



House and Senate Ethics Rules Changes 110th Congress

On January 5, 2007, the U.S. House of Representatives (“House”) amended its rules governing gifts, travel and other areas with the passage of its 110th Congress rules package, H. Res. 6. Most of the changes to the House rules were effective on January 5, 2007, although many of the changes regarding travel became effective March 1, 2007.

This memorandum summarizes key provisions of the House rules as amended by H. Res. 6 and in effect as of the date of this memorandum, and provides a brief explanation of key provisions in S. 1 as passed by the U.S. Senate (“Senate”).

The Senate, on January 18, 2007, passed S. 1, the Legislative Transparency and Accountability Act of 2007, which would amend Senate Ethics rules as well as provisions of the Lobbying Disclosure Act and the Federal Election Campaign Act. Unlike the House rules, which in most cases were effective January 5, 2007, the Senate rule changes will only become effective upon enactment of S. 1. The House has not yet considered the bill. Thus, as of this date, Senate rules—including Senate gift and travel rules—are unchanged from the 109th Congress.

On February 6, February 20, and March 14, the House Committee on Standards of Official Conduct (“House Ethics Committee”) issued guidelines providing further guidance with respect to their interpretation of the recently passed gift and travel rules. In addition to guidance provided in these documents, this memorandum uses descriptions of current rules that are also in part based on interpretations provided by the House Ethics Committee in previous Congresses. *Furthermore, as the House Ethics Committee is expected to revise the House Ethics Manual, it is important to note that the Committee may revise previous interpretations for items not clearly defined in the rules.*

It should also be noted that S. 1 should not be considered final. The House will likely amend S. 1 as it considers the legislation, and the final version passed by the House and Senate could modify current House and Senate rules.

House Rules Changes - Highlights

• HOUSE – GIFTS AND TRAVEL

No Gifts from Lobbyists / Organizations Employing or Retaining Lobbyists

- The new House rules prohibit Members and employees from accepting gifts, including meals, from a registered lobbyist, from an agent of a foreign principal, or from any entity that employs or retains these lobbyists and agents.¹ This strict prohibition applies even if the lobbyist, or any other representative of an entity employing lobbyists, uses personal funds to pay for the gift or meal.
- Preexisting exceptions under House Rule XXV(5)(a)(3) still apply, even if the donor is a Lobbyist or an entity that retains lobbyists. These exceptions include, among others:
 - Anything for which the Member or House staffer pays the market value.
 - Political contributions.
 - Gifts from a relative.
 - Gifts made on the basis of personal friendship.
 - Informational materials.
 - Anything paid for by the federal government or a state or local government (includes public universities).²
 - Items of nominal value – t-shirts, baseball caps, and greeting cards.
 - Promotional items from home state or district of minimal value.
 - Food or refreshments of a nominal value offered other than as part of a meal.

Food or Refreshments of a Nominal Value:

- Members and staff may accept food or refreshments offered other than as part of a meal, even when the donor is a Lobbyist or entity that employs them.
 - The food must be of “nominal value.”
 - 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.
 - The number of people in attendance is immaterial.
- Free attendance at a “widely attended event,” regardless of the sponsor.

¹ For purposes of this memorandum, the term “Lobbyist” includes both registered lobbyists under the Lobbying Disclosure Act and agents of foreign principals under the Foreign Agents Registration Act.

² Legislation has been introduced by Representative Jeff Flake, H. Res. 249, which would remove the exception for state and local governments, including public universities. To date, this legislation has received no consideration.

Widely Attended Event:

