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COMMITTEE ON ETHICS

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MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: **Committee on Ethics**
Charles W. Dent, Chairman *CW*
Linda T. Sánchez, Ranking Member *LS*

SUBJECT: Holiday Guidance on the Gift Rule

The House gift rule applies to all Members, officers, and employees (Members and staff) at all times, even during the holiday season.¹ This memorandum does not announce new rules or guidance, but is simply 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 guidance below, a poetic take on the gift rule, that includes common gift exceptions, is included at the end of this memorandum.

Overview of the Gift Rule and Other Gift Statutes

Members and staff may not accept any gift, except as provided in the gift rule.² The rule defines the term “gift” broadly to include “a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.”³ 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.⁴ There are also no restrictions on accepting personal holiday gifts from House co-workers and supervisors.

¹ House Rule 25, cl. 5. Generally, gifts to a Member or employee’s spouse, dependent child, or other family member are not subject to the gift rule unless there is reason to believe they are given because of the official position of the Member or employee and the Member or employee is aware of the gift. Even if a gift to a family member would be attributed to a Member or employee, a gift that falls within one of the specific exceptions to the rule may be accepted.

² House Rule 23, cl. 4 and House Rule 25, cl. 5.

³ House Rule 25, cl. 5(a)(2)(A).

⁴ 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. § 109(16).

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.

In certain circumstances, Members and staff must seek written permission before accepting a gift. Members and senior staff⁷ must also disclose the value of gifts received on their annual Financial Disclosure Statements in certain circumstances. These circumstances are explained more fully in the final section of this memorandum.

Although 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 certain 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 federally registered 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.

⁵ 5 U.S.C. § 7351.

⁶ See *2008 House Ethics Manual* at 70.

⁷ House employees paid at or above \$121,956 for 60 days or more (two pay periods) during calendar year 2015 are considered senior staff and must file an annual Financial Disclosure Statement.

⁸ 5 U.S.C. § 7353.

Example: If an individual who is not a federally registered lobbyist invites you to a holiday dinner party and the cost of your meal before tax and tip 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.

- 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 federally registered lobbyist or foreign agent.

Example: An individual who is not a federally registered lobbyist invites you to a holiday party at her personal residence to celebrate the holiday season. You may accept food and refreshments offered within the home under the **personal hospitality** exception.

- A **reception or open house**, provided that only food and refreshments of nominal value are offered other than as a part of a meal (*e.g.*, light appetizers and beverages, including alcoholic beverages). This exception **does not** include full meals (whether or not you stand to eat or use silverware) or luxury or expensive food items. This exception also assumes that you will not consume what is offered such that it becomes a full meal.

Example: A firm that is federally registered as a lobbying firm invites you to attend a holiday reception to be held in its offices. It will serve appetizers and drinks at the reception. 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: A 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 employer 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.

- A “**widely attended event**” provided:
 - 1) The event relates to the Members’ or employees’ official duties;
 - 2) The invitation comes from the event sponsor;
 - 3) The sponsor has a reasonable expectation that at least 25 non-congressional invitees will be in attendance; and
 - 4) The event is open to the public, or will be attended by a diverse group of individuals interested in a given topic.

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** valued at less than \$375 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.⁹ 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 dinner at a local D.C. restaurant to foster inter-country relations. The cost of your meal will be \$100. You may accept the dinner 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 federally registered lobbyist, foreign agent, or private entity that retains or employs such individuals; and

⁹ 5 U.S.C. § 7342.

- 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 an individual who is not a federally registered lobbyist gives you a \$40 pen set during the holiday season, you may accept the gift under the “less than \$50 exception.” However, the aggregate value of all gifts you accept from the donor under this exception may not exceed \$100 for the year.

Example 2: If an organization that does not employ a federally registered 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. 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 that employs a federally registered lobbyist 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 market value is \$250 or less.¹⁰ 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

¹⁰ You must seek Committee written approval before accepting a gift with a market value 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.

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 \$375 per person, per occasion, that are offered as a souvenir or mark of courtesy may be accepted.

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

Handling Unacceptable Gifts

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

- Pay the donor the “fair market value”¹¹ and keep the gift;
- Return the gift to the donor; or
- For perishable items (*e.g.*, flowers or fresh food), donate the items to charity or destroy them. **You may not donate non-perishable items to charity 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 available through the venue with a face value for that particular event.

