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U.S. House of Representatives

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MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: **Committee on Ethics**
Jo Bonner, Chairman
Linda T. Sánchez, Ranking Member

SUBJECT: Holiday Guidance on the Gift Rule

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 at (202) 225-7103.

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.[1] The rule defines the term "gift" broadly to mean "a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value."[2] 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.[3] There are also no restrictions on accepting gifts from co-workers and supervisors.[4]

Generally, Members and supervisors may not accept gifts from their subordinates.[5] However, the Committee has provided for a common-sense exception for voluntary gifts extended on special occasions such as holidays.[6] Accordingly, Members and supervisors may accept gifts from their subordinates that are customarily extended during the holiday season.

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[1] House Rule 23, clause 4 and House Rule 25, clause 5(a)(1)(A)(i).

[2] House Rule 25, clause 5(a)(2)(A).

[3] House Rule 25, cl. 5(a)(3)(C). 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).

[4] House Rule 25, cl. 5(a)(3)(F).

[5] 5 U.S.C. § 7351.

[6] *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 [7] 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.[8] 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.[9]

  Example 1: 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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[7] House employees paid at or above $119,553.60 for 60 days or more during calendar year 2011 are considered senior staff and must file an annual Financial Disclosure Statement.

[8] 5 U.S.C. § 7353.

[9] House Rule 25, clause 5(a)(1)(B)(i). Any gift worth less than $10 does not count towards the annual limitation. However, accepting gifts less than $10 from one source on a repetitive basis is contrary to the spirit of the gift rule. *See also 2008 House Ethics Manual* at 37.

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 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.[10]

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.[11]

  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.[12] 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. The cost of your meal will be $100. You may accept the lunch under the FGDA.

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[10] House Rule 25, clause 5(a)(3)(G)(i).

[11] House Rule 25, clause 5(a)(4)(A).

[12] 5 U.S.C. § 7342.

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.[18]

  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"[19] 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.[20]

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.[21]

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[18] 5 U.S.C. § 7342.

[19] 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.

[20] House Rule 25, clause 5(a)(6).

[21] House Rule 25, clause 5(a)(1)(B)(ii).

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)[13] 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 amount of gifts you accept from the donor is less than $100 for the year.[14]

  Example: 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.

- 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.[15]

  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.**[16] Members and staff may, without seeking Committee approval, accept a gift based on personal friendship if the gift's value is less than $250.[17] 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;

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[13] Gift cards and gift certificates are considered "cash equivalent" and may **not** be accepted under this exception.

[14] House Rule 25, clause 5(a)(1)(B)(i).

[15] House Rule 25, clause 5(a)(3)(W).

[16] House Rule 25, clause 5(a)(3)(D).

[17] 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: You are invited to sit in the premium box for 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.[22] 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 appearance of impropriety."[23] 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 on their annual Financial Disclosure Statements.[24] 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.

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[22] House Rule 25, clause 5(a)(5).

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

[24] 5 U.S.C. app. 4 § 102(a)(2).

Please note: Gifts from relatives and gifts of personal hospitality do not have to be disclosed.[25] 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.

[25] *See* 5 U.S.C. app. 4 § 102(a)(2)(A).