



Additional Materials:
Staying on Top of
Lobbying and Political
Giving Rules

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Limits on 501(c)(3) Lobbying

“Influencing legislation” may not be a “substantial part” of a 501(c)(3)’s activities

- Internal Revenue Code does not define “substantial part” or even what constitutes influencing legislation”
- IRS employs a facts and circumstances test
- Form 990 requires reporting not just amounts spent on lobbying, but a description of the activities undertaken

501(h) Election

Internal Revenue Code includes an option to be subject to specific caps, in return for specific definitions.

Caps: An organization may spend 20 percent of its first \$500,000 in exempt purposes expenditures on lobbying (*i.e.* \$100,000), plus 15 percent of the next \$500,000 (*i.e.* \$75,000), plus 10 percent of the next \$500,000 (*i.e.* \$50,000), plus 5 percent of its expenditures over \$1.5 million, until the organization reaches the maximum lobbying expenditure cap of \$1 million. One quarter of the total amount spent on lobbying may be spent on grassroots lobbying (*i.e.* \$250,000 if total lobbying expenditures are \$1 million).

Direct Lobbying Defined: A communication to (1) a member or employee of a legislative body; (2) a non-legislative body government official or employee who participates in the formulation of legislation, but only if the principal purpose of the communication is to influence legislation, or (3) the public in a referendum, initiative or constitutional amendment.

Grassroots Lobbying Defined: A communication to the public that (1) refers to specific legislation, (2) reflects a point of view on the legislation, and (3) encourages the recipients to *take action* with respect to the specific legislation by contacting their legislators.

Exclusions from Lobbying:

- **Communications with members.** An organization’s communication with its members about specific legislation – even if the communication takes a position on

that legislation – is not considered direct or grassroots lobbying so long as the communication does not directly ask the organization’s members or others to take action with respect to the legislation.

- ***Nonpartisan analysis, study or research.*** As a general rule, making available the results of nonpartisan analysis, study or research does not count as direct or grassroots lobbying – even if the materials take a position on specific legislation – so long as the materials provide a “full and fair exposition of the pertinent facts” that will allow a recipient to form their own opinion or conclusion on the matter, and so long as the materials do not directly encourage the recipient to take action or contact their legislators.
- ***Discussions of broad social and economic problems.*** Examinations and discussions of broad social, economic and other problems are not direct or grassroots lobbying communications – even if there is specific legislation pending on the matters discussed – so long as the discussion does not address the merits of specific legislation.
- ***Efforts to Change Regulations.*** Contacts with government officials or legislators in support of or in opposition to proposed administrative regulations (as opposed to statutes or laws) is not considered direct lobbying because such communications do not pertain to legislation.
- ***Requests for technical advice.*** A communication that responds to a governmental body or committee’s written request for technical advice is not direct lobbying.
- ***Conducting self-defense activity.*** An organization’s communication with legislators about the organization’s own existence, powers, or tax-exempt status is not direct lobbying.
- ***Volunteer time.*** Only those activities upon which an organization spends money will count as lobbying for purposes of the expenditure test. Thus, lobbying by volunteers is considered a lobbying expenditure only to the extent that the nonprofit incurs expenses associated with the volunteers’ lobbying.



[Section 162\(e\)](#) of the Code denies a deduction for the amount an organization spends on lobbying. Most trade and professional organizations exempt under 501(c)(6) and labor unions and farm bureaus exempt under 501(c)(5) are subject to the requirements of Section 162(e) (as are most taxable business entities). Membership organizations that are subject to Section 162(e) and that conduct lobbying may either: (1) disclose to their members what percentage of their dues are nondeductible because they are used for lobbying; or (2) pay a 35-percent proxy tax on lobbying expenditures. Regardless of the method chosen, they must disclose the amount spent lobbying on their Form 990 informational returns. Most membership organizations choose to report the nondeductible amount to their members.

“[Lobbying](#)” under Section 162(e) includes five broad categories of activity:

- 1) ***Influencing legislation.*** Any attempt to [influence legislation](#) through communication with (i) any member or employee of Congress; (ii) any member or employee of a state legislature; or (iii) any federal or state government official or employee who may participate in the formulation of legislation.
- 2) ***Grassroots lobbying.*** Any attempt to influence the general public, or segments thereof, with respect to elections, legislative matters, or referenda. This includes urging association members to engage in grassroots lobbying.
- 3) ***Communications to covered federal executive branch officials.*** Any direct communication with a covered federal executive branch official in an attempt to influence the official actions or positions of such official. Covered federal executive branch officials include the President, the Vice President, employees of the Executive Office of the President, and any individual serving in Executive Schedule level I or designated by the President as having Cabinet level status, and any immediate deputy of any of the foregoing.
- 4) ***Political activities.*** Any activity which constitutes participation or intervention in any political campaign at the federal, state, or local level, the expenditures for which are not already subject to tax under Code Section 527(f).
- 5) ***Supporting activities.*** All research, preparation, planning, and coordination (including deciding whether to make a lobbying communication) engaged in for a purpose of making or supporting a lobbying communication or political activity (as defined above) is treated as carried out in connection with such communication or activity. In other words, the time spent on any background activity engaged in for a purpose of supporting a future planned lobbying communication must also be counted as lobbying.

