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February 6, 2007

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Standards of Official Conduct
s/ Stephanie Tubbs Jones, Chairwoman
s/ Doc Hastings, Ranking Republican Member

SUBJECT: Gift Rule Amendments at the Beginning of the 110th Congress

The House Rules for the 110th Congress that were adopted on January 4 and 5, 2007 included several amendments to the provisions of House Rule 25, clause 5 (the “gift rule”) concerning the acceptance by House Members and staff of gifts and privately-sponsored, officially-connected travel. The changes to the rules on the acceptance of gifts became effective when passed, and the provisions affecting the acceptance of officially-connected travel will take effect on March 1, 2007.

This advisory memorandum addresses amendments to the rules on the acceptance of gifts. Amendments affecting the acceptance of officially-connected travel will be the subject of a forthcoming memorandum. Until the new travel rules take effect on March 1, 2007, the travel rules that were in effect during the 109th Congress remain in place.

Members and staff should keep in mind that the intent of the House gift rule is to protect the integrity of the House. The House Code of Official Conduct requires House Members and staff to ***adhere to the spirit*** as well as to the letter of the Rules of the House.^{1[1]} Narrow, technical readings of the House gift rule should be avoided. *See House Ethics Manual* at 15-16. For example, even though Members and staff may, consistent with the amendment to the gift rule, accept “food or refreshments of a nominal value offered other than as part of a meal” from registered lobbyists, foreign agents, and entities that retain or employ them, such benefits should not be accepted on a basis so frequent that a reasonable person would be led to believe that the Member or employee is using his public office for private gain. In short, it is never against the House rules to decline a gift, and Members and staff should avoid situations that present even the appearance of impropriety.^{2[2]}

Before accepting any gift, Members and staff ***should review this memorandum closely*** and ***consult with the Committee’s Office of Advice and Education***, at (202) 225-7103, with any questions.

^{1[1]} House Rule XXIII, cl. 2.

^{2[2]} Of course, as with the old gift rule, the amended gift rule described in this advisory memorandum applies to Members and staff in all circumstances, including while on official travel such as a CODEL.

Application of the Less than \$50 Provision Significantly Restricted

The House gift rule, both now and prior to the recent gift rule amendments, generally permits a Member or employee of the House to accept a gift (other than cash or cash equivalent) valued at less than \$50.^{3[3]} ***However, under the amended rule, the less than \$50 provision no longer permits gifts “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.”***^{4[4]}

This limitation significantly restricts the range of gifts that were previously acceptable by House Members and staff. Under the new rule, ***it is no longer permissible to accept a gift, such as a meal or ticket to a sporting event, from a registered lobbyist,^{5[5]} or any entity that retains or employs such an individual, under the less than \$50 provision.*** The new restriction applies not just to gifts given by individual lobbyists and foreign agents, but also to gifts given by entities that retain lobbyists or lobbying firms or that employ in-house lobbyists. Members and staff should bear in mind that many, if not most, organizations with interests before the House retain or employ lobbyists, including corporations, trade associations, unions, advocacy groups, and other special interest groups. A § 501(c)(3) charitable organization is also subject to the restriction if it retains or employs a lobbyist.

Example 1: A representative of a large corporation that employs in-house lobbyists offers to take a House employee out for a \$30 lunch. The lunch would have been acceptable under the previous rule, but the employee must now decline.

Example 2: A lobbying firm sends five pizzas to committee staff, knowing that they are working late on a bill. The pizza would generally have been acceptable under the previous rule up to a value of \$49.99 per staff person. Under the new rule, the pizzas must be declined regardless of value because they are from a lobbying firm.^{6[6]}

Example 3: A trade association that employs lobbyists offers a staff person a \$40 ticket to a Nationals game. The ticket would have been acceptable under the previous rule, but must now be declined. As before, the staff person may attend the game if he pays the trade association for the ticket.

The new rule prohibits gifts “from” a private entity that retains or employs lobbyists. Certainly, a gift paid for with the private entity’s funds (such as by use of a corporate credit card) would be considered a gift “from” the private entity. The new prohibition may also apply, depending on the circumstances, even when a non-lobbyist employee of an entity that retains or employs a lobbyist pays for a gift using *personal* funds, such as where the Member or employee knows that that donor is using personal funds to evade the application of the new rule.

^{3[3]} Under the rule, the value of gifts from a single source that may be accepted during a calendar year must be under \$100. Gifts worth less than \$10 do not count towards the annual limit.

^{4[4]} House Rule XXV, cl. 5(a)(1)(A)(ii).

^{5[5]} The gift rule also restricts acceptance of items from an agent of a foreign principal or a private entity that retains or employs such an individual. For brevity’s sake, references in the text to a lobbyist also include an agent of a foreign principal.

^{6[6]} Pizza is considered “part of a meal,” and is not acceptable as food or refreshment of a nominal value, as discussed below.

Example 4: A non-lobbyist employee of a constituent company that retains lobbyists offers to take the district director to a \$40 lunch. The company's employee says that he intends to use his personal funds instead of company funds to avoid the prohibition on gifts from entities that retain or employ lobbyists. The district director may not accept the lunch.

