

## To much fanfare, the House has adopted a series of changes to the rules governing gifts and travel

As has been widely reported, the new Congress has adopted a series of changes to the House Rules governing gifts and travel (as discussed below, changes to the Senate's rules may be forthcoming). This update is designed to alert you to the nature of these changes. It does not provide a full discussion of all of the applicable rules and the various exceptions to the rules governing gifts and travel.

### GIFT RULES

The changes to the gift rules include a provision banning gifts from registered lobbyists and agents of foreign principals and another provision that changes the way tickets to sporting events are valued.

**Gifts:** The prior gift rules prohibited any gifts worth \$50 or more from any source, unless there was an applicable exemption. Such exemptions included gifts given "on the basis of a personal friendship;" campaign contributions; contributions to legal expense funds; attendance at widely attended events; and training opportunities. Thus, members and employees were permitted to accept gifts worth up to \$49.99 from anyone, including lobbyists. They could accept gifts worth \$50.00 or more if they qualified under one of these exemptions (subject to a limit of \$250 on any one gift).

The new rules provide that members of Congress and their employees "may not knowingly accept a gift from a registered lobbyist or agent of a foreign principal or from a private entity that retains or employs registered lobbyists or agents of a foreign principal." This prohibition is subject to the same exemptions previously applicable to gifts, including gifts given "on the basis of personal friendship;" widely attended events; and campaign contributions (as well as campaign events). Accordingly, a lobbyist who does not have a personal friendship, is not conducting a widely attended event, or is not subject to one of the other exemptions cannot give a gift of any value to a member or employee.

Thus, for example, in the past a lobbyist who could not claim a personal friendship with a staff member could take that person to a lunch costing less than \$50. Now, that would be prohibited. However, if the lobbyist does have a personal friendship with the staff member, it will be permitted. Individuals other than lobbyists can still take a staff member to a lunch that costs less than \$50, even if there is no personal friendship.

It should be noted that there are specific rules – which have not changed from the previous rules – as to how to determine whether one has a personal friendship with a member or staff person. Factors include (1) the history of his relationship with the individual giving the gift, including any previous exchange of gifts between them; (2) whether the recipient has actual knowledge as to whether the individual who gave the gift personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (3) whether the recipient has actual knowledge as to whether the individual who gave the gift also gave the same or similar gifts to other members and employees.

Moreover, the rules require the employee to reject the gift if he or she has reason to believe that, under the circumstances, the gift was provided because of his or her official position and not because of the personal friendship.

Finally, it is worth noting that only “registered lobbyists” and “agents of foreign principals” are subject to the prohibition. To be a registered lobbyist, a person must, among other things, devote 20 percent of his or her time to lobbying activities. These activities include both direct contacts with members and staff and time spent preparing for such contact (e.g., conducting research or drafting issue papers). Thus, a lawyer for a client who performs primarily non-lobbying activities (e.g., most types of regulatory work, litigation, or compliance counseling) but who does occasionally lobby, is not required to register and therefore is not subject to the new prohibition.

**Sporting or Entertainment Events:** The new rules provide that a gift or a ticket to a sporting or entertainment event (e.g., a concert) must be valued at the face value on the ticket unless the face value printed on the ticket is not “the price at which the issuer offers that ticket for sale to the public.” This is designed to prevent tickets from having a price of \$49.99 printed on them even though they are sold for significantly higher prices. If there is no face value printed on the ticket, the ticket must be valued as the “highest cost of a ticket with a face value for the event.”

This change could have some impact if the ticket prices are above \$250, because a gift given out of personal friendship cannot be valued at more than that amount without prior approval from the Ethics Committee. Moreover, if the tickets are valued over \$50, it may be more difficult for an individual to base the gift of a ticket on the personal friendship exemption if he has not personally paid for the ticket (in the past, if the ticket was valued at under \$50 the exemption was not required). Tickets of any value may not be given by a registered lobbyist unless there is an applicable exemption.

## TRAVEL

**Private Jets:** The new rules prohibit members from using “personal funds, official funds, or campaign funds for a flight on a non-governmental airplane that is not licensed by the [FAA] to operate for compensation or hire.”