- This exception can apply to a broad range of events: a convention, conference, symposium, forum, panel discussion, dinner, viewing, reception, etc.
 - Attendance at the event must be appropriate to official duties or representative function of Member or staff.
 - Invitations can be accepted ONLY from the organization that is actually sponsoring the event. The sponsoring entity may employ lobbyists. An invitation cannot be accepted from an individual or organization that merely bought a block of tickets to or a table at the event.
 - Attendance at the event must be open to individuals from throughout a given industry or profession, or those in attendance must represent a range of persons with a shared interest in a given matter.
 - There must be a reasonable expectation that at least 25 persons, other than Members or staff, will attend the event.
 - Individuals who are officials of other branches or levels of government count toward the required minimum of 25 attendees, but spouses and others who accompany the congressional members and staff do not count toward the required minimum.
 - Members and staff have the responsibility of making the determination “in a reasonable manner” that the event is within their official duties. Relevant factors to consider include the opportunity to meet with constituents, representing one’s constituency, and receiving information that is pertinent to one’s district or to a legislative proposal. “With regard to a staff member, the nature of his or her duties in the office will be a relevant factor. For example, attendance at a dinner sponsored by an environmental organization may well be appropriate for a staff member who handles environmental issues, but not for a staff member who handles banking issues only.”
 - Free attendance may include a waiver of all or part of a conference or other fee, the provision of local transportation, or the provision of food, refreshments, entertainment, and instructional materials furnished to all attendees as an integral part of the event.
 - Members and staff may not accept entertainment collateral to the event or food or refreshments that are not provided in a group setting with all or substantially all other attendees.
 - Members and staff may not accept a gift bag or souvenir unless otherwise permitted by the gift rule.
- Free attendance at a “charity event:”

Charity Event:

- Members and staff may accept an invitation to a charity event only from the sponsor of the event.

- Free attendance is NOT permitted when the event is sponsored by an entity that retains or employs lobbyists, or is sponsored by the lobbyists themselves.
- The primary purpose of the event must be to raise funds for a charitable organization.
- “This provision extends to charity events such as lunches, dinners, golf or tennis tournaments, races, and cook-offs.”
- Members and staff may accept a sponsor’s unsolicited offer of free attendance to a charity event but may not be reimbursed for transportation and lodging in connection with the event. Local transportation may be accepted from the event sponsor, however.

Gifts Less Than \$50 Still Permissible from Non-Lobbyists, Entities Not Employing or Retaining Lobbyists

- Preexisting gift limits still apply to entities not employing lobbyists and non-lobbyist individuals.
 - \$49.99 per gift, \$99.99 per year per Member/staffer maximum.
 - Gifts of less than \$10 do not count toward \$99.99 per year maximum.
 - A member or staff may not “buy-down” a gift.
- Ticket Valuation
 - Tickets to a sporting or entertainment event are valued at the face value 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.
 - The value of tickets for skyboxes or other private luxury boxes with no face value or an artificially low face value is deemed to be the price of the highest individually priced ticket for the event.

Travel: Lobbyists or Organizations Employing or Retaining Lobbyists Cannot Pay for Member or Staff Travel

- Except as noted below, the rules prohibit Members and staff from accepting travel reimbursements from a lobbyist, or from an entity that employs or retains lobbyists.
- The rules also generally prohibit lobbyist accompaniment on a trip or involvement in planning, organizing, requesting, or arranging most trips.
- The exceptions provided below apply only to travel beyond the metropolitan Washington area, or beyond the Member’s district. Thus, the site to be visited at private expense must be at least 35 miles from the U.S. Capitol or, for travel in or near one’s congressional district, at least 35 miles from the district office.

- Exceptions

Colleges and Universities:

- Colleges and universities,³ even those that retain lobbyists, may provide travel to Members and staff.
 - Lobbyists may be involved with planning, organizing, requesting, or arranging the trip, and may accompany Members and staff on the trip.
 - Pre-certification, Committee approval, and post-travel disclosure is required for trips sponsored by private universities and colleges. Public universities or colleges are exempt from these requirements.
 - Members and staff must be able to demonstrate that the activities on the trip are related to the individual's official responsibilities or matters arising from his or her official duties.
 - The existing rules of reasonableness apply, including general restrictions on length of trip at the expense of the trip sponsor (four days, including travel time, for domestic travel).

One-Day Events:

- Entities that employ lobbyists may reimburse Member and employee travel to one-day events (e.g., conventions, meetings, speeches). In general, travel to a one-day event includes an overnight stay, although the Ethics Committee may permit a second night's stay when it determines, on a case-by-case basis, that the additional expenses are practically required for the individual to participate in the one-day event.
 - Lobbyists may play only a *de minimis* role (negligible or otherwise inconsequential to the overall planning and purpose of the trip) in the planning, organization, request, or arrangement of the one-day trips, and may NOT accompany the Member or employee on such trips.
 - Pre-certification, Committee approval, and post-travel disclosure are required for one-day trips.