Members and staff may still accept gifts worth less than \$50 from persons and entities *other than* lobbyists and entities that retain or employ them. However, Members and staff should exercise caution when accepting gifts under this provision. It is incumbent on the Member or employee to ascertain that the offeror is a qualified donor by, for example, asking the offeror directly whether it retains or employs registered lobbyists, or by checking lobbying registration filings. When in doubt, a gift should not be accepted.

Example 5: An employee of a constituent company offers to take the district director to a \$40 lunch at company expense. Upon inquiry by the district director, the company's employee indicates that the company retains a law firm, but he does not know whether the firm engages in lobbying work on behalf of the company. The district director should decline the lunch because it is not clear that the company does not retain a lobbyist.

Most Exceptions to the Gift Rule Continue to Apply

The new prohibition described above *does not* restrict Members and staff from accepting, even from registered lobbyists and entities that retain or employ them, gifts under the existing exceptions to the gift rule found in House Rule XXV, clause 5(a)(3).

Widely Attended Events. House Members and 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 provision and in this Committee's guidance are satisfied.^{7[7]} In short, the widely attended event provision permits free attendance at 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. Each of these elements is described more fully in the Committee's *Gifts and Travel* booklet, at pages 22-28.

Example 6: A Member is invited by a trade organization to speak at its annual dinner gala, which will have over 100 attendees from the organization. The Member may accept free attendance and

^{7[7]} See House Rule XXV, cl. 5(a)(3)(Q), (4)(A).

dinner, regardless of whether the trade organization retains or employs lobbyists.

Example 7: A staffer is invited to a defense industry association luncheon by a particular defense contractor that purchased a table at the event. The staffer may not accept the invitation because it was not offered by the sponsor of the event.

Food or Refreshments of a Nominal Value. Members and staff may continue to accept “food or refreshments of a nominal value offered other than as part of a meal,”^{8[8]} even when the donor is a lobbyist, foreign agent, or entity that employs them. Under this provision, the kinds of food and refreshments usually offered at receptions (such as hors d’oeuvres, appetizers, and beverages), and morning meetings (coffee, juice, pastry, or bagels), may be accepted. This provision does not, however, allow the acceptance of a meal, or of food or refreshments offered as part of a meal.

Example 8: A trade association invites House staff to attend a holiday reception in its offices featuring hors d’oeuvres. Provided the food offered is of “nominal value” and is offered “other than as part of a meal,” House staff may accept.

Example 9: A nonprofit organization that employs lobbyists invites House staff to attend an informational briefing on social security reform and will serve a box lunch. House staff may accept free attendance, but they may not accept the lunch because it would be considered “part of a meal.”^{9[9]}

Items of a Nominal Value. Another exception to the gift rule permits Members and staff to accept “items of a nominal value such as a greeting card, baseball cap, or a T-shirt.”^{10[10]} The Committee interprets this provision to permit the acceptance of the items explicitly referred to in the rule having a reasonable value, *i.e.*, a T-shirt or a baseball cap (even if worth more than \$10), or other items that have a value of less than \$10.

Example 10: A company in a Member’s district that employs lobbyists offers the Member a \$15 baseball cap with the corporate logo. The Member may accept as “an item of a nominal value such as . . . a baseball cap.”

Example 11: A company in a Member’s district that employs lobbyists offers the Member a coffee mug worth \$12. The Member may not accept the mug. Under Committee precedent, Members and staff should not rely on the “items of a nominal value” provision in accepting any item having a value of \$10 or more (except for a greeting card, baseball cap, or T-shirt).

^{8[8]} See House Rule XXV, cl. 5(a)(3)(U).

^{9[9]} Unless the event qualifies as a widely attended event, as described above.

^{10[10]} See House Rule XXV, cl. 5(a)(3)(W).

Gifts Based on a Personal Friendship. The gift rule also permits Members and staff to accept gifts given on the basis of personal friendship.^{11[11]} While this provision continues to apply regardless of the donor, caution should be exercised when accepting a gift under this provision when the donor is a lobbyist. The rule requires that in determining whether a gift is provided on the basis of personal friendship, a Member or staff person must consider the circumstances under which the gift was offered, including (1) the history of his or her relationship with the donor, including any previous exchange of gifts; (2) whether, to the official's knowledge, the donor personally paid for the gift, or whether the donor sought a tax deduction or business reimbursement for it; and (3) whether, to the official's knowledge, the donor at the same time gave the same or similar gifts to other Members or staff. These elements are described more fully in the *Gifts and Travel* booklet, at pages 20-21.

Example 12: A Member's former college roommate, who is also a lobbyist, offers to take the Member to dinner. The college roommate is paying for the dinner personally, and the Member and the former college roommate have previously purchased meals for each other. The Member may accept the meal.

Example 13: A staffer has come to know well a lobbyist with whom he has worked for a number of years. The staffer often sees the lobbyist at events, and the lobbyist, under the old gift rule, occasionally took the staffer out for lunch. Although the staffer considers the lobbyist a "friend," they do not see each other socially or exchange gifts. The lobbyist offers to take the staffer to lunch, just as in previous years. The staffer may not accept.