The [regulations implementing Section 162\(e\)](#) state that a covered organization may use any reasonable method to calculate the amount spent on lobbying. An accurate calculation typically includes tracking employees' time spent lobbying, allocating overhead costs to lobbying activity, and factoring actual lobbying expenses (e.g., travel, payments to outside consultants, publications, etc.) into the total. The regulations also permit an organization to make reasonable allocations for activities that are conducted for both lobbying and non-lobbying purposes.



Who is a Lobbyist?

The LDA defines a lobbyist as anyone who makes more than one **lobbying contact** *and* spends more than 20 percent of his or her time on **lobbying activities**.

What are Lobbying Contacts?

Lobbying contacts are actual communications with covered officials. Lobbying contacts may be oral, written, or electronic. A communication with a covered official is not a “lobbying contact” unless it involves:

- 1.) the formulation, modification, or adoption of federal legislation (including legislative proposals);
- 2.) the formulation, modification, or adoption of a federal rule, regulation, Executive order, or any other program, policy, or position of the United States government;
- 3.) the administration or execution of a federal program or policy (including the negotiation, award, or administration of a federal contract, grant, loan, permit, or license); or
- 4.) the nomination or confirmation of a person for a position subject to confirmation by the Senate.

Exceptions: The following communications are *not* “lobbying contacts” under the LDA, although they may constitute “lobbying activities” if made in support of other communications that constitute lobbying contacts:

Miscellaneous Contacts

- 1.) administrative requests such as requests for a meeting or about the status of a matter (as long as the request does not include an attempt to influence a covered official);
- 2.) made in the course of participation in an advisory committee subject to the Federal Advisory Committee Act;
- 3.) not possible to report without disclosing information, the unauthorized disclosure of which is prohibited by law;

Public Activities

- 4.) testimony given before a committee or subcommittee of Congress (that is included in the public record);
- 5.) speeches, articles, or publications of other material that is made available to the public or is distributed through radio, television, cable television, or other methods of mass communication;
- 6.) made by a representative of a media organization if the purpose of the communication is gathering and disseminating news and information to the public;

Requests for Information

- 7.) information provided in writing in response to a request by a covered executive or legislative branch official (the request may be oral or written);
- 8.) information required by subpoena, CID, or otherwise compelled by Congress or an agency (including information compelled by a contract, grant, loan, permit, or license);

Regulatory Activities

- 9.) communications in response to a notice in the Federal Register and directed toward the official listed in the notice;
- 10.) communications that are made on the record in a public proceeding;
- 11.) written comments filed in the course of a public proceeding; and
- 12.) petitions for agency action made in writing and made part of the public record.

What is Lobbying Activity?

Lobbying activities include lobbying contacts as well as efforts in support of such contacts, including preparation and planning activities, research, and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.

Who is a Covered Official?

Under the LDA, covered officials include certain members of the legislative and executive branches of the federal government. The definition of covered executive branch officials is narrower than that of covered legislative branch officials. Only the most senior executive branch employees and officials are considered “covered officials” for purposes of the LDA, whereas virtually every person working for Congress – from the receptionist to the Chief of Staff – is a covered official for purposes of the LDA.

- ***Covered Legislative Branch Official:*** A covered legislative branch official includes:
 - 1.) Members of Congress;
 - 2.) Elected officers of either the House or Senate;
 - 3.) Any employee, or any other individual functioning in the capacity of an employee, who works for a Member of Congress, a committee of either House of Congress, the leadership staff of either the House or Senate, a joint committee of Congress, or a working group or caucus organized to provide services to Members.

- ***Covered Executive Branch Official:*** A covered executive branch official includes:
 - 1.) The President;
 - 2.) The Vice-President;
 - 3.) Any member of the uniformed services serving at pay grade 0-7 (“one star”) or above;
 - 4.) Any officer or employee, or any other individual functioning in the capacity of such an officer or employee, in the Executive Office of the President;
 - 5.) Any officer or employee in a position listed in levels I through V of the Executive Schedule (see 5 U.S.C. §§ 5312-5316 for listed positions); and,
 - 6.) Schedule C political appointees.

