363, 153 CONG. REC. H4411-H4412 (daily ed. May 2, 2007), and H.Res. 437, Section 4, 153 CONG. REC. H5746-H5747 (daily ed. May 24, 2007).

² A registered lobbyist is one registered under the Lobbying Disclosure Act of 1995, as amended (2 U.S.C. § 1601 *et seq.*), and an agent of a foreign principal is one defined under the Foreign Agents Registration Act, as amended (22 U.S.C. § 611 *et seq.*).

³ P.L. 110-81, Section 206, 121 Stat. 747, adding 2 U.S.C. § 1613 (prohibition), and Section 203, 121 Stat. 743-744, amending and adding to 2 U.S.C. § 1604(d) (certification requirement).

⁴ House Rule XXV, clause 5(a)(1)(B).

employs registered lobbyists or agents....”⁵ Members and staff may thus no longer accept most free meals paid for by lobbyists, foreign agents, or their clients (under this \$50 *de minimis* exception), and may no longer accept tickets to sporting or entertainment events provided by lobbyists, foreign agents, or their clients, unless they pay full face value for the ticket.

Gifts of Tickets and Passes: Valuation

When Members and staff *are* allowed to accept gifts of tickets and passes to sporting or entertainment events under the \$50 exception, or when they reimburse for the full value of the ticket, the “value” of the ticket or pass will now be determined by the actual “face value” printed on the ticket. When there is no face value on the ticket, such as in the case of passes to certain luxury boxes or suites in certain venues, then the value of ticket will now be the highest face-value price of a ticket to the same event.⁶

Gifts of Travel Expenses for “Officially Connected” Events

Under the former Rules of the House, Members or staff had been permitted, within certain limitations, to accept reasonable and necessary travel expenses from private sources when the travel was for purposes “connected” to official duties, and when the payment for the travel was not from a lobbyist or an agent of a foreign principal. The extent of travel allowed was for four days for domestic travel, and seven days for international travel (excluding travel days), and certain disclosures of the travel and expenses were required to be made within 30 days of the end of the trip. Even under the former House Rules, “officially connected” travel could not be primarily for recreational purposes, nor could a Member or staffer have received gifts of “recreational” activities of \$50 or more incurred during the course of an otherwise legitimate “officially connected” trip.⁷ Although there had been criticism expressed for the lack of enforcement of the prior Rules, “officially connected” travel expenses paid for by lobbyists, and the payment by *any* private source of expenses of \$50 or more for “recreational” activities, such as golfing, scuba diving, or jet-skiing, had been expressly prohibited on such travel.

New House Rules

Under the amendments to the House Rules, new and additional restrictions are placed upon the acceptance from private sources of expenses for “officially connected” travel. The House Committee on Standards of Official Conduct has issued two documents in memorandum form concerning “officially connected” travel: “Travel Guidelines and Regulations,” February 20, 2007, and “New Travel Rules for Official Connected Travel Paid for by a Private Source,” March 14, 2007. In a similar manner as under the former Rules, travel under the new Rules must have a demonstrable connection and relevance to one’s official duties and responsibilities. In addition to the restrictions and limitations carried forward from the former Rules, there are five substantial changes to the regulation of “officially connected” travel expenses:

⁵ House Rule XXV, clause 5(a)(1)(A)(ii).

⁶ House Rule XXV, cl. 5(a)(1)(B)(ii).

⁷ House Rule XXV, cl. 5(b)(1)(B); House Rule XXV, cl. 5(b)(4)(C).

1. Receipt of Expenses from a Client of a Lobbyist

In addition to the past prohibition on the receipt of travel expenses or payments from registered lobbyists or foreign agents, the House Rules now also prohibit the receipt of such payments or expenses for “officially connected” travel from “a private entity that retains or employs registered lobbyists or agents of a foreign principal,”⁸ except if an entity is a qualified “institution of higher education,” or when provided by any entity for a one-day event when in conformance with regulations prescribed by the House Committee on Standards of Official Conduct.⁹ An “institution of higher education,” even one which retains a lobbyist, may therefore provide “officially connected” travel expenses to Members and staff for events, up to four days domestic and seven days for foreign travel, when approved by the House Committee on Standards. Additionally, any organization or entity which retains a lobbyist may sponsor a one-day event (including an overnight and, in some cases, two overnights), as long as there is only a *de minimis* lobbyist participation in the planning, organization, request or arrangement of the trip, and no lobbyist accompanies the Member or staffer on “any segment” of the travel.¹⁰

