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Joan Claybrook, President

U.S. Senate Select Committee on Ethics  
The Hon. Barbara Boxer, Chairwoman  
The Hon. John Cornyn, Vice Chairman

January 17, 2008

Committee on Standards of Official Conduct  
The Hon. Stephanie Tubbs Jones, Chairwoman  
The Hon. Doc Hastings, Ranking Member

U.S. Office of Government Ethics  
Robert Cusick, Director

Dear Members and Ethics Officers:

On January 1, 2008, the *Los Angeles Times* published an article, entitled “Film Industry Lobbies Within a Movie Lobby,” by Jim Puzzanghera. The article asserted that the Motion Picture Association of America (MPAA) intends to continue its decades-old lobbying practice of providing executive branch officials, Members of Congress, and congressional staff members free food, drinks and screenings of unreleased feature films to “help Hollywood stay on the A-list of influential industries in the nation’s capital.” [See attached article, “Film Industry Lobbies Within a Movie Lobby.”]

Public Citizen submits these comments to the congressional ethics committees and the Office of Government Ethics (OGE) to highlight that such gifts to public officials from MPAA run afoul of the new congressional ethics rules adopted last year on January 4<sup>th</sup> and 5<sup>th</sup> by the House, and September 14<sup>th</sup> by the Senate, and may well contradict ethics guidelines for executive branch employees provided by OGE. We encourage you to issue appropriate guidance to MPAA and other lobbying organizations clarifying the applicability of the gift rules in this situation.

**A. “Dinner and a Movie” as a Lobbying Tool**

The *LA Times* article describes how the late Jack Valenti, former CEO of the Motion Picture Association, realized that the industry could bolster its influence with the federal government by adopting a popular lobbying tool used by other lobbying organizations: providing free meals and entertainment to lawmakers. In 1969, MPAA built a 70-seat theater two blocks from the White House to provide exclusive screenings of unreleased films to administration officials, lawmakers and Supreme Court Justices along with movie industry executives, lobbyists and celebrities. The free screenings were always accompanied with free food and drink. The purpose of the screenings was to develop relationships that could pay off when the industry needed a favor from government.

“Washington is a town where you gain power through personal relationships, and this screening room is one of those places where you develop those personal relations,” said John Feehery in the *LA Times* article, a former MPAA executive who is now a registered lobbyist.

“It presents this great social event,” added one White House staffer, who did not want to be named in the article.

The *Times* article explains that the new MPAA Chief Executive, Dan Glickman, has acknowledged that he intends to continue using the lobbying tool in much the same way, despite the new ethics rules. MPAA plans on holding about 10 such free screenings a year, along with additional screenings in the same theater by other businesses that lobby on Capitol Hill, such as Paramount Pictures, Warner Brothers and Walt Disney Company.

Glickman is planning on making a few adjustments in an ostensible effort to qualify the free screenings under the “widely attended event” exception to the new ethics rules. These adjustments include: (i) serving a menu of appetizers and drinks, rather than a formal dinner; (ii) inviting at least 25 people from outside Congress, such as industry executives and celebrities; and (iii) showing a 5-minute trailer film on a subject of concern to the industry such as movie pirating for “educational value,” before screening the full-length feature film for entertainment.

## **B. The “Widely Attended Event” Exception to the Congressional and Executive Branch Gift Rules**

On January 4<sup>th</sup> and 5<sup>th</sup>, 2007, the House adopted a set of stringent new ethics rules which, in part, ban gifts (except for gifts of “nominal” or “little intrinsic” value) from lobbyists, lobbying firms and organizations or businesses that employ them to Members of Congress or their staffs. The Senate followed suit when the “Honest Leadership and Open Government Act of 2007” (S. 1) was signed into law on September 14, 2007. Generally, “nominal” or “little intrinsic” value has been defined by the ethics committees as comprising token items such as a baseball cap or t-shirt. The ban on gifts from lobbyists and lobbying organizations is subject to 24 exceptions, 23 of which are shared by both the House and the Senate. [See attached summary, “Gift Rules for Congress.”]