The “Executive Schedule” delineates the most senior positions in the administration, such as Cabinet secretaries, deputy secretaries, under secretaries, and assistant secretaries, as well as agency commissioners and directors. The appendix to this guide includes all of the positions in the Executive Schedule.

Schedule C posts are typically non-career policymaking or “political” appointees, and confidential secretaries and administrative assistants of key appointees within an agency. Not all agencies, however, use Schedule C posts for such appointees because the agency organic statute provides for such political appointments outside of Schedule C. For example, the FCC and the FTC have very few Schedule C appointees, even though there are political appointees and confidential assistants at those agencies. Such individuals are not, however, covered officials under the LDA because they are not Schedule C employees.

Senior Executive Service (“SES”) employees—senior career government officials—are not covered officials, unless they are on the Executive Schedule.

Under the LDA, an employee must say if he or she is a covered official if asked.



Executive Branch Restrictions

1. All Executive Branch Employees:

A. Specific Parties

A former executive branch employee is prohibited from making:

any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or the District of Columbia, on behalf of any other person . . . in connection with a particular matter—

(A) in which the United States or the District of Columbia is a party or has a direct and substantial interest,

(B) in which the person participated personally and substantially . . ., and

(C) which involved a specific party or specific parties at the time of such participation

B. Specific Issues

A former executive branch employee is prohibited from “making any communication or appearance” regarding a matter that an individual “knows or reasonably should know was actually pending under his or her official responsibility” as an employee of the executive branch for two years.

C. Trade or Treaties

A former executive branch employee “who personally and substantially participated in any ongoing trade or treaty negotiation on behalf of the United States” is prohibited from representing any other party to the negotiation for one year after leaving office.

2. Senior Executive Branch Employees:

Definition: A senior official is a person who is:

- 1.) Employed in the Executive Schedule;
- 2.) Not employed in the Executive Schedule but who is paid at a rate of basic pay which is equal to or greater than 86.5 percent of the rate of basic pay for level II of the Executive Schedule;
- 3.) One of a limited number of employees appointed by the President to work in the White House Office or the Vice President to work on certain matters delegated to him by the President and who are paid at Level III of the Executive Schedule;
- 4.) An officer in the military with a rank of O-7 or above (as shown below);

Pay Scale	Army	Air Force	Marines	Navy and Coast Guard
**	General of the Army	General of the Air Force		Fleet Admiral
O-10	Army Chief of Staff General	Air Force Chief of Staff General	Commandant of the Marine Corps General	Chief of Naval Operations Commandant of the Coast Guard Admiral
O-9	Lieutenant General	Lieutenant General	Lieutenant General	Vice Admiral
O-8	Major General	Major General	Major General	Rear Admiral (Upper Half)
O-7	Brigadier General	Brigadier General	Brigadier General	Rear Admiral (Commodore)

- 5.) Assigned from a private sector organization to an agency under chapter 37 of title 5.

Prohibition: A senior official may not “knowingly make, with the intent to influence, any communication to or appearance before any officer or employee of the department or agency in which such person served within one year (two years for those signing Obama Ethics Pledge) before such termination, on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of such department or agency.

3. Very Senior Executive Branch Employees:

Definition: A very senior official is a person who:

- 1.) serves in the position of Vice President of the United States;
- 2.) is employed in a position in the executive branch of the United States (including any independent agency) at a rate of pay payable for level I of the Executive Schedule or

employed in a position in the Executive Office of the President at a rate of pay payable for level II of the Executive Schedule; or

- 3.) Is one of a limited number of employees appointed by the President to work in the White House Office or the Vice President to work on certain matters delegated to him by the President and who are paid at Level III of the Executive Schedule

Prohibition: A very senior official may not “knowingly make, with the intent to influence, any communication to or appearance before” any officer or employee of any department or agency in which such person served in such position within a period of 1 year before such person’s service or employment with the United States Government terminated or anyone employed on the Executive Schedule “on behalf of any other person (except the United States), in connection with any matter on which such person seeks official action by any officer or employee of the executive branch of the United States,” for two years after leaving government.

4. Lobbying by Obama Administration Appointees:

No individuals who have signed the Obama Ethics Pledge may not lobby any covered executive branch official or non-career Senior Executive Service appointee for the remainder of the Obama Administration.

Legislative Branch Restrictions

Senate

1. Senators:

Senators may not make any communication to any Member, officer, employee of either House of Congress with an intent to influence any action by a Member, officer, or employee of either House of Congress for two years after leaving office.