Example: You are invited to sit in the premium box for a concert. 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 available through the venue for that particular concert is \$285. You must pay the donor \$285 in order to accept the ticket.

Some provisions of the gift rule require knowledge of the identity of the donor to assess whether the gift may be accepted. For example, the exceptions with respect to gifts worth less than \$50 and for those authorized by the FGDA require knowledge of the donor’s identity before accepting the gift since those provisions permit acceptance of gifts from donors who meet certain criteria. (Other gift rule exceptions, such as those that permit acceptance of nominal value gifts and informational materials, apply regardless of the identity of the donor, since they are not limited to certain types of donors.)

¹¹ Items are valued at market/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, cl. 5(a)(3)(A); 2008 House Ethics Manual at 73.

At times when a Member, officer, or employee is unexpectedly presented with a gift at an event, he or she may be uncertain whether it can be accepted under the gift rule. In that circumstance, the individual may receive the gift and wait until after the event to review the provisions of the gift rule and make a decision on the gift's acceptability.¹²

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 market 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, including any reciprocal gift giving; (4) a description and the market value of the gift; and (5) whether the donor will be paying for the gift personally and if a tax deduction will be taken.
- 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."¹³ Thus, the House gift rule 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 \$375 from a single source in a calendar year on Schedule G ("Gifts") of their annual Financial Disclosure Statements.¹⁴ 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 \$150 need not be counted towards the \$375 disclosure threshold.

¹² If the return of a gift is impossible – e.g., if the identity of the donor is unknown – the recipient may "return" the item by donating it to charity or destroying it, or the recipient may keep the item by paying the fair market value to the U.S. Treasury.

¹³ 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).

¹⁴ 5 U.S.C. app. § 102(a)(2).

Please note: Gifts from relatives, gifts of personal hospitality, tickets to widely attended events, and certain other gifts do not have to be reported on a Financial Disclosure Statement. 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 \$375 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 employment.

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.

THE HOUSE GIFT RULE – A RHYME FOR THE HOLIDAYS

*The holidays are coming, and all through the House, its people were stirring & beginning to grouse,
That they needed reminders if gifts came their way, because within Ethics rules they wanted to stay.*

*So let's start with the basics, federal statutes and such, that apply to employees and Members as much.
There's no soliciting for gifts – it's simply not done, you may not ask for gifts, not even in fun.*

*And no rule requires you to accept any gift; you may decline without causing a rift.
Or you may pay for that gift using fair market cost, and be within the rules so you shouldn't feel lost.*

*The House gift rule, House Rule Twenty-Five, is also important so into it let's dive.
It says that "gifts" are a term that is broad, as gifts could be discounts, favors, or something quite odd.*

*The rule requires an exception before accepting a gift; so read on and common exceptions we'll list.
For example, an exception permits your relatives to give gifts without limit – go ahead – nothing to forgive.*

*Gifts from dear friends worth less than \$250? Perhaps. It depends on the friendship and running the traps.
What's that, a thank you gift for an official act? This must be refused unless nominal in fact.*

*Gifts worth less than 50 dollars really aren't scary, unless there's a lobbyist, then please be wary.
Please refuse that gift card or cash sent your way, because gifts such as this are never okay.*

*A government gift has us not seeing red, provided it comes from a state, local, or fed.
Gifts from foreign governments are limited as thus – to less than \$375 or there could be a fuss.*

*Receptions are gifts but are permitted if they aren't a meal, and aren't pricey, then they are okay.
What if the event's political, held by an IRC 527(e)? If invited directly, you can attend for free.*

*You may be invited to events widely attended, but your duties must be related or the invite's upended.
So too if the invitation came indirectly to you, or less than 25 non-Hill attendees will be there, too.*

*How 'bout a fundraising gala for a 501(c)(3)? Sponsor sent the invite? Then attend with glee.
Member to Member gifts are also permitted if sent, but staffer to Member require that special event.*

*So, too, if an outside employer decides, to you or your spouse a gift to provide.
This is permitted so long as you and the rest, get the same gift – no special treatment's the test.*

*There are other exceptions that possibly apply, so don't feel distraught or ready to cry.
We know the rules and the statutes can be a bit hairy, which is why we're sending this memo so merry.*

*We'll end now and leave you with hopes that you'll call, our Committee with questions even if small.
For we're here to help you, most every day, and say to you sincerely, have a good holiday!*