



CRS Report for Congress

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

Jack Maskell
Legislative Attorney
American Law Division

Summary

On January 4, 2007, the House adopted new internal House Rules to prohibit the receipt of most gifts by Members and staff from lobbyists, agents of a foreign principals, and certain organizations that employ lobbyists or foreign agents. In addition, the new House Rules will put into place by March 1, 2007, many more restrictions and requirements concerning the acceptance of travel expenses for “officially connected” travel by Members and staff from outside private sources, specifically to further restrict and limit the participation and involvement of lobbyists, foreign agents, or their clients in such travel events, and to provide for more transparency and disclosures of any such travel.

With the adoption of H.Res. 6 on January 4, 2007, the House of Representatives amended its internal Rules to apply greater restrictions, more transparency, and further regulation to the acceptance by Members and staff of “gifts” from private, outside sources. The House first adopted the Rules that were in place in the 109th Congress and then added several new restrictions and limitations to those Rules for the 110th Congress.¹

Under the new Rules of the House, in a similar manner as under the former Rules, no gifts from outside, private sources may be accepted by Members and staff of the House unless expressly permitted by one of the provisions of the House Rules. Thus, gifts from all outside, private sources continue to be restricted and limited, with several important exceptions. Gifts with a value of under \$50 may still be accepted, other than from lobbyists and foreign agents and their clients; gifts from relatives and personal friends may continue to be accepted and exchanged. In addition, the 23 specific exceptions to the gift prohibition in the House continue to be in force, allowing the receipt of such things as bona fide noncash awards; prizes; plaques and trophies; inheritances; food or

¹ H.Res. 6, January 4, 2007, Sections 101, 201-210; 153 *Congressional Record* H19-H38 (daily ed. January 4, 2007).

refreshments of nominal value offered other than as part of a meal; items of “nominal value,” such as greeting cards or baseball caps; free attendance at a “widely attended” gathering (including a meal served to all attendees); personal hospitality of an individual (other than a registered lobbyist or foreign agent); expenses for training in certain circumstances; things paid for by the federal, state, or local government; and lawful political contributions, as well as expenses for political events provided by a political organization.² The exception for reasonable and necessary expenses for some “officially connected” travel is also still provided, and Members and staff may continue to accept such travel expenses from private sources, other than from lobbyists, foreign agents, and some private entities employing them, with several additional restrictions and regulations, and more detailed and fuller disclosure of any such travel.

Gifts from Lobbyists — De Minimis Gifts

The new Rules institute immediately a new restriction on accepting most gifts from registered lobbyists, agents of foreign principals, and private organizations that employ lobbyists or foreign agents.³ As noted, under the former House Rules, as well as under the new Rules, there is a de minimis exemption allowing for gifts of under \$50 from private sources.⁴ This exemption under the former Rules had allowed Members and staff to receive gifts, such as meals, bottles of liquor or wine, or tickets for entertainment, that did not exceed \$49.99, even if such gifts had been from a lobbyist. Under the new rules, however, the de minimis exception for gifts will no longer apply if the gift is from a “registered lobbyist or agent of a foreign principal or from a private entity that retains or employs registered lobbyists or agents...”⁵

One of the principal consequences of the Rules change would be to prohibit the receipt by a Member or employee of the House of most meals paid for by a lobbyist, foreign agent, or their clients (i.e., meals that had been accepted under the \$50 de minimis exception). In addition, Members and staff would no longer be able to accept tickets to sporting events or entertainment venues provided by a lobbyist, foreign agent, or their client, unless the Member or staff employee pays full face value for the ticket.

The new House Rules, although eliminating this \$50 de minimis exception for gifts when the gifts are from lobbyists, foreign agents, and their clients (thus closing the largest exemption for gifts from lobbyists), still do allow the acceptance of some gifts under the other exceptions to the gifts rule, even when those gifts are from lobbyists.⁶ Thus, if a lobbyist is a relative of the Member or staffer, a gift may continue be accepted from such

² House Rule XXV, clause 5(a)(3)(A) - (W).

³ A registered lobbyist is one registered under the Lobbying Disclosure Act of 1995, as amended (see now 2 U.S.C. § 1601 *et seq.*), and an agent of a foreign principal is one defined under the Foreign Agents Registration Act, as amended (see now 22 U.S.C. § 611 *et seq.*).

⁴ House Rule XXV, clause 5(a)(1)(B).