2. Employees & Officers:

Any elected officer of the Senate or any employee paid at 75 percent or more of the basic rate of pay for a Senator for one year prior to leaving the Senate may not make any communication to any Senator, officer, or employee of the Senate, with an intent to influence any action by a Senator, officer, or employee of the Senate for one year after leaving the Senate.

House

1. Members of the House:

Members of the House may not make any communication to any *Member, officer, employee of either House of Congress* with an intent to influence any action by a Member, officer, or employee of either House of Congress for *one year* after leaving office.

2. Elected Officers of the House:

Elected officers of the House may not make any communication to *any Member, officer, or employee of the House of Representatives* with an intent to influence any action by a Member, officer, or employee of either House of Congress for *one year* after leaving office.

3. Personal Staff:

Any personal staff paid at 75 percent or more of the basic rate of pay of a Member of the House for one year prior to leaving the House may not make any communication to the *Member of the House for whom that person was an employee or any employee of that Member of the House* with an intent to influence any action by a Member, officer, or employee of either House of Congress for a period of *one year* after leaving the House.

4. Committee Staff:

Any committee staff paid at 75 percent or more of the basic rate of pay of a Member of the House for one year prior to leaving the House may not make any communication to *any Member or employee of the committee for which that person worked* (or to any person who was a Member of the Committee in the year prior to leaving the House) with an intent to influence any action by a Member, officer, or employee of either House of Congress for a period of *one year* after leaving the House.

5. Leadership Staff:

Any leadership staff paid at 75 percent or more of the basic rate of pay of a Member of the House for one year prior to leaving the House may not make any communication to *any Member of the House Leadership or employee of the House Leadership staff* with an intent to influence any action by a Member, officer, or employee of either House of Congress for a period of *one year* after leaving the House.

Other Legislative Positions

Officers and employees of the:

- Architect of the Capitol
- United States Botanic Garden
- Government Accountability Office
- Government Printing Office
- Library of Congress
- Office of Technology Assessment
- Congressional Budget Office
- United States Capitol Police

who are paid at a rate equal to or greater than level IV of the Executive Schedule for one year prior to leaving the House may not make any communication to *any officers or employees of the office for which that person worked* with an intent to influence any action

by a Member, officer, or employee of either House of Congress for a period of *one year* after leaving the House.

Representing Foreign Entities

For one year after leaving office, “senior” and “very senior” officers of the executive branch and all employees of the legislative branch are prohibited from representing a foreign entity “before any officer or employee of any department or agency of the United States.” They are also prohibited from “aiding or advising” any foreign entity “with the intent to influence a decision of any officer or employee of any department or agency of the United States.” A “foreign entity” is any government of a foreign country or any foreign political party, as defined in FARA.



Legislative Branch Gift Rules

The House and Senate Rules governing gifts are similar to one another, but do have several important differences. This guide explains the rules applicable to both bodies, and notes where there are differences.

Non-Lobbyists

Non-lobbyists may give a gift of up to \$49.99 in value, with an annual cumulative total for all gifts to any one individual of \$99.99. This rule applies to (1) entities that do not employ or retain lobbyists and (2) individuals who are not registered lobbyists and who do not seek to have the gift reimbursed by an entity that retains or employs a registered lobbyist.

Rule for Lobbyists

No entity that employs or retains a lobbyist may give a gift of any value, unless the gift is given pursuant to a valid exemption (see below).

Moreover, no individual who is a registered lobbyist may give any gift, unless given pursuant to a valid exemption. This includes gifts given with that person's own funds.

Application of the Rules to Lobbyists

The Lobbying Disclosure Act makes *giving* a prohibited gift illegal. Specifically, a lobbyist, "may not make a gift or provide travel to a covered legislative branch official if the person has knowledge that the gift or travel may not be accepted by that covered legislative branch official under the Rules of the House of Representatives or the Standing Rules of the Senate (as the case may be)."

Gifts

Definition

“Gift” is broadly construed by both the House and the Senate to include “[a] gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.”

Scope

Gifts given to family members (or any other individual based on that individual’s relationship with the Member) shall be considered gifts to the Member if it is given with the knowledge and acquiescence of the Member, and the Member has reason to believe the gift was given because of his official position.

Coverage

The rules apply to Members of Congress and all employees and officers of the House and Senate.

Gift Rule Exemptions

There are a number of exemptions to the gift rules that allow Members of Congress or their staff to accept gifts, even if they are given by registered lobbyists or entities that employ or retain registered lobbyists. This section describes the requirements for each of the relevant exemptions. In addition, a later section discusses various situations that lobbyists may encounter, and the different rules that may apply in the situations.

