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Gift Rules for Congress

Both houses of Congress have specific regulations concerning gifts that may be accepted by Members and staff. The term “gift” covers any gratuity, favor, discount, entertainment, hospitality, loan, or other item having monetary value. In particular, the term includes 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.

A gift is deemed to be “accepted” if a Member or employee of Congress exercises dominion over or control of the gift. It does not matter whether it would be used personally by the individual or anybody else.

A gift to a family member or any other individual is considered a gift to the Member or employee of Congress if there is reason to believe the gift was given because of his/her official position.

GENERAL PROVISIONS

While gifts rules for the House and the Senate tend to be similar, the House on January 4th and 5th, 2007, adopted a new set of gift restrictions, especially as they apply to lobbyists. The Senate is likely to follow suit later this year.

Generally, a Member or employee of Congress may accept a gift only if it is unsolicited and the:

- Gift is valued at less than \$50;
- Aggregate value of gifts from one source in a calendar year is less than \$100, though no gifts with a value below \$10 count toward the \$100 annual limit;
- Gift is not cash or a cash equivalent (e.g. stocks and bonds). The only exceptions are gifts made by relatives and parts of an inheritance;
- Gift is not offered under circumstances that might be construed by reasonable persons as influencing the performance of their governmental duties;
- Tickets to sporting and entertainment events must be valued at face value and cannot be artificially lowered to meet the gift limits.

GIFT BAN FOR LOBBYISTS, LOBBYING ORGANIZATIONS AND AGENTS OF FOREIGN PRINCIPALS

In the House, more stringent gift rules apply to gifts and travel benefits provided by lobbyists, lobbying organization and agents of a foreign principal. **A Member or employee of the House may not accept a gift of any value from a registered lobbyist, an organization that employs a registered lobbyist or an agent of a foreign principal**, subject to certain exceptions described below. Furthermore, in most situations, the gift ban covers employees of organizations that employ lobbyists, even if the employee is not a lobbyist and pays for the gift with personal funds.

A 501(c)(3) charity may be subject to the gift ban if it employs or retains a lobbyist, except for the following situation. A lawmaker may accept free attendance at a charity event hosted by a 501(c)(3) charity, even if the event is not a widely-attended event and regardless of whether the charity employs a lobbyist. Local transportation and lodging may be included in “free attendance” so long as all of the net proceeds benefit the charity and the travel and lodging expenses are paid for by the charity.

In addition to the gift ban in the House applicable to lobbyists, lobbying organizations and foreign agents, the gift rules of both the House and the Senate have other specific prohibitions for gifts from registered lobbyists and foreign agents. Members and employees of Congress may not accept:

1. Anything provided by a registered lobbyist or a foreign agent to an entity that is maintained or controlled by a Member or employee of Congress;
2. Charitable contributions from lobbyists and foreign agents expressly solicited by a Member or employee (except in lieu of honoraria);
3. Contributions from lobbyists or foreign agents to a conference, retreat, or similar event, sponsored by or affiliated with an official congressional committee or caucus;
4. Contributions from lobbyists and foreign agents to legal defense funds of Members, officers and employees of Congress;
5. Gifts of personal hospitality unless lobbyists or agents of foreign principals qualify as personal friends; and
6. Reimbursements from lobbyists and foreign agents for officially-connected travel. Many of the same restrictions apply to lobbying organizations. (*see* “Summary of Congressional Travel Rules”).

These limitations make the gift rules very strict. However, numerous exceptions dramatically reduce the scope of the regulations. There are 24 exceptions to the gift rules in general, many of which also apply to the gift ban from lobbyists, lobbying organizations, and agents of foreign principals.

EXCEPTIONS TO CONGRESSIONAL GIFT RULES

A Member or employee of Congress may accept gifts that exceed the value limit for individual gifts and annual limit for gifts from one source if they are subject to one of **24 exceptions**. Most of these exceptions (unless otherwise noted) also apply to the gift ban for lobbyists, lobbying organizations and agents of a foreign principal. These exceptions are:

1. Anything for which the Member or employee pays the market value, or does not use and promptly returns. If it is not practicable to return the item to the giver because it is perishable, it may be given to an appropriate charity or discarded.