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

⁶ The new Rule bans gifts from lobbyists, foreign agents, or their private clients “except as provided in subparagraph (3) of this paragraph” (House Rule XXV, clause 5(a)(1)(A)(ii)). The subparagraph (3) cited (i.e., House Rule XXV, clause 5(a)(3)), provides 23 specific exceptions to the gift prohibition, many of which would apply even if the donor were a lobbyist.

person under the current Rule exceptions.⁷ Similarly, gifts that are provided to a Member or staffer “on the basis of a personal friendship” may continue to be accepted and exchanged, even if the personal friend is a lobbyist or foreign agent.⁸ Not to create too large a loophole in the House Rules by merely allowing a Member or staffer to declare virtually anyone a personal friend, the House Rules apply some objective criteria to assist in determining when a gift is made “on the basis of a personal friendship,” including the history of gift exchanges between the Member or staffer and the donor of the gift, whether the “friend” paid for the gift personally and did not seek a tax deduction for the gift, and whether the donor made similar gifts to other Members or staff.⁹ Gifts may also be accepted when they meet the exception for gifts of “nominal value,” such as “a greeting card, baseball cap, or a T-shirt,”¹⁰ and when “food or refreshments of a nominal value” are offered other than as part of a meal, such as when a Member or staff employee is attending a reception or party (even one financed by a lobbyist, foreign agent, or their client organizations).¹¹

Gifts of Tickets — Valuation

When Members and staff *are* allowed to accept gifts of tickets and passes to sporting or entertainment events under the \$50 de minimis exception (i.e., when given by a private source who is not a registered lobbyist, a foreign agent, or a client organization, and when the value of the ticket is less than \$50), the “value” of the ticket or pass will now be determined by the actual “face value” printed on the ticket. When there is no face value on the ticket, such as in the case of passes or admission tickets to certain luxury boxes or suites in some stadiums or arenas, then the value of such pass or ticket will now be the highest face-value price of a ticket to the same event.¹²

Gifts of Travel Expenses for “Officially Connected” Events

Under the former Rules of the House, a Member or staff employee had been permitted, within certain restrictions and limitations, to accept reasonable and necessary travel expenses from private sources when the travel was for purposes connected to one’s official duties, and when the payment for the travel was not from a lobbyist or an agent of a foreign principal.¹³ Under the former House Rules, the travel could not be primarily for recreational purposes, nor could a Member or staffer have received reimbursement or payment for any “recreational” expenses incurred during the course of an otherwise

⁷ House Rule XXV, clause 5(a)(3)(C).

⁸ House Rule XXV, clause 5(a)(3)(D).

⁹ House Rule XXV, clause 5(a)(3)(D)(ii).

¹⁰ House Rule XXV, clause 5(a)(3)(W).

¹¹ House Rule XXV, clause 5(a)(3)(U).

¹² House Rule XXV, clause 5(a)(1)(B)(ii).

¹³ House Rule XXV, clause 5(b)(1)(A). The extent of travel allowed was for four days for domestic travel, and seven days for international travel (excluding travel days), and required certain disclosures of the travel and expenses to be made within 30 days of the end of the trip.

legitimate “officially connected” trip.¹⁴ Although there has been widespread criticism for the lack of enforcement of those prior Rules, “officially connected” travel expenses paid for by lobbyists, and the payment by any private source of expenses of \$50 or more for “recreational” activities, such as golfing, scuba diving, fishing, or tennis, were in fact expressly prohibited under former House Rules governing “officially connected” travel expenses.

Under current amendments to the House Rules, new restrictions beginning on March 1, 2007, will be placed upon the acceptance of payment or reimbursement of such “officially connected” travel expenses. There are four substantial changes to and tightening of the current regulations in the House Rules on the receipt of “officially connected” travel expenses:

1. Involvement of a Lobbyist or Client of a Lobbyist. In addition to the existing prohibition on the receipt of such expenses or payments from a registered lobbyist or an agent of a foreign principal, the House Rules, as of March 1, 2007, will now also prohibit the receipt of such payments or expenses for “officially connected” travel from “a private entity that retains or employs registered lobbyists or agents of a foreign principal,”¹⁵ except if from a qualified “institution of higher education” or when provided for a one-day event when in conformance with regulations prescribed by the House Committee on Standards of Official Conduct.¹⁶ Furthermore, in addition to merely prohibiting a lobbyist from financing such “officially connected” travel, as in the former Rules, a lobbyist or foreign agent under the new provisions would not be allowed to accompany the Member or staffer on any segment of the trip, and would not be permitted to plan, organize, request, or arrange for such a trip for which a Member or employee of the House may accept expenses.¹⁷

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

¹⁴ House Rule XXV, clause 5(b)(1)(B); House Rule XXV, clause 5(b)(4)(C).

¹⁵ House Rule XXV, clause 5(b)(1)(A), as amended by H.Res. 6, 110th Congress.

¹⁶ House Rule XXV, clause 5(b)(1)(C), as amended by H.Res. 6, 110th Congress. A one-day event may include an overnight stay, and may be extended to two overnights when the Committee on Standards of Official Conduct deems it, on a case-by-case basis, “practically required to participate in the one-day event.” Expenses for such a “one-day” events may not be accepted unless involvement of a lobbyist in the planning, organization, request or arrangements of the trip is de minimis. House Rule XXV, clause 5(c)(2), as amended by H.Res. 6, 110th Congress.