Personal Friendship

Individual registered lobbyists may give gifts based on personal friendship. Before accepting such a gift, the Member of Congress (or the staff person) must consider:

- 1) The history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between such individuals.
- 2) Whether the giver sought a tax deduction or reimbursement for the gift.
- 3) Whether the individual has given similar gifts to other Members or staff.

Generally speaking, it is not possible for a gift to be given out of personal friendship during the first meeting between a lobbyist and a

staffer.

Gifts accepted under this provision must not exceed \$250 unless the lawmaker or staff member obtains a waiver from either the House Committee on Standards of Professional Conduct or the Senate Ethics Committee. There is no annual limit to gifts given in personal friendship. A series of gifts valued at \$250 would be questionable, however, where there is no history of such a regularly expensive exchange.

Receptions/Food of Nominal Value

Lawmakers and staff may accept “food or refreshments of a nominal value offered other than as a part of a meal,” even when the donor is a lobbyist. Under this provision, the kinds of food and refreshments usually offered at receptions—such as hors d’oeuvres, appetizers, and beverages—and morning meetings—coffee, juice, pasty, or bagels—may be accepted. The exception does not allow Members or staff to accept a “meal,” or “food or refreshments offered as part of a meal,” no matter how nominal the cost.

The both the House and Senate Ethics Committee has interpreted this provision narrowly to preclude pizza, hamburgers, and other types of food that is typically part of a meal. Note, however, that even if the food does not qualify as food of nominal value, the event itself may qualify under a different exemption (e.g., as a widely attended event), which would allow food of any value to be given as part of the event.

The Senate Ethics Committee has explained that food or drink of a nominal value that is served at an organized event in which such food and drink is customarily provided to participants, speakers, and panelists. The example given is a cup of coffee on a Sunday talk show.

Widely Attended Events

Lawmakers may accept gifts of free attendance, food, and refreshments at “widely attended events,” so long as the gift comes directly from the sponsor of the event. A “widely attended event” must be “open to individuals from throughout a given industry or profession, or those in attendance represent a range of persons interested in a given matter” and must be expected to include more than twenty-five people who are not employees or Members of Congress. The Gifts and Travel Booklet explains that “[t]he types of events that typically satisfy this first requirement are Chamber of Commerce and Rotary Club lunches and dinners, and meetings of the membership of trade or professional associations.”

For the exception to apply, a lawmaker must reasonably determine that attendance at the event is related to his official duties. Congressmen may not accept tickets to widely attended events that have been distributed by third parties. Sporting events, concerts, and theater performances are never considered widely attended events.

There must be an expectation of having at least 25 people who are not Members or employees of Congress attend.

Charitable Events

The gift rules allow attendance at charity events when a lawmaker is invited directly by the event sponsor. The primary purpose of a “charity event” must be to raise funds for a charitable organization. Contributors to a charity event (e.g., the sponsors that purchase tables) may request that the sponsor invite particular members or staff to sit with them at the event, but the sponsoring charitable organization must retain ultimate control of the guest list and the invitation may not reference the contributor.

Political Fundraisers

The sponsor of a political event may provide complimentary attendance to a Member or staff person. This includes only federal and state political committees (i.e., those entities organized under section 527(e) of the Internal Revenue Code), such as PACs, parties, other candidates, leadership PACs. Thus, for example, one Member of Congress could invite another to a campaign event and the Member could accept the food and drink being served. Similarly, a PAC may host an event for a candidate and the candidate may attend and accept the food and drink served.

Site Visits

Organizations may wish to have Members of Congress or their staff visit their facilities. The House has adopted an exemption for meals given to Members as part of such a “site visit.” To qualify, the meal must be given on the business’s premises and eaten “in a group setting with employees of the organization.” Local transportation may be provided only outside the District of Columbia, and only “between the airport or other terminus and the site.” The Senate has no such provision for visits to a business site, and its members and employees must either decline an offer of food or transportation or reimburse the member for the costs.

Training Events

The rules governing training events are different for the House and Senate.

Senate Rules

Senate staffers may attend training events that are “in the interest of the Senate” and any accompanying meals. Such an event must be expected to be attended by at least 25 staffers, not all of whom are from the same office, before this exception may apply. Actual attendance is immaterial; there must be an expectation of at least 25 staffers based on the number invited.

House Rules

House staffers may only attend academic events that are not legislative briefings. Academic events include university events or non-partisan, nonprofit think tank events. The event cannot be a legislative briefing. For example, the event may be a discussion of foreign policy in general but not a discussion of the impact of legislative proposals on an industry.

