

New House and Senate Ethics Rules

On January 5, 2007, the House of Representatives adopted, by a vote of 232 to 200, House Resolution 6, amending House rules to impose restrictions on the acceptance of gifts by members and their staff. The quick action was a direct response to the ethics scandals that plagued both parties during the 109th Congress. Many of the restrictions take effect immediately, while others, such as new limitations on the acceptance of travel expenses for “officially connected” travel, take effect on March 1, 2007.

On January 18, 2007, the Senate passed the “Legislative Transparency and Accountability Act of 2007” (S. 1). This legislation took nearly two weeks to complete as the Senate debated a range of issues beyond gift and travel bans. The Senate measure as passed included both rule changes that are effective immediately and a group of legislative proposals that must be considered by the House and signed by the president to become law.

Among the most notable rule changes are increased restrictions on gifts, travel and lobbying by former congressional employees. Both chambers adopted new bans on gifts, including meals and other items, from persons required to be registered under the Lobbying Disclosure Act (“LDA”), from agents of foreign principals and from the individuals or companies that hire them. The House adopted a nearly complete ban on travel paid for by outside groups (excluding colleges and universities) as well as a prohibition against travel on corporate jets, while the Senate took a slightly more flexible approach, permitting the use of corporate jets but requiring the reimbursement amount of the flight to be the fair market value of a charter fare or rental charge for a comparable plane of comparable size. The Senate adopted additional restrictions affecting the so-called revolving door by expanding the current lobbying prohibition against Senate staff lobbying their former office. Senior Senate staff (those earning 75 percent or more of member pay) would be prohibited from making lobbying contacts with *anyone* in the Senate for one year after leaving Senate employment. The House did not address post-employment by members or staff.

This advisory outlines the new House and Senate rules and their likely effect on members, staff, lobbyists and registered agents of a foreign principal and their clients. The advisory also outlines key provisions of the legislative changes to the LDA that have now passed the Senate. These provisions must still be taken up by the House, and following such approval, would go to the president for signing.

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HOUSE RESOLUTION 6

Gifts to Members and Staff

Previously, members and staff were generally prohibited from accepting gifts from outside individuals, subject to certain exceptions. The most significant exception permitted members and staff to accept *de minimis* gifts, defined as being less than \$50 (no more than \$100 per year) regardless of who gave the gift. Such gifts often included meals, bottles of wine, tickets to sporting or entertainment events or similar items. Gifts in excess of that amount were permitted only from relatives or personal friends of the member or staffer. Under the new rules, members and their staff may not accept a gift, even if less than \$50, from a lobbyist, agent of a foreign principal or any entity that retains a lobbyist or agent of a foreign principal. Thus, the only gifts that may be accepted pursuant to the *de minimis* exception are from individuals who are not lobbyists or agents of a foreign principal, or entities that do not hire lobbyists or agents of a foreign principal.

The rules retain the exception to the gift restrictions for gifts that come from a lobbyist or agent of a foreign principal who is a relative of the member or staffer, or if the gift is given by a lobbyist or agent of a foreign principal on the basis of a “personal” friendship. The rules provide criteria regarding whether a gift is made under the “personal friendship” exception, such as whether the gift was paid for personally by the giver (and where no tax deduction is sought for the value of the gift) and whether similar gifts were given to other members or staff.

Members and staff may also accept gifts of nominal value, such as “a greeting card, baseball cap, or a T-shirt,” even if the gift comes from a lobbyist or agent of a foreign principal. Food and refreshments may also be accepted from lobbyist or agents of a foreign principal if offered at a reception or other widely attended event.

Tickets to sporting events and other entertainment events may be accepted, but only if the member or staff paid the full face value for the ticket – in effect, paying full price for the “gift.”

