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ONE HUNDRED THIRTEENTH CONGRESS

## U.S. House of Representatives

COMMITTEE ON ETHICS

December 4, 2013

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### MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

**FROM:** Committee on Ethics  
K. Michael Conaway, Chairman *KMC*  
Linda T. Sánchez, Ranking Member *LTS*

**SUBJECT:** Holiday Guidance on the Gift Rule

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The House gift rule, codified at House Rule 25, clause 5, applies to all Members, officers, and employees (Members and staff) at all times, even during the holiday season. This memorandum is a reminder of some of the restrictions of the gift rule and some of the more common questions that arise during the holiday season. This guidance does not cover every situation. As a result, if you are unsure about a particular situation, please contact the Committee staff at (202) 225-7103. In addition to the detailed guidance provided below, in the spirit of the season, we have also added a poetic take on the gift rule at the back of this memorandum.

#### Overview of the Gift Rule and other Gift Statutes

Members and staff may not knowingly accept any gift, except as provided in the gift rule.<sup>1</sup> The rule defines the term “gift” broadly to mean “a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.”<sup>2</sup> The gift rule contains numerous exceptions permitting Members and staff to accept gifts. There are certain gifts that staff may accept without worry. For example, there are no restrictions on accepting gifts, including cash or cash equivalents, of any dollar value, from relatives.<sup>3</sup> There are also no restrictions on accepting personal holiday gifts from co-workers and supervisors.

Generally, Members and supervisors may not accept gifts from their subordinates.<sup>4</sup> However, the Committee has provided for a common-sense exception for voluntary gifts extended on special occasions such as holidays.<sup>5</sup> Accordingly, Members and supervisors may accept from their subordinates gifts that are customarily extended during the holiday season.

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<sup>1</sup> House Rule 23, clause 4 and House Rule 25, clause 5.

<sup>2</sup> House Rule 25, clause 5(a)(2)(A).

<sup>3</sup> The term “relative” is broadly defined, and it includes fiancés/fiancées and in-laws. *See 2008 House Ethics Manual* at 69 and 5 U.S.C. app. 4 § 109(16).

<sup>4</sup> 5 U.S.C. § 7351.

<sup>5</sup> *See 2008 House Ethics Manual* at 70.

In certain circumstances, Members and staff must seek written permission before accepting a gift. Members and senior staff<sup>6</sup> must also disclose the receipt and value of gifts on their annual Financial Disclosure Statements in certain circumstances, as explained more fully in the final section of this memorandum.

While the gift rule defines what Members and staff may accept, it does not authorize them to ask for any gift. There is also a statutory gift provision, which prohibits Members and staff from asking for or accepting anything of value from anyone who seeks official action from the House, does business with the House, or has interests that may be substantially affected by the performance of official duties.<sup>7</sup> The statutory provision also prohibits Members and staff from soliciting on behalf of other individuals or entities, other than political solicitations or solicitations for charity.

A brief description of some of the common gift rule exceptions applicable to the holiday season are listed below.

### **Parties and Receptions**

During the holiday season, Members and staff may be invited as guests to parties or related events that are sponsored by individuals or organizations that have, or plan to have, business dealings before Congress. Provided the guidance below is followed, Members and staff may accept an invitation to the following:

- An event where the per person cost or ticket price (if sold) is **less than \$50**, provided:
  - 1) The invitation is not from a federal lobbyist, foreign agent, or private entity that retains or employs such individuals; and
  - 2) The total value of gifts or other invitations you accept from the host under this exception is less than \$100 for the calendar year. Any gift worth less than \$10 does not count towards the annual limitation.

Example: If a non-lobbyist invites you to a holiday dinner party and your meal is less than \$50, you may accept the meal under the “less than \$50 exception,” provided the aggregate value of all gifts and similar invitations you accept from the host does not exceed \$100 for the year.

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<sup>6</sup> House employees paid at or above \$119,553.60 for 60 days or more during calendar year 2013 are considered senior staff and must file an annual Financial Disclosure Statement.

<sup>7</sup> 5 U.S.C. § 7353.