¹⁷ House Rule XXV, clause 5(c)(1) - (3), as added by H.Res. 6, 110th Congress.

requested, or arranged by a lobbyist or foreign agent, except as permitted.¹⁸ Before accepting and participating in any such travel, the Member or employee must obtain the prior approval of the Committee for each trip.¹⁹ All filings, disclosures and certifications will be made available for public inspection.²⁰

3. More Disclosure and Transparency. The disclosures that are to be made after a privately financed “officially connected” trip are now to be filed within 15 days of the completed travel (instead of 30 days)²¹ and are to detail, in addition to the information currently required to be disclosed, a “description of the meetings and events attended.”²²

4. Reasonable and Necessary Expenses. The existing Rules of the House provide that the “necessary” expenses that may be accepted in relation to officially connected travel must also be “reasonable.”²³ There appear to be, however, no published guidelines or tables delineating any specific monetary amounts considered within, or outside of, the range of “reasonable” expenses for travel and lodging on such trips. The Rules of the House in the 110th Congress have been specifically amended to direct the House Committee on Standards of Official Conduct to develop “guidelines” on reasonableness of expenses, including factors that would establish a “connection between the trip and official duties,” as well as providing guidelines and standards for the reasonableness of the amount of expenditures made by a private source for any trip to be approved, taking into consideration “maximum per diem rates for official Government travel....”²⁴

Travel on Private, Corporate Aircraft

When a Member or employee of the House accepts a trip on a private, corporate aircraft (i.e., an aircraft that is not licensed as a commercial carrier, nor as an aircraft that may be chartered), such “free” flight, depending on the purpose of the travel, could be considered as a “gift” to the Member or employee (when for personal or recreational purposes), a contribution or assistance to a Member’s “unofficial office account” (when the travel is in connection with the carrying out of official congressional duties), or a campaign contribution to the Member or staffer (when the purpose of the travel is campaign-related). Because such acceptance would in most cases violate provisions of federal law or congressional rule,²⁵ the Member or staff employee accepting such flight would have been required, under former law and House Rules, to have reimbursed the owner of the aircraft. Criticism arose because Members and staff were being allowed to

¹⁸ House Rule XXV, clause 5(d)(1), as added by H.Res. 6, 110th Congress.

¹⁹ House Rule XXV, clause 5(d)(2), as added by H.Res. 6, 110th Congress.

²⁰ House Rule XXV, clause 5(b)(5), as added by H.Res. 6, 110th Congress.

²¹ House Rule XXV, clause 5(b)(1)(A)(ii), as amended by H.Res. 6, 110th Congress.

²² House Rule XXV, clause 5(b)(3)(F), as added by H.Res. 6, 110th Congress.

²³ House Rule XXV, cl. 5(b)(4)(A) and (B).

²⁴ House Rule XXV, clause 5(i), as added by H.Res. 6, 110th Congress.

²⁵ Gifts rule, House Rule XXV, clause 5(a)(1); unofficial office account rule, House Rule XXIV, clauses 1 - 3; prohibition on corporate campaign contributions, 2 U.S.C. § 441b.

use private, corporate aircraft for travel for “personal” or “official” purposes, and then had been allowed to reimburse the owner of such aircraft at rates which were, arguably, far below the fair market value for a comparable, privately chartered flight.²⁶ In addition, the convenience and ease for a Member of Congress to take such a flight, and the special “access” to Members such flights provide for corporate officials and lobbyists, regardless of the amount of reimbursement from official or personal funds for the flights, concerned reformers worried about the normal gratitude that such special favors for Members might engender and the potential resulting undue influence on the Member’s judgment.

Under the new Rules of the House, Members and staff are now prohibited from using any funds, whether personal funds, campaign funds, or official funds, to pay for or reimburse the expenses of traveling on a private, corporate aircraft. Members and staff traveling for personal purposes, for campaign purposes, or for purposes related to one’s official duties, will now generally be required to fly on commercially scheduled airlines, or to charter flights from companies in that business.²⁷ It would appear that Members and staff could still fly on a private, corporate aircraft when the Member or staff is to be involved, for example, in a permissible outside, private business endeavor, or in employment discussions with a prospective private employer who owns the aircraft, when the private company or prospective employer normally would make such aircraft available to one involved in the business endeavor, or to one being interviewed or otherwise seeking employment.²⁸

Gift Rules — Ethics Training

The Rules of the House have been amended to require the House Committee on Standards of Official Conduct to “offer” ethics training on a yearly basis to Members of the House and staff. Only staff employees, however, and not Members, would be required to take such ethics briefings and training.²⁹

²⁶ Federal campaign laws require, however, candidates to reimburse corporate owners of private aircraft at the charter rate if the trip is to a city that is not served by regularly scheduled airlines, and first class fare if the destination is so served. 11 C.F.R. § 114.9(e).

²⁷ The intent of the Rule was to allow Members to fly on their own, personally owned aircraft, according to a colloquy on the House floor. 153 *Congressional Record* H30 (daily ed. January 4, 2007), colloquy between Representatives Peterson and Hastings.

²⁸ House Rule XXV, clause 5(a)(3)(G)(i) and (ii). If such transportation is not considered a “gift” under the House Rules because of the exemption cited, and is not a “campaign” or “official” expense or event, then the expenses for such transportation would apparently *not* be required to be reimbursed.

²⁹ House Rule XI, clause 3(a)(6)(A) and (B), as added by H.Res. 6, Section 211, 110th Congress.