2. Political contributions reported under the law, or attendance at a fundraising event sponsored by a political organization.

3. Gifts from relatives. A “relative” means a father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the individual. Fiancés and fiancées are also subject to this exception, which is why engagement rings and other tokens are not counted towards the gift limit.

4. Anything, including personal hospitality, provided by an individual on the basis of a personal friendship. However, such gifts may not exceed \$250 in value unless the recipient gets approval from the respective Ethics Committee. Though the rule does not explicitly exempt gifts given because of a significant, personal, dating relationship, the Ethics Committees may grant a waiver permitting the recipient to accept such a gift.

5. Contributions or payments to an approved legal expense trust fund. Officeholders may establish this fund to pay for legal expenses associated with official congressional duties. The individual establishing the fund may make unlimited contributions. However, contributions to a legal defense fund maintained by a Member of the House are limited to \$5,000 per year and no lobbyist or foreign agent may contribute to such a fund. In the Senate, contributions to a legal defense fund are limited to \$10,000 and no lobbyist, foreign agent, congressional staff person, corporation or labor union may contribute to it.

6. Gifts from another Member or employee of Congress. Whereas Members of Congress are allowed to make any gifts to other Members, the situation related to congressional staff is more complicated because federal employees are prohibited by law from giving a gift to a superior without approval of the respective Ethics Committee. However, both Ethics Committees usually permit voluntary gifts given on specific occasions like marriage, retirement, birth of a child, birthday or anniversary. On the other hand, congressional employees are strictly prohibited from making contributions to the campaign of their supervising Member of Congress.

7. Food, refreshments, lodging, and other benefits that result from the outside business or employment of the Member, or employee, or his/her spouse. The benefits should be

customarily provided and not offered or enhanced because of the official position of the Member or employee. For example, the exception covers benefits customarily provided by a prospective employer in connection with bona fide employment discussions, or benefits provided by a political organization in connection with a fundraising or campaign event sponsored by the organization.

8. Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer. Such benefits are considered earnings from the previous employment rather than a gift. At the same time, neither the former employer nor the recipient may continue to contribute to the pension or the benefit plan.

9. Informational materials, such as books, articles, periodicals, audio or videotapes, sent to the office.

10. Awards or prizes won in contests open to the public. The group of competitors should be chosen on the basis of talent. However, the awards and prizes received under this exception must be disclosed as earned income in the annual disclosure statements.

11. Honorary degrees (and associated travel, food, refreshments, and entertainment) and other bona fide, non-momentary awards presented in recognition of public service. If the value of the award is more than \$250, the Member or employee of Congress must disclose acceptance of the award in the annual disclosure form. If the event where a cash award is bestowed is not open to public, the recipient may accept the honor of the award, but the proposed cash award should be given directly to a designated charity, unless the waiver is guaranteed by the respective Ethics Committee.

12. Donations of products from the home state that are intended primarily for promotional purposes. To be covered with this exemption, the gifts must be of minimal value to any individual recipient, come from producers or distributors of the Member's home state and be available to office visitors. However, a loan of art work from home state producers or distributors is not considered a gift.

13. Training in the interest of Congress. Training expenditures, including food and refreshments furnished to all attendees as an integral part of the training, are exempt from the gift limitations. However, the rules don't allow a Member or employee to accept reimbursement for transportation or lodging in connection with the training (but provision of local transportation is permitted).

14. Bequests, inheritances, and other transfers at death.

15. Any item whose receipt is authorized by the Foreign Gifts and Decorations Act, the Mutual Educational and Cultural Exchange Act, or any other statute. MECEA covers only gifts of travel funded by foreign governments. FGDA authorizes Members and employees to accept gifts of minimal value tendered as a souvenir or a mark of courtesy. Under the current regulations, the upper limit of value is \$100 for the Senate and \$260 for the House. In addition, FGDA allows the temporary acceptance of an otherwise impermissible gift if it would likely

cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States. Such gifts are only to be accepted on behalf of the United States. Within 60 days the gifts must be turned over to the Clerk of the House or the Secretary of the Senate for disposal. On the other hand, with the consent of the respective Ethics Committee the Member or employee may retain the gift for display in his or her office or other official use.