- A non-business event, such as a holiday party, hosted by an individual, at the personal residence of that individual or the individual's family, unless offered by a registered lobbyist or foreign agent.

Example: A non-lobbyist invites you to a holiday party at his personal residence to celebrate the holiday season. You may accept food and refreshments offered within the home under the **personal hospitality** exception.

- A **reception**, provided that only food and refreshments of nominal value are offered other than as a part of a meal (*i.e.*, appetizers and beverages, including alcoholic beverages). This exception **does not** include full meals or luxury food items, such as caviar.

Example: A lobbying firm invites you to attend a holiday reception in its office, at which it will serve moderate appetizers and drinks. Provided that the food and refreshments are of "nominal value" and offered "other than as part of a meal," you may attend and accept these items.

- An event where invitations are offered to a group or class in which membership is **unrelated to House employment**.

Example: Your college alumni association is having a holiday party for its members. You may attend as an alumnus of the college.

- An event that is **open to the public or to all federal employees**.

Example: Your local park is having a free holiday concert that is open to the public. You may attend as a member of the public.

- An event where invitations are offered because of the **outside business or activity of the invitees or their spouses**, provided the invitation:

- 1) was not offered or enhanced because of the individual's House status; and
- 2) is customarily provided to others in similar circumstances.

Example: Your spouse's company is having a holiday party and all employees may bring their spouses as guests. You may attend as your spouse's guest and receive the same food, refreshments, and entertainment that are provided to all attendees, including a full meal or luxury food items.

- A "**widely attended event**," provided:

- 1) The invitation comes from the event sponsor;

- 2) The sponsor has a reasonable expectation that at least 25 non-congressional invitees will be in attendance;
- 3) The event is open to the public, or will be attended by a diverse group of individuals interested in a given topic; and
- 4) The event relates to the Members' or employees' official duties.

Please note: The widely attended event exception **does not** apply to holiday parties that are purely social in nature and not related to one's official duties.

- An event paid for by a **foreign government** that is less than \$350 per person, per occasion. Under the Foreign Gifts and Decorations Act (FGDA), Members and staff may receive a gift item received as a souvenir or mark of courtesy.<sup>8</sup> The Committee has interpreted this provision to allow Members and staff to accept meals and entertainment in the United States related to their official duties.

Example: A foreign embassy in Washington, D.C., is having a holiday luncheon at a local D.C. restaurant to foster inter-country relations. The cost of your meal will be \$100. You may accept the lunch under the FGDA.

#### **Other Holiday Gifts**

In addition to the provisions discussed above, other gift rule exceptions may permit acceptance of holiday gifts. Provided the guidance below is followed, Members and staff may accept the following:

- Gifts (other than cash or cash equivalent) valued at **less than \$50**, provided:
  - 1) The gift is not from a federal lobbyist, foreign agent, or private entity that retains or employs such individuals; and
  - 2) The total value of gifts you accept from the donor under this exception is less than \$100 for the year.

Please note: Gift cards and gift certificates are considered "cash equivalent" and **may not** be accepted under this exception.

Example 1: If a non-lobbyist gives you a \$40 pen set during the holiday season, you may accept the gift under the "less than \$50 exception," provided the aggregate value of all gifts you accept from the donor under this exception does not exceed \$100 for the year.

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<sup>8</sup> 5 U.S.C. § 7342.

Example 2: If an organization that does not employ a federal lobbyist sends perishable food, such as a fruit basket, to a House office for all the staff, the gift is considered a gift to the individual recipients and not to the employing Member. Therefore, each staff member may accept items from the fruit basket having a value of less than \$50, provided that no recipient accepts more than \$100 of gifts in the aggregate from the organization during the year.

- A **baseball hat, T-shirt, or any item valued at less than \$10**, even if from a lobbyist. This exception does **not** include food items.

Example: A company sends the office 10 T-shirts along with a letter stating that one is to be given to the Member and any staff member that would like to receive one. The Member and staff may each accept one of the T-shirts under this exception.