*Widely attended event exception.* The most relevant exception to the gift rule for this discussion is the “widely attended event” exception. Members of Congress and their staff may continue to accept free attendance, including food and refreshments, at a “widely attended event,” regardless of the sponsor, provided that each of the requirements set forth in the ethics guidelines is satisfied. The widely attended event provision applies to events such as conventions, conferences, dinners, and other similar events where (1) the event is 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* there is a reasonable expectation that at least 25 persons will attend, other than Members, officers, or employees of Congress; (2) the invitation is provided by the sponsor of the event; and (3) the Member or employee reasonably determines that attendance at the event is related to his or her official duties.<sup>1</sup>

<sup>1</sup> Committee for Standards of Official Conduct, Memorandum for all Members, Officers and Employees: Gift rule amendment at the beginning of the 110<sup>th</sup> Congress (June 14, 2007).

The defining characteristic of an event falling within this exception to the gift ban is that the event is some type of business or educational function. The event must focus on a legislative or regulatory issue of concern to the sponsor of the event that would make attendance at the event pertinent to the official duties of the public officials invited. Appropriate examples would include an industry association conference, an educational forum, a panel discussion or a speaking engagement. A social or entertainment event would not qualify for the widely attended event exception to the gift ban, even if it were widely attended.

Members of Congress and staff may accept from a lobbying organization full dinners, appetizers and refreshments in a group setting served to all other attendees, as well as waivers of conference fees, free local transportation and any instructional materials provided at an event that qualifies for the widely attended event exception to the gift ban. “Free attendance” at a widely attended event, however, does not include entertainment collateral to the business or educational function of the event,<sup>2</sup> such as a golf outing, tickets to a sporting event, or a movie shown for entertainment.

The ethics rules regarding acceptance of gifts are somewhat different for executive branch employees, but still applicable to any business, educational or social function. [See attached summary of “Gift Rules for the Executive Branch.”] Generally, an employee of the executive branch may accept a gift only if it is unsolicited and valued at \$20 or less per gift, with an aggregate yearly limit of less than \$50 for all gifts from a single source.<sup>3</sup> An executive branch employee may accept free attendance at all, or appropriate parts, of a widely attended event, if it will further agency programs and operations.<sup>4</sup> The determination of whether participation in the widely attended event will further the agency’s purpose should be made based upon several factors, such as (i) the importance of the event to the agency, (ii) the nature and sensitivity of any pending official matters affecting the interests of the sponsor of the event, (iii) the significance of the official’s role in the event, such as whether the official is speaking at the event, (iv) the purpose of the event, (v) the identity of other expected participants, and (vi) the total market value of the gift of free attendance.<sup>5</sup> Free attendance at a social function cannot be accepted by an employee of the executive branch if it is sponsored by a “prohibited source” – an entity with business pending, or likely to be pending, before the employee’s agency.<sup>6</sup>

As in the case of the congressional ethics rules, the gift restriction for employees of the executive branch is intended to prohibit the acceptance of free attendance, meals, entertainment and other gifts from lobbying organizations for events that do not primarily serve an educational function or otherwise further the purpose of the agency.

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<sup>2</sup> Id.

<sup>3</sup> 5 CFR 2635.204(a).

<sup>4</sup> 5 CFR 2635.204(g)(2).

<sup>5</sup> 5 CFR 2635.204((g)(3).

<sup>6</sup> 5 CFR 2635.204(h).

### C. Free Screenings of Feature Films by MPAA Violate the Ethics Rules of Congress and the Executive Branch

MPAA’s old lobbying tool of “dinner and a movie” for employees of the executive branch, Members of Congress, and congressional staffers – even when “dinner” is modified to include only appetizers, and a brief “educational” trailer is also shown before the movie – violates the current gift ban applicable to the House and Senate, and normally will violate the gift restriction applicable to the executive branch.

Whether dinner or a menu of appetizers is served at such a function is irrelevant under the widely attended event exception to the gift rules.<sup>7</sup> The critical determinant of whether the widely attended event exception applies is whether the MPAA-sponsored event is a business or educational function that focuses on a legislative or regulatory matter relevant to the official duties of the public officials in attendance.