Travel May Be Provided by Entities Not Retaining Lobbyists

- A Member or employee of the House may accept reimbursement for necessary transportation, lodging, and related expenses for travel to a meeting, speaking engagement, fact-finding trip, or similar event in connection with his or her duties as an officeholder when it is from a private source other than a lobbyist or a private entity that retains or employs lobbyists.

³ As used in the rule, "an institution of higher education" is one within the meaning of section 101 of the Higher Education Act of 1965, that is, an accredited, degree-granting postsecondary education institution.

- Reimbursement may be accepted for travel provided by federal, state, or local governmental entities, including public colleges or universities.
- Prior to accepting reimbursed travel from a private entity, however, the Member or employee must obtain certification from the entity paying for the trip, and provide a copy of this certification to the House Ethics Committee. This must certify the following:
 - The trip will not be financed in any part by a lobbyist.
 - Either the entity paying for the trip does not retain or employ lobbyists, or the trip falls under the private college/university or one-day event exceptions.
 - The entity will not accept from another source any funds earmarked directly or indirectly for the purpose of financing any aspect of the trip.
 - The traveler will not be accompanied on any segment of the trip by a lobbyist.
 - Lobbyists did not plan, organize, request, arrange, or finance the travel.

Private Aircraft: Members (or Staff) May Not Use Any Funds (Government or Campaign Funds) to Reimburse for Travel on Private Aircraft

- Members or staff may not use personal funds, official funds, or campaign funds for a flight on a non-governmental airplane that is not licensed by the FAA to operate for compensation or hire.

United States Senate - Key Provisions of S. 1

The provisions of S. 1—The Legislative Transparency and Accountability Act of 2007—as passed by the Senate, including changes to Senate rules, will become effective upon enactment of the bill. As of this date, S. 1 has yet to be considered by the House. Below is a brief summary of some of the key provisions contained in the version of S. 1 passed by the Senate.

• **S. 1 – GIFTS AND TRAVEL**

No Gifts from Lobbyists / Organizations Employing or Retaining Lobbyists

- Prohibits Members and employees from accepting gifts from a lobbyist, or entities that employ or retain lobbyists.
- Amends the Lobbying Disclosure Act to include a provision prohibiting Lobbyists from giving banned gifts to Members and employees, subject to civil or criminal penalties for violations.

Travel: Lobbyists or Organizations Employing or Retaining Lobbyists Cannot Pay for Member or Staff Travel

- Prohibits Members and employees from accepting reimbursement for travel from lobbyists.
- Exceptions

501(c)(3) Organizations:

- Tax-exempt 501(c)(3) organizations, even those that retain lobbyists, may provide travel to Members and staff.

One-Day Events:

- Entities that employ lobbyists may reimburse Member and employee travel to one-day events (e.g., conventions, meetings, speeches). In general, travel to a one-day event includes an overnight stay, although the Ethics Committee may allow two-night stays in certain cases. Lobbyists, however, may play only a *de minimis* role in the planning, organization, request, or arrangement of the one-day trip, and the lobbyist may not accompany the Member or employee on such trips.

Travel May Be Provided by Entities Not Employing or Retaining Lobbyists

- A Member or employee of the Senate may accept reimbursement for necessary transportation, lodging, and related expenses for travel to a meeting, speaking engagement, fact-finding trip, or similar event in connection with his duties as an officeholder when it is from a private source other than a lobbyist or a private entity that retains or employs lobbyists.

- Prior to accepting reimbursed travel, however, the Member or employee must obtain certification from the entity paying for the trip, and provide a copy of this certification to the Senate Ethics Committee. This must certify:
 - The trip will not be financed in any part by a lobbyist.
 - Either the entity paying for the trip does not retain or employ lobbyists, or the trip falls under the college/university or one-day event exceptions.
 - The entity will not accept from another source any funds earmarked directly or indirectly for the purpose of financing any aspect of the trip.
 - The traveler will not be accompanied on any segment of the trip by a lobbyist.
 - Lobbyists did not plan, organize, request, arrange, or finance the travel.

Private Aircraft: Charter Rates for Private Aircraft Travel

- Requires Senators to pay the charter rate for travel on private aircraft not licensed by the FAA to operate for compensation or hire. Existing rules allow payment of the cost of a first-class ticket for travel on such aircraft under certain circumstances.