- Gifts based on **personal friendship**. Members and staff may, without seeking Committee approval, accept a gift based on personal friendship if the gift's value is less than \$250.<sup>9</sup> The following factors must be considered before accepting a gift under this exception:

- 1) The history of the recipient's relationship with the donor, including any previous exchange of gifts;
- 2) Whether the donor personally paid for the gift, or whether the donor sought a tax deduction or business reimbursement for it; and
- 3) Whether the donor gives the same or similar gifts to other Members or staff at the same time.

Example: Your former roommate, who is a real estate agent, offers you a \$100 ticket to a holiday play. The roommate personally paid for the ticket. You and the roommate have exchanged gifts throughout the years. The roommate does not contact you or your office on official matters. To the best of your knowledge, the roommate has not made a similar offer to other Members or staff. You may accept the ticket without seeking Committee approval.

- **Gifts from a foreign government** under the FGDA. As noted above, gifts valued at less than \$350 per person, per occasion, that are offered as a souvenir or mark of courtesy.

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<sup>9</sup> You must seek Committee written approval before accepting a gift over \$250 under the personal friendship exception. Please see the section below regarding seeking written Committee approval for details on how to submit a request.

Example: A French government official sends you a \$300 bottle of French champagne, on behalf of the foreign government. You may accept the champagne under the FGDA.

### **Handling Unacceptable Gifts**

If Members or staff receive invitations to events or gifts that they may not accept under the gift rule, they may:

- Pay the donor the “market value”<sup>10</sup> and keep the gift;
- Return the gift to the donor; or
- For perishable items (*i.e.*, flowers or food), donate the items to charity or destroy them. You may **not** donate non-perishable items in lieu of returning or paying for them.

Please note: For tickets to events that do not have a printed cost on the ticket, the value of the ticket is the highest cost of a ticket with a face value for that particular event.

Example: You are invited to sit in the premium box for a performance of the Nutcracker Ballet. The offer does not meet one of the gift exceptions, but you would still like to attend. Your ticket does not have a price on it, but the highest ticket price for that particular ballet performance is \$285. You must pay the donor \$285 in order to accept the ticket.

### **Prior Written Committee Approval Required**

Members and staff must seek written Committee approval before accepting the following:

- A gift based on personal friendship with a value over \$250. The Committee will only grant written approval for a personal friendship gift exceeding \$250 in value in response to a written request. The request should include: (1) the donor’s identity and employment; (2) any interests the donor may have before Congress; (3) the history of the recipient’s relationship with the donor; (4) the nature of the gift; and (5) whether the donor will be paying for the gift personally.
- A gift that is not otherwise acceptable, but that the Member or staffer believes the Committee should permit them to accept. The Committee has “flexibility to allow the acceptance of gifts . . . in cases where there is no potential conflict of interest or

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<sup>10</sup> Items are valued at their retail, rather than wholesale, prices. For tickets, the fair market value is the cost printed on the ticket, regardless of whether the donor paid more or less. *See House Rule 25, clause 5(a)(3)(A); 2008 House Ethics Manual at 73.*

appearance of impropriety.”<sup>11</sup> Thus, House Rule 25, clause 5(a)(3)(T), authorizes the Committee to grant a waiver to permit acceptance of a gift “in an unusual case.” Members and staff must submit a written request for a gift waiver from the Committee prior to accepting such a gift. Any request should include, at a minimum, a description of the gift, including its market value, the identity of the donor, and a statement of the reasons believed to justify acceptance of the gift.

### **Financial Disclosure Requirements**

Members and senior staff must disclose certain gifts valued over \$350 from a single source in a calendar year on Schedule VI of their annual Financial Disclosure Statements.<sup>12</sup> This disclosure must include the source of such gifts and a brief description of the gifts. Any gift with a market value of less than \$140 need not be counted towards the \$350 disclosure threshold.

Please note: Gifts from relatives and gifts of personal hospitality do not have to be disclosed. In addition, gifts that are received by your spouse or children, independent of your House status, do not have to be disclosed. However, all other gifts that are over \$350 in value must be disclosed.

Example: Your spouse’s college roommate gives your spouse a \$400 coat as a holiday present. You would not have to report this gift on your Financial Disclosure Statement if you believe that the gift was given regardless of your House status.