Opportunities Not Based on Government Status

There are several categories of exemptions to the gift rules based on a person’s status:

- 1.) Gifts available to the public or to a class consisting of all Federal employees, whether or not restricted on the basis of geographic consideration;
- 2.) Gifts offered to members of a group or class in which membership is unrelated to congressional employment;
- 3.) Gifts offered to members of an organization such as an employees’ association or congressional credit union, in which membership is related to congressional employment and similar opportunities are available to large segments of the public through organizations of similar size;
- 4.) Gifts offered to a group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of branch of Government or type of responsibility, or on a basis that favors those of higher rank or rate of pay; or
- 5.) Gifts that are in the form of reduced membership or other fees for participation in organization activities offered to all Government employees by professional organizations if the only restrictions on membership relate to professional qualifications.
- 6.) Food, lodging, and transportation customarily provided by a

prospective employer in connection with bona fide employment discussions.

Items of Nominal Value

The gift rule permits Members of Congress and their staff to accept “items of a nominal value, such as a greeting card, baseball cap, or a T-shirt.” Items of “nominal value” have a value of less than \$10. Additionally, both the House and Senate have interpreted the provision to permit the acceptance of the items explicitly referred to in the rule, regardless of price. Therefore, a Member or staff person may accept a baseball cap, tee-shirt, or card as a gift, even if it costs more than \$10. Although not specified in the rule or commentary, it is advisable to avoid giving even these listed items if they have a particularly high value.

Books & Informational Materials

The House and Senate both allow entities to provide “[i]nformational materials that are sent to [the Member’s] office...in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication.” The House Ethics Manual explains that this is “to ensure that Members have access to information sources or reference tools useful in the conduct of official duties.” The Manual goes on to explain that “sent to the office” is designed to prevent the materials from being sent to the Member’s home. Therefore, the Member (or staff person) may accept the book at a reception or other event. The Senate Rules include a similar provision.

The Manual also explains that although this provision allows a publisher to give a subscription to a periodical, it does not allow the gift of “software that provides access to a database that otherwise is available only on a subscription basis (e.g., LEXIS-NEXIS...)”

The Manual does note that demonstration copies of software may be permissible as a gift that is given on a wide basis, not on government status (see pp. 13-14 *supra*).

Personal Hospitality

Individuals *who are not registered lobbyists* may provide personal hospitality in their own homes. There is no limit on the amount that may be spent on personal hospitality by non-lobbyists, so long as the purpose of the hospitality is not to discuss House or Senate business. As indicated, registered lobbyists, are excluded from this exception, and therefore may only give such hospitality if it is under \$50.00 in value or if there is a close personal friendship exception and the cost is under \$250.00 (unless a written waiver is granted).

When making use of this exemption, the owner does not have to be present when the hospitality is provided. This exception applies only to a personal residence that is not owned by a company and that is not used as rental property. Thus, a corporate official who has use of his company's guesthouse may not invite a staffer to spend a weekend at the company's house because it is not his own personal house. Furthermore, the Gift and Travel Booklet provides, "as a general rule, a residence or other property that the individual owner rents out to others or otherwise uses for business purposes may not be used under this provision." A person may extend personal hospitality to a staffer in a property that he leases from someone other than his employer.

This exception does not include expenses for entertainment or travel accompanying the hospitality. Thus, a person may provide use of his house in Vail but may not provide lift tickets or airfare to or from Colorado. Personal hospitality would include the use of an individual's boat while staying at a beach house.

**Career Executive Branch
Gift Rules**

The Executive Branch apply to career government employees—that is, those who are not political appointees—and are not dependant on whether an individual is or is not a registered lobbyist. Although these rules include similar exemptions to the Legislative Branch gift rules, the exact criteria differ slightly. In addition, there are broad prohibitions on gifts given because of the employee's position or from a prohibited source.

Prohibited Sources

Prohibited sources, which may not give gifts unless there is an exemption, include an entity that is:

- 1.) Is seeking official action by the employee's agency;
- 2.) Does business or seeks to do business with the employee's agency;
- 3.) Conducts activities regulated by the employee's agency;
- 4.) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or
- 5.) Is an organization a majority of whose members are described in (1) through (4).

In addition, no gift may be given because of an employee's official

position, unless an exemption applies. A gift is solicited or accepted because of the employee's official position if it is from a person other than an employee and would not have been solicited, offered, or given had the employee not held the status, authority or duties associated with his Federal position.

Exemptions

There are a number of exemptions that allow gifts to be given to Executive Branch employees—even if given by a prohibited source or on the basis of the employee's official position. Some of the more common are discussed below.

Items of \$20 or less

Employees may accept gifts with a market value of \$20 or less, with a \$50 annual limit for any one source of a gift.

Personal Friendship

Employees may accept gifts—without limitation—if given on the basis of friendship. However, this exemption does not apply if a business is paying the cost of the gift.