2. Other Participation/Involvement of a Lobbyist

In addition to merely prohibiting a lobbyist from financing such “officially connected” travel, as in the former Rules, lobbyists or foreign agents are now not allowed to plan, organize, request, or arrange for such a trip for which a Member or employee of the House may accept expenses, unless the event is being sponsored by an institution of higher education, or when such participation concerning a one-day event is *de minimis*. Furthermore, a lobbyist or foreign agent is prohibited from accompanying the Member or staffer on “any segment” of a trip, except one sponsored by an institution of higher education.¹¹

3. Prior Certification and Approval

The new House Rules now require that Members or staff who seek to accept private expenses for “officially connected” travel, before accepting such expenses, provide to the House Committee on Standards of Official Conduct a written certification from the private source of the trip that (1) the trip will not be financed by a registered lobbyist or foreign agent; (2) that this private source either does not retain a lobbyist or foreign agent, or is a qualified “institution of higher education”; (3) that this private source will not accept money earmarked directly or indirectly from another source for this trip; (4) that the travelers will not be accompanied by a lobbyist or foreign agent (except as allowed for institutions of higher education); and (5) that the trip will not be planned, organized, requested, or arranged by a lobbyist or foreign agent, except as permitted.¹² Before accepting and participating in any such travel, the Member or employee must

⁸ House Rule XXV, cl. 5(b)(1)(A), as amended by H.Res. 6, 110th Congress.

⁹ House Rule XXV, cl. 5(b)(1)(C), as amended by H.Res. 6, 110th Congress. A 1-day event may include an overnight stay, and may be extended to two overnights when the Committee on Standards of Official Conduct deems it “practically required to participate in the one-day event.”

¹⁰ House Rule XXV, cl. 5(b)(1)(C)(ii), 5(c)(1)(A) and 5(c)(2). “Any segment” means a segment of travel, not including attendance at the event itself or appearance at the location visited.

¹¹ House Rule XXV, cl. 5(c)(1) - (3), as added by H.Res. 6, 110th Congress.

¹² House Rule XXV, cl. 5(d)(1), as added by H.Res. 6, 110th Congress.

obtain the prior approval of the Committee for each trip, and all filings, disclosures and certifications will be made available to the public.¹³

4. More Disclosure and Transparency

The disclosures required after a privately financed “officially connected” trip must be filed within 15 days of the completed travel (instead of 30 days), and are to detail, in addition to the information required under the old Rules, a “description of the meetings and events attended.”¹⁴

5. Reasonable and Necessary Expenses

House Rules provide that the “necessary” expenses that may be accepted in relation to “officially connected” travel must also be “reasonable.”¹⁵ The House Committee on Standards of Official Conduct has determined that the purpose of a trip must have a demonstrable connection to legislative or policy interests of Congress, and that officially connected activities must occur during each day of the trip; that transportation in coach or business class is generally “reasonable,” unless there are extenuating circumstances requiring first-class or charter travel; and that lodging accommodations for trips arranged specifically for Members or staff may only be at “appropriate” facilities, considering cost, location and proximity to the officially connected events. For events arranged without regard to congressional participation, lodging and food provided for all other attendees are presumptively reasonable. For events arranged specifically for Members and staff, food costs must be reasonable, and one factor for consideration will be the *per diem* rates for meals for official Government travel. Expenses for such travel may be accepted only from entities that have a significant role in organizing and conducting the trip, and that also have a clear and defined interest in the purpose of the trip or events.¹⁶

Travel on Private, Non-Commercial Aircraft

Former Rule

Members or employees of the House had generally been required to reimburse the owner of private aircraft to avoid violations of House gift rules, unofficial office account rules, or federal campaign finance laws. Criticism of this practice arose, however, because Members and staff were allowed to use private, corporate aircraft for travel for “personal” or “official” purposes, while reimbursing the owner of such aircraft at rates which were, arguably, far below the fair market value for a comparable, privately chartered flight.¹⁷ In addition, the convenience and ease for a Member of Congress to take such a flight, and the special “access” to Members such flights provided for corporate officials and lobbyists, regardless of the amount of reimbursement from official or personal funds for the flights, concerned reformers worried about the normal gratitude

¹³ House Rule XXV, cl. 5(d)(2), and 5(b)(5), as added by H.Res. 6, 110th Congress.

¹⁴ House Rule XXV, cl. 5(b)(1)(A)(ii), and 5(b)(3)(F), as added by H.Res. 6, 110th Congress.

¹⁵ House Rule XXV, cl. 5(b)(4)(A) and (B).

¹⁶ House Comm. on Standards of Official Conduct, “Travel Guidelines and Regulations,” *supra*.

¹⁷ Federal campaign laws required, however, candidates to reimburse corporate owners of private aircraft at the charter rate if the trip is to a city that is not served by regularly scheduled airlines, and first class fare if the destination is so served. 11 C.F.R. § 114.9(e).

that such special favors for Members might engender and the potential resulting undue influence on the Member's judgment.