The MPAA’s free screenings of feature films are no such thing. The feature films – which are the key attraction to the MPAA-sponsored events, along with mingling with Hollywood celebrities – neither contribute to, nor constitute, a business or educational function relevant to a legislative or regulatory concern. They merely provide entertainment. Any effort to disguise these social events as educational in nature by showing a brief trailer on a legislative issue fails to transform this event into a trade association conference or other business or educational function permissible under the gift rules. Regardless, the feature film itself is entertainment collateral to any business or educational function. Indeed, it would be perverse to suggest that providing this valuable gift is permissible simply because the MPAA briefly lobbies attendees by offering its point of view on an issue such as film piracy while providing the gift. And even if the trailers MPAA screens are genuinely educational rather than advocacy pieces, a few minutes of education in an evening devoted to food, drink, and feature-length entertainment films does not change the basic character of the event. To suggest otherwise is tantamount to arguing that members of the public attend motion pictures primarily to see the coming attractions.

Dinner and a movie is a big social event for most Americans. Similarly, the food, drinks and free screenings offered by MPAA as part of its lobbying strategy are not educational seminars; they are “dates” between the industry’s lobbyists and lawmakers. These “dates,” when provided courtesy of Hollywood, violate the congressional and executive branch ethics rules.<sup>8</sup>

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<sup>7</sup> The distinction between offering a sit-down dinner and serving appetizers or finger food is relevant to whether a different exception — the exception for meals of nominal value — applies, but that exception, even if applicable to the food and drinks served at the MPAA events, would not cover the provision of valuable free *entertainment*; thus, the legitimacy of MPAA’s events turns on whether they meet the criteria of the widely attended event exception, which are in no way tied to the nature of the food served.

<sup>8</sup> We also question whether, merely by inviting at least 25 industry insiders and celebrities in addition to covered officials, MPAA meets the requirements that a “widely attended event” either be *open* to individuals from *throughout* a given industry or profession, or be attended by a *range* of persons interested in a given matter. MPAA’s handpicked audiences of its friends and those it seeks to influence hardly seem to satisfy these requirements. However, given that the predominantly entertainment nature of the events disqualifies them because they are insufficiently related to the performance of official congressional duties or executive agency functions, this question need not even be reached.

Public Citizen requests that the congressional ethics committees and OGE provide our public servants, as well as MPAA and any other lobbying organization that plans on giving similar gifts to public officials, clear and appropriate guidance concerning the requirements of the ethics rules as applied to these entertainment events.

Respectfully Submitted,

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Public Citizen's Congress Watch

Craig Holman, Ph.D.  
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## Attachment A: Los Angeles Times

# Los Angeles Times

<http://www.latimes.com/entertainment/news/business/newsletter/la-fi-mpaa31dec31,1,3063195.story>

*From the Los Angeles Times*

## ENTERTAINMENT

# Courtship starts with free film screenings

A-listers in politics and government are in MPAA's audience.

By Jim Puzzanghera

Los Angeles Times Staff Writer

December 31, 2007

WASHINGTON — The previews you see in movie theaters are approved for all audiences by the Motion Picture Assn. of America. But the trade group for the major Hollywood studios saves one type of sneak peek for a more select crowd.

At its exclusive 70-seat theater two blocks from the White House, the MPAA offers free movie screenings to its best friends in Washington -- and those it wants to join the list. The screenings are a long-standing lobbying tool, refined to deal with new congressional ethics rules, that help Hollywood stay on the A-list of influential industries in the nation's capital.

"We do have an asset that most people don't have: the power and glamour of entertainment and film," said MPAA Chief Executive Dan Glickman. "We might as well use it."

A ticket to the cozy theater, which underwent major renovation last year, is a coveted invite. The guest list usually is punctuated with big names from government and politics, who can be as much a draw as the movie itself for the young aides mixed into the crowd. Well-known senators including Orrin G. Hatch (R-Utah) and Patrick J. Leahy (D-Vt.) -- a movie buff who has had cameos in two Batman films -- have been spotted there, along with Supreme Court justices, administration officials, think tank scholars, foreign dignitaries and celebrity journalists.

"It presents this great sort of social event," said one White House staffer, who did not want to be named publicly talking about a perk of the job.