Widely Attended Events

The Executive Branch gift rules allow government employees to attend widely attended events for free, but only in certain specific situations. In addition, there may be rules for specific agencies that impact whether the employee may accept attendance.

Speaking Role

If the employee will be speaking, participating in a panel, or otherwise presenting, then the employee may accept free attendance on the day of his presentation.

Non-Speaking Role

If an employee is not speaking or presenting, an agency can still determine that it is in the agency's interest to have the employee attend an event. If the entity sponsoring the event has interests before the agency (or is comprised of members with such interests), then the agency must make written findings balancing the benefits of attendance with the nature and sensitivity of the pending matters.

If the invitation is extended by the sponsor of the event, the employee may accept attendance 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. If, however, the

invitation is extended by a third party (e.g., a member of the organization, rather than the organization itself), the market value of the cost of the attendance must be \$305 or less and there must be an expectation that there will be at least 100 people present.

Attendance may include conference fees, food, entertainment that is part of the event, and materials. It does not include meals that are not taken in a group setting with all other attendees or entertainment that is collateral to the event.

Food of Nominal Value

Employees may accept modest items of food or refreshments that are not part of a meal. Soft drinks, coffee, and donuts are all specifically referenced in the regulations as being permitted types of food.

Social Invitations

People who are not prohibited sources (see above), may provide food, refreshments and entertainment, not including travel or lodgings, at a social event attended by several persons if no fee is charged. This is designed to cover dinner parties and similar functions, even where the personal friendship exemption is not applicable.

Political Appointees

Political appointees are subject to the rules that apply to career executive branch employees as well as a specific set of rules imposed through the “Obama Ethics Pledge” only on political appointees.

Scope of “Political Appointee”

Political Appointees include anyone appointed by the president or vice president (whether or not they are subject to Senate confirmation) as well as lower-level appointees. In essence, the Ethics Pledge applies to any Schedule C employee and any non-career Senior Executive Service appointee. In addition, employees who perform confidential or policy making functions, even if not technically exempt from the General Schedule system by Schedule C, but by a similar system are considered to be political appointees.

Career Confidential Positions

The Office of Government Ethics (“OGE”) has noted that “it has been a regular practice at certain agencies to appoint regular career staff to serve in confidential positions with a given Commissioner, with the expectation that the confidential assistant will return to a career staff position at the end of the Commissioner’s term or earlier.” OGE explained that the Ethics Pledge “is not intended to apply to such

employees, provided that the right of return to a career position is established by statute, regulation, or written agency personnel policy. Under such circumstances, a confidential 'rotation' would be viewed as part of an established career pattern, and imposing the exacting requirements of the Pledge could create unintended disincentives for career employees to accept such rotations."

Acting Confidential Positions

A career appointee who is temporarily detailed to a position normally occupied by a non-career appointee is not subject to the Pledge.

Gift Ban

Political Appointees may not accept any gifts from registered lobbyists or entities that are registrants under the LDA, other than in certain limited situations. The most common exemption is for gifts given out of personal friendship.

Attending Events

OGE has created several exemptions for political appointees to attend events. For example, appointees may accept offers of free attendance on the day of an event when they are speaking or presenting information in an official capacity. The speaker may be accompanied by "essential" personnel. OGE has explained that who is essential will depend on the circumstances, contrasting the security and staff necessary for the Secretary of Defense to address 1,000 in an auditorium with a Federal Communications Commissioner speaking to a luncheon attended by several dozen communications lawyers.



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Nonprofit Organizations and
 Associations
 Consumer Products and Services
 Life Sciences
 Consumer Financial Protection
 Bureau Task Force

GOVERNMENT EXPERIENCE

Field Representative, United States
 House of Representatives, Office of
 Representative Steve Chabot (R-
 OH)

Ronald Jacobs advises clients on all aspects of state and federal political law, including campaign finance, lobbying disclosure, gift and ethics rules, pay-to-play laws, and tax implications of political activities. He also assists clients with crises response to government investigations and enforcement actions, Congressional investigations, class-action law suits, and other high-profile problems that involve potentially damaging legal and public-relations matters.

Mr. Jacobs understands the often-contradictory rules imposed by the different laws that apply to political activities. He offers practical advice that considers not only the legal requirements, but also the reputational risk, of political activity to a broad range of clients, including large and small companies, trade associations, ideological groups, individuals, and political vendors. He has developed political compliance programs for Fortune 500 companies and other clients that lobby and make political contributions nationwide.

In addition to counseling clients on political law matters, Mr. Jacobs has extensive experience in the administrative rulemaking process and in litigating challenges to agency decisions in federal court. He has represented clients in administrative matters before the Federal Election Commission, the Merit Systems Protection Board, the Federal Trade Commission, the United States Congress, and in federal court.