Other Exceptions. Other gift rule exceptions that continue to apply, even when the donor is a lobbyist or entity that retains or employs a lobbyist, include: Gifts from a relative (clause 5(a)(3)(C)); informational materials sent to a House office (clause 5(a)(3)(I)); an item from a foreign government acceptable under the Foreign Gifts and Decorations Act (clause 5(a)(3)(N)); anything paid for by the federal government or a state or local government (clause 5(a)(3)(O)); a plaque, trophy, or other item that is substantially commemorative in nature (clause 5(a)(3)(S)); donations of "home state products" for display or free distribution (clause 5(a)(3)(V)).

Members and staff are reminded that each of these exceptions to the gift rule has certain requirements that must be satisfied in order to apply. Reiterating those requirements is beyond the scope of this advisory memorandum, and House Members and staff should carefully consult the applicable provision of the gift rule and the Committee's *Gifts and Travel* booklet in this regard.

Example 14: A Member's brother, who is a lobbyist, gives the Member a birthday present worth \$300 paid for with his personal funds. As long as the gift is unrelated to the performance of the Member's official duties, the Member may accept as a gift from a relative.

Example 15: A Member, during a trade organization's annual dinner gala, is presented with a \$75 plaque engraved with the

^{11[11]} See House Rule XXV, cl. 5(a)(3)(D).

organization's logo and the date of the event. The trade organization employs lobbyists. The Member may accept the plaque as a commemorative item.

Example 16: A candy manufacturer in the district that retains a lobbyist offers sample-size packets of chocolates to the Member for distribution to visitors to the House office. The Member may accept the candy as a "home state product."

Example 17: A Member is invited to attend a lunch valued at \$100 hosted by a foreign government. If related to the Member's official duties, the Member may accept the invitation under the minimal value provision of the Foreign Gifts and Decorations Act.

Charity Events. Under the revised rules, House Members and staff may no longer accept free attendance at charitable events sponsored by entities that retain or employ registered lobbyists or foreign agents, or sponsored by such lobbyists or agents themselves. The new gift rule preserves only the exceptions found in subparagraph (3) of House Rule XXV, clause 5(a). The exception for charitable events is found in subparagraph (4).

Example 18: A trade association that retains lobbyists invites a staff member to play in its annual charity golf tournament. The staff member may not accept.

Effect of the Gift Rule Amendment on Member and Staff Attendance at Political Events. A provision of the gift rule permits Members and staff to accept free attendance, including accompanying food or refreshments, at a fundraising or campaign event sponsored by a political organization.^{12[12]} In order to accept free attendance under this provision, the offer must originate from the political organization. A "political organization" is defined by reference to § 527(e) of the Internal Revenue Code, which defines the term in part as a "party, committee, fund, or other organization" that is organized for the purpose of "influencing the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office." This definition includes, for example, organizations such as the RNC, the DCCC, and political action committees.

This provision of the gift rule is unaffected by the recent changes to the rules. Members and staff may continue to accept free attendance at political events under this provision, even when lobbyists will attend the event or are involved in, or such individuals are employed by, the political organization. A meal with a lobbyist where the lobbyist provides a campaign contribution is not a "fundraising or campaign event" under this provision of the gift rule unless the meal is sponsored and paid for by a political organization, and the expenditures are reported as required by FEC rules or applicable state or local rules.

Valuation of Tickets to Sporting and Entertainment Events

The new rule codifies long-standing Committee guidance that a ticket to a sporting or entertainment event *"shall be valued at the face value of the ticket, or in the case of a ticket*

^{12[12]} See House Rule XXV, cl. 5(a)(3)(B), (G)(iii).

*without a face value, at the highest cost of a ticket with a face value for the event.” In addition, to address the issue of artificially low face values, the rule also provides that the “**price printed on the ticket to an event shall be deemed its face value only if it also is the price at which the issuer offers the ticket for sale to the public.**”^{13[13]}*

As to tickets for skyboxes or other private luxury boxes with no face value or an artificially low face value, the value is deemed to be the price of the highest individually-priced ticket for the event. For the vast majority of events, especially in the Washington, DC area, this value most likely will exceed \$50. When the value equals or exceeds \$50, the invited Member or employee must either decline the invitation or must pay for the ticket at the value of the highest individually priced seat for the event. Of course, as explained above, if the donor is a registered lobbyist, foreign agent, or an entity that employs them, a Member or employee may not accept free attendance, even if the ticket is valued at less than \$50. Other methods of valuation, such as attaching a pro-rata, per-event cost based on a season ticket, are not permissible under the gift rule.^{14[14]} If an event does not have any individually priced tickets available to the public, contact the Committee’s staff for guidance in determining their value.

Please contact the Committee at (202) 225-7103 with any questions.

^{13[13]} See House Rule XXV, cl. 5(a)(1)(B)(ii).

^{14[14]} This guidance applies to valuation of tickets for purposes of the gift rule. For information regarding valuation of tickets for *campaign* events, Members and staff should consult the guidance of the Federal Election Commission.