Before a recent screening of "Charlie Wilson's War" for the Washington press corps, for example, CNN's Wolf Blitzer greeted CBS' Bob Schieffer. "Fox News Sunday" host Chris Wallace stood near the shiny new black granite bar in the MPAA lobby. Even the glasses of wine at the open bar had a Hollywood connection -- the Chardonnay and Cabernet Sauvignon came from director Francis Ford Coppola's Napa Valley winery. Under the frozen gazes of Fred Astaire, Ginger Rogers and other Hollywood legends, Glickman served up handshakes as waitresses offered shrimp spring rolls with sweet chile sauce and triangles of quesadillas filled with Camembert cheese, mango and red onion. Soon everyone moved to the dining room for a buffet featuring roasted beef tenderloins and grilled salmon fillets.

Enjoying some free food and drink before getting an early peek at a major motion picture, these Washington insiders are Hollywood's dates for a night. Those relationships can pay off when the major movie studios need a favor.

"Washington is a town where you gain power through personal relationships, and this screening room is one of those places where you develop those personal relationships," said John Feehery, a former MPAA executive who now runs his own government affairs and public relations firm in Washington.

It's difficult to make direct connections between the relationships nurtured at the screenings and a specific favorable bill passed or unfavorable trade deal blocked, and MPAA officials aren't eager to trumpet them. The idea is to gently woo influential people with what Feehery calls "soft lobbying."

Feehery recalled a screening last year of "The Lost City," a film set in Cuba during Fidel Castro's rise to power. The director and star, Cuban American Andy Garcia, was there, and one of the guests was Sen. Mel Martinez (R-Fla.), who was born in Cuba. The event helped the MPAA build a relationship with Martinez, who had been elected in 2004, he said.

"If you do it right, you kind of create a hospitable atmosphere where people are enjoying the movie and they start getting the

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message this is an experience they want to protect," he said.

Trade associations traditionally try to use their products to win friends in Washington.

The Wine Institute, which represents California vintners, hosts an annual reception featuring fine wines at the Library of Congress for the state's congressional delegation. The Recording Industry Assn. of America invites lawmakers, staffers and other officials to its Washington headquarters for mini-concerts by trendy musicians. And the National Cable Television Assn. has its own 105-seat screening room for major cable programs, such as the final episode of "The Sopranos."

### **He made lobbying an art**

Jack Valenti raised the movie screening to a lobbying art during his 38 years as CEO of the MPAA. He had the theater built when the MPAA's headquarters was constructed in 1969, and used the lure of major motion pictures to make it a desired destination. But he often said he never directly lobbied at the events.

"After introducing a movie he would close it the same way every time, with the perfect blend of Hollywood and Washington: 'If you like this film, go out and tell everyone you know. If you don't, don't leak it all over town,' " said Matt Gerson, a lobbyist for Universal Music Group, who worked at the MPAA from 1989 to 1995. "Every time he said it, it got a laugh."

Yet Valenti explained in his memoir, "This Time, This Place: My Life in War, the White House, and Hollywood," released shortly after his death this year, how the screenings helped the MPAA. At one, he found himself seated during dinner between the two young grandsons of former Sen. Jesse Helms (R-N.C.). Valenti regaled them with stories about the movies and his World War II combat. The next morning, Helms -- a conservative with little affection for Hollywood -- called to thank him.

"Would you agree to have lunch with me soon in the Senate dining room?" Valenti recalled Helms asking. They struck up a friendship. When South Korea tried to put film quotas in a trade deal with the United States in 1998, Valenti asked Helms, who was the chairman of the Senate Foreign Relations Committee, to block the deal because it would harm one of America's leading exports. Helms agreed, Valenti said.

Glickman uses the screenings in the same relationship-building way.

"The main value is goodwill," he said. "People come here, they relax. . . . They can sit next to people they may be fighting and screaming with, and they come here and they don't fight and scream. They sometimes will bring their families. And it makes them feel good about this product."

Part of that feel-good message is avoiding highly controversial films with a lot of violence or nudity, Glickman said. But the MPAA, which holds about 10 screenings a year, isn't the only one using the theater. It's booked about four nights a week, with the group's member companies -- Paramount Pictures, Sony Pictures, 20th Century Fox, Universal Pictures, Walt Disney Co., and Warner Bros. -- using it for screenings of their films for critics and other guests.

### **Ethics rules come into play**

Although the MPAA's goal of the screenings is the same as under Valenti, Glickman has made some changes.

