

PUBLICATION

Recent Amendments to Congressional Ethics and Gift Rules: No More Free Lunch?

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The U.S. House of Representatives recently adopted the House Rules for the 110th Congress which contain several amendments governing the acceptance by Members and staff of gifts and payment for officially-connected travel. While the House Rules technically govern only the conduct of Members and congressional staff, it is important for those who are involved in the legislative process in Washington to understand and abide by these rules, as the U.S. Department of Justice has recently taken the position that, at least in the context of egregious violations, the facilitation of violations of these rules may constitute a violation of federal laws regarding the provision of "honest services" by public officials.

The most significant amendment relates to the House gift rule which formerly permitted Members and staff to accept gifts — broadly defined as anything of value, including meals, drinks, appetizers and the like — valued at less than \$50. Under the amended rule, Members and staff may no longer accept such 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." House Rule XXV, cl. 5(a)(1)(A)(ii). Because the amended rule prohibits gifts not just from registered lobbyists, but also any entity that retains a lobbyist, the rule now prohibits gifts from a vast number of organizations with interests before Congress, including corporations, trade associations, unions, advocacy groups and other special interest groups. As a result, corporate employees who previously could, for example, buy a Member or staff person a lunch or dinner valued at less than \$50, should no longer do so if the corporation employs or retains a registered lobbyist.

There are a number of existing exemptions to the gift rule that still apply whether or not a registered lobbyist or related entity is involved. For example, Members and staff may continue to accept free attendance for "widely attended events" such as conventions, conferences, dinners and the like, as long as (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; (2) there is a reasonable expectation that at least 25 persons will attend, other than Members and staff; (3) the invitation is provided by the sponsor of the event; and (4) the Member or employee reasonably determines that attendance at the event is related to his or her official duties. House Rule XXV, cl. 5(a)(3)(Q), 4(A).

Members and staff may also continue to accept "food or refreshments of a nominal value offered other than as part of a meal," even if provided by a registered lobbyist or related entity. House Rule XXV, cl. 5(a)(3)(U). As described by the House Ethics Committee, "the kinds of food and refreshments offered at receptions (such as hors d'oeuvres, appetizers and beverages), and morning meetings (coffee, juice, pastry or bagels) may be accepted."

Members and staff may also accept "items of a nominal value such as a greeting card, baseball cap or a T-shirt." House Rule XXV, cl. 5(a)(3)(W). The House Ethics Committee has interpreted this exception "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."

Numerous other exceptions to the rule were not affected by the amendments, including gifts based on personal friendship; gifts from relatives; informational materials sent to a House office; a plaque, trophy or other item

that is substantially commemorative in nature; and donations of "home state products" for display or free disbursement.

Another significant amendment to the gift rule prohibits Members and staff from accepting free attendance at charitable events sponsored by entities that retain or employ registered lobbyists. This prohibition will have an enormous impact on the ability of corporations and other entities that sponsor charitable events to invite Members and staff to enjoy free attendance at charitable events.

Finally, it is important to note the new rule's amendment related to the valuation of tickets to sporting and entertainment events. The amended rule codifies the House Ethics Committee's previous guidance that a ticket to a sporting or entertainment event should be valued at the face price of the ticket, or, in the case of a ticket without a face value, at the highest cost of a ticket with a face value for the event. Thus, skybox and luxury suite tickets with no face value will be valued at the highest cost of a ticket with a face value for the event, and will more often than not exceed \$50 in value. The amended rule also attempts to address the issue of artificially low face values by providing that the "price printed on the ticket to an event shall be deemed its face value only if it is also the price at which the issuer offers the ticket for sale to the public." House Rule XXV, cl. 5(a)(1)(B)(ii).

In light of the current focus in Washington on reforming congressional ethics and other aspects of the legislative process, it is crucially important for individuals and entities doing business there to establish appropriate policies and controls to ensure compliance with applicable rules and regulations. Failure to do so can result in exposure both legally and in terms of reputation.