Gifts under the \$50 threshold (other than those stated above from lobbyists or agents of a foreign principal who are friends or family) may still be accepted by members or staff if they are from individuals or entities that are not lobbyists or agents of a foreign principal, or that do not retain lobbyists or agents of a foreign principal. When tickets to sporting events or entertainment events are given to members or staff by such private entities, the value of the ticket is determined by the face value on the ticket. In the case of tickets to sky boxes, which may not have a printed face value, the value is considered to be the face value on the highest-priced ticket to the particular event.¹

Travel Expenses

The previous rules prohibited members and their staffs from accepting travel reimbursements from registered lobbyists or agents of foreign principals; the new rules expand this prohibition to prohibit reimbursements from entities that employ lobbyists or agents of a foreign principal, unless the travel is for a one-day event. Lobbyists are only permitted to play a *de minimis* role in planning such an event. These new limitations do not apply to colleges and universities.

Before accepting any permitted reimbursed travel, members and staff must submit a certification to the Ethics Committee, obtained from the entity providing the trip, that lobbyists were not involved

¹ House rule XXV, clause 5(a)(1)(B)(ii).

in the planning or organization of the trip, nor did lobbyists arrange, request or finance the travel (unless the lobbyists are from colleges or universities). Such travel must be pre-approved by the Ethics Committee.

Corporate Airplanes

The new rules expressly prohibit members and staff from using personal, campaign or official funds to either pay for or reimburse the cost of flying on private corporate aircraft. Previously, corporate jet travel was permitted if the travel was for a personal or official purpose, but the flight was treated either as a gift or a contribution to the member and thus often would have violated existing rules or federal campaign finance law. In such cases, the member or staffer was required to reimburse the value of a first class ticket on a commercial flight. The new rules effectively require members and their staff to fly commercially or to charter planes from charter companies at their own or their campaign's expense.

Other Provisions

The new House rules also contained the following provisions relating to civility, fiscal responsibility and earmark reform:

- Prohibit members from threatening any official retaliation against any private entity that hires individuals who do not share the member's political affiliation;
- Prohibit the speaker of the House from holding votes open longer than the scheduled time period for the purpose of changing the outcome of the vote;
- Prohibits the consideration of any conference report that has been altered after being signed by the conferees;
- Require House conferees to sign conference reports at the same time and in the same place;
- Prohibit the House from considering budget resolutions or amendments to the budget resolutions that contain reconciliation instructions that would increase the budget deficit;
- Prohibit the consideration of any legislation proposing direct spending or revenue changes that would increase the budget deficit within a five-year or a ten-year period ("PAYGO");
- Require committees to publish lists of the earmarks, limited tax benefits and limited tariff benefits contained in all reported bills, unreported bills, manager's amendments and conference reports that are brought to the House floor (lists must be electronically available to the general public);
- Prohibit trading earmarks for votes; and
- Require members to disclose earmark requests they make and certify that neither they nor their spouses have any personal financial interest in the particular requests.

S. 1 – THE LEGISLATIVE TRANSPARENCY AND ACCOUNTABILITY ACT OF 2007

As noted previously, the Senate bill contained changes to the Senate rules, many of which are similar to the House changes, as well as statutory changes to the LDA. The rule changes become effective immediately, as they apply only to the Senate. The statutory changes, however, must proceed through the remainder of the legislative process before they become effective.

Gifts to Members and Staff

Similar to the changes in the House, the Senate prohibits any member or staff from accepting any gifts from registered lobbyists, agents of a foreign principal or clients of lobbyists or agents of a foreign principal. The rules also provide that the market value of a ticket to a sporting or entertainment event is the face value of the ticket, or in the case of sky boxes, the face value of the most similar ticket.

Travel Expenses

The Senate also expanded the prohibition on travel expense reimbursement by lobbyists and agents of a foreign principal, now prohibiting reimbursement by any entity that hires or retains one or more lobbyists or agents of a foreign principal. There are two exceptions to this prohibition that permit such entities to reimburse members or staff participating in a one-day event or if the trip that is sponsored by a 501(c)(3) organization is pre-approved by the Select Committee on Ethics. The exceptions do not apply, however, if the trip is financed, planned, organized, requested or arranged by a lobbyist or agent of a foreign principal.

Before accepting any permitted travel, a certification must be submitted to the Select Committee on Ethics that the trip was not financed in any part by a registered lobbyist or agent of a foreign principal, that the source of the trip does not employ such individuals (subject to the exceptions noted above for one-day events and 501(c)(3)-sponsored trips) and that the trip meets any additional requirements specified in rules established by the Select Committee on Ethics. The trip must be pre-approved by the Ethics Committee.