16. Anything paid for by the Federal government, or secured by the Government under a Government contract. State and local governmental agencies are not exempt from the gift restriction, or the gift ban if they employ a lobbyist. In addition, a Member or employee may accept gifts from Native American groups that are federally recognized.

17. Personal hospitality, other than from a registered lobbyist, lobbying organization or agent of a foreign principal. This exemption covers hospitality in any personal residence that an individual owns or leases under a lease unrelated to the individual's employment. Additionally, personal hospitality must be paid by the individual himself, not by a corporation or firm, even if the corporation or firm is wholly owned by the individual.

18. Free attendance at a widely attended event that is officially related to Congressional duties.

- An event is considered widely attended when at least 25 persons from outside Congress are expected to attend.
- The event should be open to members from a given industry or profession, or to a range of persons interested in an issue.
- Free attendance does not include entertainment collateral to the event, such as tickets to a sporting or some other purely recreational event.
- The exemption also does not cover food or refreshments that are not taken in a group setting with substantially all of the other attendees.
- A ticket to a sporting or recreational event that is not a charity must come within the gift limit of \$49.99 and the aggregate limit from the source of \$99.99 per year.

Even lobbyists, lobbying firms or foreign agents may sponsor a widely attended event.

19. Free attendance at a charity event, as long as the charity event is not sponsored or paid for by a registered lobbyist, lobbying organization or agent of a foreign principal. Even free attendance to a charity event provided by a legitimate sponsor that is substantially recreational may be accepted.

20. Opportunities and benefits that are offered because of the Member's or employee's membership in a group that is not defined on the basis of the employment with Congress. This exemption includes benefits or commercial loans available to the public or all

federal employees, reduced fees for participation in organization activities offered to all government employees by professional organizations, etc.

21. A plaque, trophy, or other item that is substantially commemorative in nature and that is intended solely for presentation. However, such items whose value exceeds \$250 must be listed on annual financial disclosure statements.

22. Anything for which a waiver is granted by the respective Ethics Committee. The waivers are granted in unusual cases and cover wedding gifts, gifts given because of a significant, personal, dating relationship, etc.

23. Food or refreshments of a nominal value offered other than as part of a meal, known as the “toothpick rule.” The Ethics Committees distinguishes the provision of “food” from the sharing of a “meal.” A reception where the attendees consume food or drink standing up, like a continental style breakfast where coffee and donuts are served, is not considered a meal and therefore is covered by the exemption. Generally, such reception food should avoid coinciding with lunch time.

The food sent to a congressional office for consumption by a group of the office’s employees (commonly known as the ‘pizza rule’) is subject to different regulations. In the Senate it is regarded as one gift to the Member of Congress and is subject to the \$49.99 per single gift limit and \$99.99 annual gift limit. This result may not be avoided by having the food divided into separate packages labeled with the names of individual staff members. In the House, however, the value of perishable food shall be allocated among the individual recipients and not to the Member. In the House, such meals may not be accepted from lobbyists, lobbying organizations or agents of a foreign principal.

24. An item of little intrinsic value such as a greeting card or T-shirt.

ETHICS TRAINING FOR MEMBERS AND EMPLOYEES OF CONGRESS

The congressional ethics committees provide regular ethics training seminars to all Members and employees of Congress, In the House, all employees are required to receive at least one hour of ethics training annually; officers and senior employees must receive at least two hours of ethics training annually. Training seminars are provided in class as well through video replays of live training sessions.

Since pre-approval for offering or receiving gifts is strongly encouraged, Members and employees of Congress, as well as the general public, may seek advice from the House ethics committee’s Office of Advice and Education at (202) 225-7103. Similar assistance is expected to be offered by the Senate ethics committee upon final approval of its new gift rules.

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