Some were spurred by new congressional ethics rules signed into law in September designed to curb the influence of lobbyists. The MPAA no longer serves dinner when lawmakers or their staffers attend, keeping the menu to just appetizers to avoid complex rules for free meals. Entire committees can no longer be wooed, as the MPAA must invite at least 25 people from outside of Congress to meet the definition of a "widely attended event," which is allowed under the rules.

The MPAA also shows a short film about the industry's economic effect or movie piracy to provide an educational component.

But some nonpartisan advocacy groups say the free screenings should end because they are improper gifts to lawmakers and their staffs.

"They're intended to lure in a lawmaker or a staffer so the lobbyist can sit down with them one-on-one and the appreciative lawmakers will lend a very favorable ear," said Craig Holman, a lobbying expert at Public Citizen. "That's the kind of influence peddling . . . the new ethics law is intended to stop."

But the show goes on at the MPAA -- and in upgraded style.



After more than three decades, the theater and lobby were looking "frayed and a little ragged," Glickman said. "You'd lean back and you'd lean back into the other people's laps," he said of the old red velour theater seats.

So the MPAA spent about \$100,000 to refurbish the theater last year. It now features chocolate-brown crushed velour seats and curtains a warm shade of cafe au lait. The screening room was closed for several months this year before reopening in October as the MPAA updated the lobby and the rest of the building's first floor, giving it a more modern look by softening the colors. They plan to add a row of flat-panel TVs in the large living room, just off the bar area.

It's all to showcase the movies -- and make government officials feel good about the companies that make them.

"We're in the business of producing something that makes people smile and happy," Glickman said, "and it's good that we show this off."

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## Attachment B:

# Summary of the 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, forbearance 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.<sup>9</sup>

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.<sup>10</sup>

A gift to a family member or any other individual based on the recipient’s relationship with a Member or employee of Congress is considered a gift to the Member or employee if is given with the knowledge and acquiescence of the Member or employee and there is reason to believe the gift was given because of his/her official position.<sup>11</sup>

## General Provisions

While gifts rules for the House and the Senate tend to be similar, a few differences do exist. In 2007, both houses adopted sweeping bans on gifts from lobbyists and lobbying organizations. The House, on January 4th and 5th, 2007, adopted its new set of gift restrictions in the first days of the 110<sup>th</sup> Congress through rules changes. The Senate eventually followed suit upon adoption of the full lobbying and ethics reform legislation (S. 1) when it was signed into law on September 14, 2007.

Generally, for gifts from non-lobbying entities, a Member or employee of Congress may accept a gift only if it is unsolicited and the following conditions apply:<sup>12</sup>

- 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;
- 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 these limits. In the Senate, such food 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. **Importantly, in both houses of**

<sup>9</sup> “What is a Gift?” Senate Ethics Manual 25.

<sup>10</sup> “The Gift’s Rule,” Senate Ethics Manual 22; “Gift Highlights,” Rules of the U.S. House of Representatives on Gifts and Travel: 106<sup>th</sup> Congress, 2<sup>nd</sup> Session, April 2000.

<sup>11</sup> “Who is Restricted?” Senate Ethics Manual 25.

<sup>12</sup> Standing Rules of the Senate: Rule XXXV- Gifts (2007); Rule XXV, Limitations on Outside Earned Income and Acceptance of Gifts, Rules of the House of Representatives (2007).

**Congress, such meals may not be accepted from lobbyists, lobbying organizations or agents of a foreign principal.**

- 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 or in the absence of a face value, at the value of a ticket with the highest face value for the event.

**Gift Ban for Lobbyists, Lobbying Organizations and Agents of Foreign Principals**

The newest and 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 and Senate may not accept a gift of any value from a registered lobbyist, a private entity that retains or employs a registered lobbyist (“lobbying organization”) or an agent of a foreign principal,** subject to certain exceptions described below.<sup>13</sup> Furthermore, in most situations, the gift ban covers employees of organizations that employ lobbyists, even if the employee is not a lobbyist.