Previously, members could fly on private planes if they paid for the flight using either their personal, official, or campaign funds – depending on the purpose of the trip. The amount of the payment was set as the cost of a first class ticket for a comparable flight, or, in certain circumstances, the price of a charter flight. However, the House Ethics Manual recognized that in many cases, operators of private planes were prohibited from receiving compensation for travel by virtue of their license from the FAA. Thus, members were admonished to only reimburse companies for travel if the company was allowed to accept such payment (and to not accept travel if they could not make such a payment). The FAA’s regulations, however, provided a specific exemption for campaigns to reimburse companies who otherwise could not receive compensation for flights. Therefore, campaign flights were permissible in a broader range of circumstances than personal or official travel.

The new rule appears to codify the existing interpretation, barring members from flying on private jets unless the operators are permitted to receive compensation for the travel. The rule specifically changes campaign-related travel because the rules preclude sitting members of Congress from making use of corporate planes for campaign purposes. Candidates who are not yet in Congress would not be precluded from making use of such travel.

**Travel Expenses:** The current rules allow a private entity to pay for “necessary transportation, lodging, and related expenses for travel to a meeting, speaking engagement, fact finding trip, or similar event in connection with [a member or employee’s] duties as an officeholder.” These rules required members to approve travel by employees under these provisions and disclosure of the costs within 30 days after travel was completed. The new rules, which become effective March 1, 2007, create two different types of trips.

- First, reimbursement for travel is permitted “from a private source other than a registered lobbyist or agent of a foreign principal or a private entity that retains or employs registered lobbyists or agents of a foreign principal,” for trips of up to four days within the U.S. or seven days (excluding travel time) outside of the U.S. Moreover, lobbyists or agents of foreign principals are not permitted to accompany the traveler “on any segment” of the trip.

Colleges and universities are allowed to pay for such travel, even if they employ lobbyists or agents of a foreign principal, and even if a lobbyist or agent accompanies the member or employee on the trip.

- Second, lobbyists, agents of foreign principals, and those entities that employ lobbyists and agents of foreign principals are allowed to pay for travel “for attendance or participation in a one-day event (exclusive of travel time and an overnight stay).” The new rules allow the Committee on Standards of Official Conduct (commonly known as the House Ethics Committee) to create regulations that permit a “two-night stay when determined by the committee on a case-by-case basis to be practically required to participate in the one-day event.” Moreover, travel under this provision is only permitted if “any involvement of a registered lobbyist or agent of a foreign principal in the planning, organization, request, or arrangement of the trip is *de minimus* under rules prescribed by” the Ethics Committee. Finally, a lobbyist or agent of a foreign principal is not permitted to accompany the member or employee on “any segment” of the trip.

In addition, before accepting travel, the member or employee must provide the Ethics Committee with a written certification signed by the source of the travel (or, in the case of a corporate source, an officer), which specifies that the following four conditions are true:

- 1.) That the trip will not be financed in any part by a registered lobbyist or agent of a foreign principal;
- 2.) That the source either (1) does not retain or employ registered lobbyists or agents of a foreign principal; (2) is a college or university; or (3) certifies that the trip is for one-day and that no lobbyist or agent of a foreign principal planned or directed the trip;
- 3.) That the source will not accept from another source any funds earmarked directly or indirectly for the purpose of financing any aspect of the trip; and
- 4.) That the traveler will not be accompanied on any segment of the trip by a registered lobbyist or agent of a foreign principal, unless the trip is funded by a college or university.

Once the Ethics Committee promulgates its regulations, travelers will have to obtain prior approval of the committee for the trip.

Within 15 days of completion of the travel, the member or employee must submit a disclosure form that includes the costs involved and a description of the meetings or events attended. The former rule allowed 30 days for this disclosure and did not require the meeting or event to be described.

It is important to note that these rules apply to members of the House and their staffs. The Senate has introduced legislation to make modifications to its rules, but has done so in a format that requires action by both the House and Senate, and the signature of the President. Moreover, the Senate's proposed changes include a number of other proposals. Therefore, changes to the Senate rules are expected to take longer. Finally, these rules make no changes to the Lobbying Disclosure Act or the Federal Election Campaign Act (other than the prohibition on travel on private planes).

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