Members and staff seeking a waiver of the reporting requirement must send a written request to the Committee. The written request and the Committee’s response will be made publicly available.

*If you have any questions, please contact the Committee’s Advice and Education staff at (202) 225-7103.*

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<sup>11</sup> See House Bipartisan Task Force on Ethics, *Report on H.R. 3660*, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess. (Comm. Print, Comm. on Rules 1989), reprinted in 135 Cong. Rec. H9255 (daily ed. Nov. 21, 1989).

<sup>12</sup> 5 U.S.C. app. 4 § 102(a)(2).

## *The House Gift Rule - A Rhyme for the Holidays*

*It's the holiday season, so be of good cheer,  
For soon there'll be recess and very few here.  
So let us remind you, as gifts come your way,  
Please check with Ethics so you don't go astray.*

*Remember the statute: 18 U S C  
Section seven three five three is key.  
It says you can't ask for something worth money,  
No matter how small, not even a bunny.*

*No cash and no gift cards are ever okay  
As gifts from a donor, they're always "No Way!"  
If the gift seeks to thank you for official deeds,  
Give it back or refuse it, it's a no-go indeed.*

*House Rule 25, clause five (a)(2)(A)  
Defines the term "gift" very broadly, we'd say.  
It's a favor, a discount, a loan, or a meal,  
And the meaning of "gift" requires some zeal.*

*Keep reading that rule, there's a list of exceptions  
That don't always jive with other's perceptions.  
But remember your job is a public trust,  
So avoiding most gifts is clearly a must.*

*Each gift you are offered should trigger your brain  
To look for exceptions or maybe refrain.  
'Cause these rules, they apply all day and all night,  
So just do it, call Ethics, to make sure you're all right.*

*A gift from a relative always is fine,  
But that gift from your friend might cross the line.  
A dinner in the home of another  
Is fine in most cases, the rules it won't bother.*

*An outside employer or business may offer  
A benefit to you or your spouse from its coffer.  
Fine so long as your gift looks like the rest;  
No special treatment for you is really the test.*

*That fundraising invite from a 527(e)  
Can be attended cause it's an exception, you see.  
A gift from Member to Member? Divine.  
But no special event? Not fine up the line.*

*A government gift - state, local or fed?  
You can accept it like the gift exception said.  
The holiday gift from a foreign delegation?  
If less than \$350, cheers to international cooperation.*

*That invite you got says it's "widely attended,"  
If over 25 non-Hill guests the rules won't be offended,  
As long as attendance is part of your job,  
And the sponsor invited you, go join the mob!*

*If there's a reception, and the sponsor sent word  
That no meal's served. Go! That's a yes you heard.  
A fundraising gala for a 501(c)(3)?  
Attend it, no letter needed from our Committee.*

*If you're offered a "something" available to all,  
Or to a group of others not small,  
Provided your House title isn't part of the deal,  
Take that "something," and no guilt should you feel.*

*If the office is given a gift from your state,  
Accept it, but for constituents' sake.  
A t-shirt, a card, or that baseball cap,  
Can be accepted, no chance for mishap.*

*The gift's less than 50 dollars? Accept with good cheer,  
If the total's less than a hundred in a calendar year.  
If you pay for the gift, then it's no gift you see,  
'Cause paying full price means it's not free.*

*But if the donor's a lobbyist in the Clerk's database,  
Pick up the phone and call us post haste.  
For the gift exceptions we've described up above,  
May not apply though that gift you love.*

*Got a gift not covered by the rules we've quoted?  
Please call us or write us, a waiver may be floated.  
Getting married? A baby? On our Web site you'll find  
A gift waiver form for your peace of mind.*

*You should feel free to say no any time.  
If something inside you says to decline,  
You should do so, no worries - a gift's not a must.  
Feel free to decline it or pay, no worries, no fuss.*

*In parting we send you our holiday greetings,  
As you travel and have those constituent meetings.  
Enjoy your holiday because there's no reason  
The gift rules should ruin your holiday season.*

*With thanks to the Office of Government Ethics as inspiration for this poem.*