Corporate Airplanes

Unlike the House rules changes, the new Senate rules do not prohibit travel on corporate aircraft; they do, however, place new limitations on corporate air travel by members and staff. Any member or staff who travels on private aircraft is required to file a report with the secretary of the Senate within 60 days of the trip that includes the date and destination of the flight, the owner or lessee of the plane, the purpose of the trip and the charter rate paid for the flight. Reimbursement for such flights is calculated as a *pro rata* share of the fair market value of the normal and usual charter fare or rental charge for a comparable plane of comparable size.

Other Provisions

- Prohibit members from threatening any official retaliation against any private entity that hires individuals who do not share the member's political affiliation;
- Prohibit members from accepting a cost-of-living adjustment if the member voted for any amendment (or against tabling any amendment) that provided that the adjustment would not be made;
- Prohibit employees of a member from having any contact with the member's spouse or immediate family member if the spouse or immediate family member is a registered lobbyist, unless the spouse or immediate family member registered to lobby at least one year prior to the member's election or one year prior to the marriage;
- Prohibit former senior Senate employees (those earning 75 percent or more of member pay level) from lobbying any member, officer or employee of the Senate for one year after leaving the position (retaining the one-year ban on lobbying the former office or committee for those making less than 75 percent of member pay);
- Prohibit former members from lobbying for two years after leaving office;
- Prohibit members from attending any party honoring them at a national party convention if the event is paid for by a lobbyist or client of a lobbyist;
- Eliminate floor privileges for former members, Senate officers and speakers of the House who are registered lobbyists;
- Require committees to publish lists of the earmarks, limited tax benefits and limited tariff benefits contained in all reported bills, unreported bills, manager's amendments and conference reports that are brought to the Senate floor (lists must be electronically available to the general public for at least 48 hours before consideration); and
- Require members to provide a written statement to the chairman and ranking member of the committee of jurisdiction including the member's name, the name of the intended recipient or beneficiary, the purpose of the earmark, tax benefit or tariff benefit and a certification that neither the member nor spouse has a financial interest in the request.

Senate LDA Amendments

The Senate legislation would require lobbying disclosure forms to be filed quarterly, rather than semi-annually as is currently required. Such reports would have to include, among other things, a listing of all contributions above \$200 made by the lobbyist; fundraising events hosted, co-hosted, or sponsored by the lobbyist, the lobbyist's client, or a political action committee administered by the client; money donated to a presidential library or presidential inaugural committee; any money expended by the lobbyist for a retreat or conference attended by members of Congress or executive branch officials. The penalty for failure to comply with lobbyist disclosure requirements would be increased from \$50,000 to \$200,000. A searchable database would also be made available online of all reports filed under the LDA and linked with information reported to the Federal Election Commission.

The Senate bill would also amend the lobbying disclosure law to prohibit lobbyists or entities that employ one or more lobbyists from giving a gift or providing travel to a member, staffer, officer or other employee of the Congress if the lobbyist knows that the gift or travel is prohibited under House or Senate rules.

The Senate bill would establish the Committee to Strengthen Confidence in Congress (“Committee”). The Committee would be required to provide annual reports to Congress regarding any recommendations for corrective measures relating to strengthening ethical safeguards in Congress. The Committee also would have six months to issue a report listing the campaign contributions given by specific corporate interests prior to the enactment of recent bankruptcy, Medicare, trade and energy legislation. Such a report would include the campaign contributions of companies in the banking and financial services, medical, pharmaceutical, oil, natural gas and coal companies.

Next Steps

The rules changes passed by the House and the Senate require no further action and are effective immediately (with the exception of the travel restrictions that come into effect in March). The House must now act either on its own or the Senate’s legislative proposals before the statutory changes can be sent to the president for his consideration and probable signature. Future Alston & Bird advisories will explain the continuing congressional action on lobbying disclosure reform, as well as the implementation of the House and Senate rules.

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