• **S. 1 – LOBBYING DISCLOSURE ACT AMENDMENTS**

Quarterly Filing of Lobbying Activities, Political Contributions and Amounts “Raised” in Hosted Events

- Requires registered lobbyists to file with the House and Senate lobbying reports not later than 20 days after the end of each calendar quarter.
- Reduces *de minimis* thresholds of activity below which registration/disclosure is not required.
- Requires disclosure of:
 - Political contributions during the quarter exceeding \$200 made by the registrant, “raised” at events “hosted or co-hosted” by the registrant, or “collected” by the registrant.
 - Payments for travel expenses and gifts in excess of \$20 made by the registrant to legislative and “covered” executive branch officials.

• **S. 1 – EMPLOYMENT RESTRICTIONS: FORMER MEMBERS/STAFF, RELATIVES**

Post-employment Waiting Periods

- Prohibits staff, whose rate of pay is equal to or greater than 75 percent of the rate of pay of a Member, from lobbying any Member, officer, or employee of the Senate for a period of one year after leaving Senate employment.

- Places a two-year moratorium from lobbying on former Members of Congress.
- Extends from one year to two years the existing lobbying restrictions on Executive Branch employees paid at the Senior Executive level.

Relatives

- Prohibits a Member's spouse or immediate family member, who is a Lobbyist, from having any official contact with any staff employed by that Member (including staff in personal, committee, and leadership offices), unless the Member's spouse was serving as a lobbyist at least one year prior to the election of that Member to office or at least one year prior to their marriage to that Member.

As of this date, House leadership has not indicated any specific plans to bring S. 1 to the House floor. A House Judiciary subcommittee recently held a hearing on S. 1, but there has been no further committee action to date. It is expected that the bill will be considered on the House floor in the coming months.

If you have further questions, please call Ada Meloy, ACE's director of legal and regulatory affairs, at (202) 939-9355 or e-mail ada_meloy@ace.nche.edu.

Summary of House Gift Rules

	Public Universities Employing or Retaining Lobbyists	Public Universities NOT Employing or Retaining Lobbyists	Private Universities Employing or Retaining Lobbyists	Private Universities NOT Employing or Retaining Lobbyists
May Give a Gift or Provide a Meal	YES	YES	NO	YES
Value of Gift of Meal	Unlimited	Unlimited	N/A	\$49.99
Widely Attended Events Exception	N/A	N/A	YES (at least 25 non-Hill personnel attending, related to official duties)	YES (at least 25 non-Hill personnel attending, related to official duties)
Items of Nominal Value Exception	N/A	N/A	YES (t-shirts, baseball caps, greeting cards)	YES (t-shirts, baseball caps, greeting cards)
Travel Consistent with Official Duties of Members and Staff	YES* (maximum 4 days domestic travel)	YES* (maximum 4 days domestic travel)	YES* (pre-approval, maximum 4 days domestic travel)	YES* (pre-approval, maximum 4 days domestic travel)

Summary of House Travel Rules

Note: All travel described below must comply with the reasonableness standards described in the attached memorandum, including length of trip (maximum of four days, including travel time, for domestic travel), and must be relevant to the official duties of the participating Member or staff.

Type of Trip	Permissible Sponsor	Lobbyist Involvement in Planning, Organizing, Requesting, or Arranging	Lobbyist and Foreign Agent Accompaniment	Certification, Committee Approval, and Post-travel Disclosure Required?	Notes
One-Day Event Trip	Any sponsor <i>OTHER</i> than a lobbyist or foreign agent	<i>De minimis</i>	Not permitted	Yes	Travel may be extended to a two-night stay when determined by the Committee to be practically required for traveler to participate in the one-day event
Trip Sponsored by an Institution of Higher Education	Private universities and colleges	Permitted	Permitted	Yes	Private entities not employing or retaining lobbyists may help fund such trips only if they are also actively involved in the planning and purpose of the trip. See rules below.
Multiple-Day Event Trip	Any sponsor <i>OTHER</i> than a lobbyist, foreign agent, or private entity that retains or employs such an individual	Not permitted	Not Permitted	Yes	
Government-sponsored Travel	Federal, state, and local governments, including a public university or college	Permitted	Permitted	No	Private entities not employing or retaining lobbyists may help fund such trips only if they are also actively involved in the planning and purpose of the trip. See rules below.