Mr. Jacobs has also counseled and defended clients in a host of other regulatory matters, including disputes involving the Foreign Corrupt Practices Act, the Foreign Agents Registration Act, and privacy and data security issues.

SIGNIFICANT MATTERS

Some of Mr. Jacobs's significant matters have included:

- Successfully defending a large, nationally-known trade association during a Congressional investigation into allegations of fraudulent grassroots lobbying activity.
- Representing a campaign finance reporting company through an FBI investigation of a former business partner accused of campaign fraud, ultimately convincing the government to return assets that had been wrongly seized from the company.
- Assisting a large social welfare organization with multiple Congressional investigations and several class action lawsuits.
- Successfully petitioning the FEC to reverse a long-standing rule to allow trade associations to use payroll deduction for their PAC activities.
- Assisting a company in fending off government investigations and rebuilding its reputation following problems with a school program to attend the 2009 presidential inauguration.

BAR ADMISSIONS

District of Columbia
Virginia

COURT ADMISSIONS

U.S. Supreme Court
U.S. Court of Appeals for the D.C. Circuit
U.S. Court of Appeals for the Federal Circuit
U.S. District Court for the District of Columbia
U.S. Court of Appeals for the Seventh Circuit
U.S. District Court for the Eastern District of Virginia
U.S. Court of International Trade

EDUCATION

J.D., *high honors*, George Washington University Law School, 2001

Order of the Coif

Articles Editor, *The George Washington Law Review*

Imogene Williford Constitutional Law Award

B.A., *cum laude*, The George Washington University, 1997

Omicron Delta Kappa

MEMBERSHIPS

American Bar Association
Federalist Society, Free Speech and Election Law practice group

- In a pro bono matter, convincing the D.C. Court of Appeals to establish new procedural protections for child custody cases similar to those used in many other states.
- Successfully litigating a Hatch Act case before the Merit Systems Protection Board involving a school district's ability to re-hire a teacher previously dismissed for campaigning for public office.
- Reversing a decision by Immigration and Customs Enforcement to revoke a language school's accreditation.

ACTIVITIES

Mr. Jacobs is a frequent speaker and author on campaign finance and lobbying regulation issues. He serves on the board of the Human Rights Foundation, a nonprofit organization dedicated to preserving democracy and protecting human rights in the Americas.

PUBLICATIONS

Mr. Jacobs has authored or co-authored a number of articles on campaign finance issues, the Telephone Consumer Protection Act, the Telemarketing Sales Rule (both of which govern the national do-not-call list), using the fax for marketing purposes, unsolicited email.

SPEAKING ENGAGEMENTS

Mr. Jacobs has participated in a number of panel discussions and seminars on the impact of various communication and privacy regulations on trade and professional associations and other businesses. He has addressed GWSAE, ASAE, The Direct Marketing Association, and the Mortgage Bankers Association.



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INDUSTRIES

Credit Counseling and Debt
 Services
 Nonprofit Organizations and
 Associations

BAR ADMISSIONS

New York
 District of Columbia
 New Jersey

EDUCATION

J.D., Fordham University, 2008
 B.A., University of Pennsylvania,
 2005

Alexandra Megaris is an associate in Venable’s regulatory practice group, where she focuses on transactional, regulatory, and policy matters in a broad range of industries. Ms. Megaris assists clients with ongoing compliance with all aspects of state and federal political law, including campaign finance, lobbying disclosure, gift and ethics rules, and pay-to-play laws. She also advises clients on a variety of advertising, marketing, communications, and general business issues, including compliance with the FTC Act, the Children’s Online Privacy Protection Act, the Children’s Television Act, the Telephone Consumer Protection Act, and the FTC’s Telemarketing Sales Rule.

In addition, she assists clients with civil and criminal investigations before the United States Congress, the Federal Trade Commission, the Department of Justice, and various other federal and state agencies.

While in law school, Ms. Megaris interned for the Honorable Loretta A. Preska of the United States District Court for the Southern District of New York and for the United States Attorney’s Office for the Eastern District of New York.

PUBLICATIONS

- March 22, 2010, Texas Housing Counselors Are SAFE from Licensing Requirements, Credit Counseling Alert
- February 3, 2010, Supreme Court Decision Opens New Doors for Associations
- January 2010, Supreme Court Strikes Down Laws Banning Corporate Expenditures, Political Law Alert

SPEAKING ENGAGEMENTS

- January 20, 2011, "New Year's Resolution: Stay on Top of Lobbying & Political Giving Rules" webinar hosted by Venable LLP

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