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

1. Anything provided by a registered lobbyist, lobbying organization or a foreign agent to an entity that is maintained or controlled by a Member or employee of Congress;
2. Charitable contributions from lobbyists, lobbying organizations and foreign agents expressly solicited or recommended by a Member or employee (except in lieu of honoraria);
3. Contributions from registered lobbyists, or foreign agents to a conference, retreat, or similar event, sponsored by or affiliated with an official congressional committee or caucus (though such events sponsored by private sources may be financially supported by lobbying entities or foreign agents, subject to other gift and travel restrictions given below);
4. Gifts of personal hospitality from registered lobbyists or agents of a foreign principal; or if the Member or employee has reason to believe that the hospitality was provided because of his or her official position.
5. Reimbursements from lobbyists and foreign agents for officially-connected travel. Lobbying organizations are subject to strict restrictions on sponsoring travel.

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**

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<sup>13</sup> New Rules for Lobbyists and Lawmakers: A BNA guide to the new “Honest Leadership and Open Government Act” and other rules changes by the 110<sup>th</sup> Congress, 8 Aug 2007.

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**, 23 of which are shared by both the House and the Senate. Most of these exceptions (unless otherwise noted) also apply to the gift ban for lobbyists, lobbying organizations and agents of a foreign principal.

The two most important exceptions to the gift rule, especially the ban on gifts from lobbyists, lobbying organizations or foreign agents, are:

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

- An event may qualify for the widely attended exception if it serves primarily a business or educational function and it is open to members from a given industry or profession, or to a range of persons interested in the issue at hand.

An event is considered widely attended when at least 25 persons from outside Congress are expected to attend.

- Free attendance does not include entertainment collateral to the event, such as tickets to a sporting or some other purely recreational event. A gift of a ticket should be valued at the face value of the ticket, or at the highest cost of a ticket with a face value for the event. The face value is how much the ticket is for sale to the public. A ticket holder can try to persuade the Select Committee on Ethics in advance of the event that a no-face value ticket is equivalent in value to a less expensive ticket. It must be based on “written and independently verifiable information” relating to seat location, access to parking, food and refreshment, and “venue areas not open to the public.”
- Members and staff may accept full dinners as part of the free attendance at a widely attended event, if the food and drink are taken in a group setting with substantially all of the other attendees.

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

**2. Food or refreshments of a nominal value offered other than as part of a meal,** known as the “toothpick rule.”

Under this exception to the gift ban, the Ethics Committees distinguishes the provision of “food” from the sharing of a “meal.” A reception or social event where the attendees consume appetizers and drinks, or 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.

*Additional exceptions to the gift rule include:*

- 3. 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.

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

**5. 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. A gift to a relative is considered a gift to the employee if it is given with knowledge and acquiescence of the employee, and the employee has reason to believe the gift was given because of the official position of the employee.

**6. 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. Employee of the House may not accept a gift the value of more that \$250 on the basis of the personal friendship exception unless the Committee on Standards of Official Conduct issues a written determination that such exception applies. A determination is not required for gifts on the basis of the family relationship exception.

**7. 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.

**8. 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.

**9. 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.

**10. 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.

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

**12. 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. This exception does not apply to sponsorship of events “honoring” Members of Congress at the national party conventions, which are prohibited for lobbyists, lobbying organizations or foreign agents.

**13. Honorary degrees (and associated travel, food, refreshments, and entertainment) and other bona fide, non-momentary awards presented in recognition of public service, subject to the special restrictions on travel and events honoring Members at national party conventions applicable to lobbyists, lobbying organizations or foreign agents.** 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.

**14. 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.

**15. 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).

**16. Bequests, inheritances, and other transfers at death.**

**17. 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 accepting, but not retaining, a gift of more than the defined the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States. Such gifts are 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.

**18. 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.

**19. 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.

**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. An item of little intrinsic value such as a greeting card or T-shirt.** Though no monetary value is set to determine items of little intrinsic value, less than \$10 could be used as a general guideline.

**House Exception #24. 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.** Free attendance to a charity event provided by a legitimate sponsor that is substantially recreational may not be accepted.

**Senate Exception #24. Free attendance at a constituent event, as long the event is sponsored by constituents of, or a group consisting primarily of constituents of the senator, or senator by whom the employee is employed.** The event must be attended primarily by a group of at least five constituents and may not be attended by registered lobbyists.