New Rule

Under the new House Rules, Rule XXIII, cl. 15, Members and staff are now prohibited from using *any* funds, whether personal funds, campaign funds, or official funds, to pay for or reimburse the expenses of traveling on a private or corporate aircraft. Members and staff traveling for personal, campaign or official purposes will generally be required to fly on commercially scheduled airlines, or to charter flights from companies in that business. It appears that under existing exceptions to the gift rule, however, Members and staff can still fly on a private, corporate aircraft when the Member or staffer is to be involved in a permissible outside, business endeavor, or in employment discussions with a prospective private employer which owns the aircraft, when the private company or prospective employer normally would make such aircraft available to one involved in the business endeavor, or to one being interviewed or otherwise seeking employment.¹⁸ Similarly, if an aircraft is owned by an individual who provides a flight on the "basis of personal friendship" to a Member or staffer, then a flight can be accepted under such exception (with approval from the House Committee on Standards of Official Conduct when the value of the flight would be in excess of \$250).¹⁹ Members or staff may also fly on their personally owned or family owned or leased aircraft.²⁰

Other Exceptions to Gift Prohibition

The new House Rules, although tightening restrictions on gifts from lobbyists, foreign agents, and their clients, still allow the acceptance of private gifts under the 23 express exceptions to the gifts rule, even when certain of those gifts are from lobbyists.²¹ Under these exceptions Members and staff may continue, for example, to accept gifts from and exchange gifts with "**relatives**" in unlimited amounts;²² may accept gifts given "on the **basis of a personal friendship**" (even if the personal friend is a lobbyist or foreign agent);²³ may, under the so-called **reception exception**, partake of "food or drink of nominal value" offered "other than as part of a meal," such as hors d'oeuvres, pastries, snacks, and drinks typically served at receptions;²⁴ may continue to accept "free attendance" at "**widely attended**" gatherings (including meals served to all attendees),

¹⁸ Since such flight would not be a "gift" under House Rule XXV, cl. 5(a)(3)(G), there would need to be no reimbursement (and no use of any personal, official or campaign funds).

¹⁹ House Rule XXIII, cl. 15(b)(3) and (c)(3); House Rule XXV, cl. 5(a)(3)(D) and 5(a)(5).

²⁰ House Rule XXIII, cl. 15(b)(2), as amended by H.Res. 363, 110th Congress.

²¹ The new Rule bans gifts from lobbyists, foreign agents, or their private clients "except as provided in subparagraph (3) of this paragraph" (House Rule XXV, clause 5(a)(1)(A)(ii)). The subparagraph (3) cited (i.e., House Rule XXV, clause 5(a)(3)(A) - (W)), provides 23 specific exceptions to the gift prohibition, many of which would apply even if the donor were a lobbyist.

²² House Rule XXV, cl. 5(a)(3)(C). A "relative" expressly includes a fiancé (5 U.S.C. app. § 109(16), and thus (contrary to press reports) a staffer could accept an engagement ring from a fiancé without having to receive prior approval from one's employer or the "Ethics" Committee.

²³ House Rule XXV, cl. 5(a)(3)(D). See, however, specific factors limiting application of this exception, at House Rule XXV, cl. 5(a)(3)(D)(ii)(I)-(III). Gifts received on the basis of personal friendship exceeding \$250 must receive the written approval of the House "Ethics" Committee.

²⁴ House Rule XXV, cl. 5(a)(3)(U). But see new restrictions on certain receptions honoring Members sponsored by lobbyists during national political conventions. House Rule XXV, cl. 8.

when such attendance is appropriate to one's official duties;²⁵ may accept free attendance and transportation for certain **charitable events**;²⁶ may still accept **personal hospitality of an individual** (other than from a registered lobbyist or foreign agent);²⁷ and may accept the receipt of such things as: bona fide noncash awards; prizes; plaques and trophies; inheritances; items of "nominal value" (such as greeting cards or baseball caps); expenses for training in certain circumstances; informational materials; promotional items of home state products; things paid for by the federal, state, or local government; expenses for outside business or employment travel; and lawful political contributions, as well as expenses for political events provided by a political organization.²⁸

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²⁵ House Rule XXV, cl. 5(a)(3)(Q) and cl. 5(a)(4). Only the sponsor of the event may pay for the Member's or staffer's attendance, and only *local* transportation (and no lodging) may be accepted.

²⁶ House Rule XXV, cl. 5(a)(3)(Q), 5(a)(4)(C). H.Res. 437, Sec. 4, 110th Cong. Transportation and lodging may be accepted under some circumstances from the sponsoring charity.

²⁷ House Rule XXV, cl. 5(a)(3)(P).

²⁸ House Rule XXV, clause 5(a)(3)(A) - (W).

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