### **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. Ethics training for Members of the House is optional. Training seminars are provided in class as well through video replays of live training sessions. The Ethics Committee will offer annual ethics training to each Member, Delegate, Resident Commissioner, officer, and employee of the House which



will involve the classes of employees for whom the committee determines such training to be appropriate. A new officer or employee of the House will receive training no later than 60 days after beginning service to the House. No later than January 31<sup>st</sup> of each year, each officer and employee of the House shall file a certification with the committee that the officer or employee attended ethics training in the last year as established.

In the Senate, the Select Committee on Ethics conducts and ethics training and awareness program for Senators and staff of the Senate. Ethics training for Senators is mandatory. New Senators and staff must take the training within 60 days of employment or service; Senators and staff employed on the date of enactment of must take the training within the following 165 days.

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 offered by the Senate ethics committee at (202) 224-2981.



## Attachment C:

# Gift Rules for the Executive Branch

Employees of the Executive Branch are subject to regulations related to gifts that they may accept.<sup>14</sup> The term “gift” refers to any gratuity, favor, discount, entertainment, hospitality, loan or other item having monetary value. In particular, the term includes services as well as gifts of training, transportation, local travel, lodgings 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 ‘**solicited**’ 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.<sup>15</sup>

### General Provisions

In general, an employee of the Executive Branch may accept a gift only if it is unsolicited and the:

- Favors or benefits are not offered under circumstances that might be construed by reasonable persons as influencing the performance of their governmental duties;<sup>16</sup>
- Gift is not cash or a cash equivalent (e.g. stocks and bonds);<sup>17</sup>
- Gift is valued at \$20 or less;<sup>18</sup> and the
- Aggregate value of gifts from one source in a calendar year is less than \$50.<sup>19</sup>

These limitations seem to make Executive Branch gift rules very strict. However, numerous exceptions reduce the scope of regulation dramatically.

### Exceptions to Executive Branch Gift Rules

An employee of the Executive Branch may accept gifts that exceed the \$20 value limit for individual gifts and \$50 annual limit for gifts from one source if they are subject to one of 12 exceptions:<sup>20</sup>

1. **Anything for which the 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.

<sup>14</sup> 5 CFR 2635.203 - 205 Revised as of Jan 1, 2005

<sup>15</sup> 5 CFR 2635.204(d)

<sup>16</sup> 5 U.S.C. 7353 (b)(2)(B)

<sup>17</sup> 5 CFR 2635.204(a)

<sup>18</sup> 5 CFR 2635.204(a)

<sup>19</sup> Id.

<sup>20</sup> 5 CFR 2635.204 (a – f)

2. **Gifts based on a personal or family relationship.** Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.
3. **Discounts and similar benefits that are not directly related to government employment.**
4. **Awards (other than cash) and honorary degrees with an aggregate market value of \$200 or less.** If aggregate market value is in excess of \$200, acceptance is contingent upon the written determination by an agency ethics official.
5. **Meals, lodgings, transportation and other benefits that result from the outside business or employment of that employee or his/her spouse.** The benefits should be customarily provided and not offered or enhanced because of the government employee's position.
6. **Gifts in connection with political activities permitted by the Hatch Act.** An employee may take an active part in political management or in political campaigns. Meals, lodgings, transportation, and other benefits in connection with such active participation may be accepted.
7. **Admission into widely attended gatherings.** An employee may accept free admission to represent the agency as a speaker or panelist by the sponsor only. If the event is considered to be in the best interests of that agency, the employee may accept free attendance as a gift from a person other than the sponsor of the event only if there will be more than 100 persons expected to attend and the free admission has a market value of \$285 or less.
8. **Social invitations from persons other than prohibited sources or where there is no admission charge.** An employee may accept food, refreshments and entertainment, not including travel or lodgings, at a social event attended by several person, as long as the sponsor of the social event does not have, and is not likely to have, official business pending before the employee's agency.
9. **Meals, refreshments and entertainment in foreign areas.**
10. **Gifts to the President and Vice President.** Both offices may accept any gift on his own behalf or on behalf of any family member, provided that such acceptance does not violate conflict of interest or anti-bribery laws,<sup>21</sup> or the Constitution of the United States.
11. **Gifts authorized by supplemental agency regulation.** An employee may accept any gift if it is specifically authorized by a supplemental agency regulation.
12. **Gifts accepted under specific statutory authority.**

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<sup>21</sup> Sec. 2635.202(c)(1) or (2), 18 U.S.C. 201(b) or 201(c)(3)