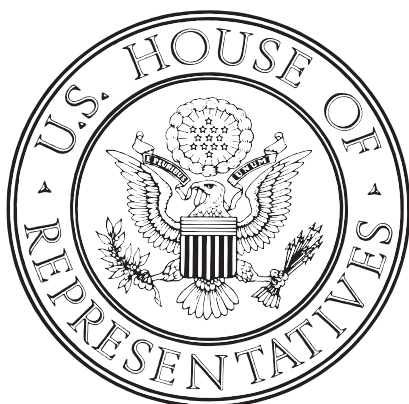


HOUSE ETHICS MANUAL

COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

110TH Congress, 2d Session



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GENERAL ETHICAL STANDARDS

Overview

Members, officers, and employees of the House should:

- Conduct themselves at all times in a manner that reflects creditably on the House;
- Abide by the spirit as well as the letter of the House rules; and
- Adhere to the broad ethical standards expressed in the Code of Ethics for Government Service.

They should not in any way use their office for private gain. Nor should they attempt to circumvent any House rule or standard of conduct.

Employees must observe any additional rules, regulations, standards, or practices established by their employing Members.

The Committee on Standards of Official Conduct urges Members, officers, and employees of the House to call or to write the Committee with any questions regarding the propriety of any current or proposed conduct. The Committee's Office of Advice and Education will provide confidential, informal advice over the telephone, and the Committee will provide confidential, formal written opinions to any Member, officer, or employee with a question within its jurisdiction.

General Ethical Standards

Government is a trust, and the officers of the government are trustees; and both the trust and the trustees are created for the benefit of the people.

HENRY CLAY¹

That “public office is a public trust” has long been a guiding principle of government.² To uphold this trust, Congress has bound itself to abide by certain standards of conduct, expressed in the Code of Official Conduct (House Rule 23)³ and the Code of Ethics for Government Service.⁴ These codes provide that Members, officers, and employees are to conduct themselves in a manner that will reflect creditably on the House, work earnestly and thoughtfully for their salary, and that they may not seek to profit by virtue of their public office, allow themselves to be improperly influenced, or discriminate unfairly by the dispensing of special favors. This chapter discusses the overarching principles that inform both codes, the penalties for violating their provisions, and the history and procedures of the Committee on Standards of Official Conduct.

Appropriate standards of conduct enhance the legislative process and build citizen confidence. “Ethics rules, if reasonably drafted and reliably enforced, increase the likelihood that legislators (and other officials) will make decisions and policies on the basis of the merits of issues, rather than on the basis of factors (such as personal gain) that should be irrelevant.”⁵ Members, officers, and employees should, at a minimum, familiarize themselves with the Code of Official Conduct and

¹ Speech at Ashland, Kentucky, March 1829. Henry Clay was Speaker of the House of Representatives during 1811-1814, 1815-1820, and 1823-1825.

² Code of Ethics for Government Service ¶ 10, H. Con. Res. 175, 72 Stat., pt. 2, B12 (adopted July 11, 1958) (contained in the appendices to this Manual). This creed, the motto of the Grover Cleveland administration, has been voiced by such notables as Edmund Burke (*Reflections on the Revolution in France* (1790)), Charles Sumner (speech, U.S. Senate (May 31, 1872)), as well as Henry Clay (*see note 1, supra*).

³ House rules are formally referenced by Roman numerals. For ease of reading, this manual uses the more familiar Arabic numerals throughout. All citations are to the House rules for the 110th Congress, unless specifically stated otherwise.

⁴ *See note 2, supra*.

⁵ *Congressional Ethics Reform: Hearings Before the Bipartisan Task Force on Ethics, U.S. House of Representatives*, 101st Cong., 1st Sess. 113 (1989) (statement of Dennis F. Thompson, Alfred North Whitehead Professor of Political Philosophy in the Kennedy School of Government and the Department of Government, Harvard University, and Director of the Harvard University Program in Ethics and the Professions).

the Code of Ethics for Government Service. The Code of Official Conduct and the Code of Ethics for Government Service not only state aspirational goals for public officials, but violations of provisions contained therein may also provide the basis for disciplinary action in accordance with House rules.

Violations of Ethical Standards

Violations of ethical standards may lead to various penalties. The U.S. Constitution authorizes each House of Congress to punish its Members for disorderly behavior and, with the concurrence of two thirds, to expel a Member.⁶ The House may also punish a Member by censure, reprimand, condemnation, reduction of seniority, fine, or other sanction determined to be appropriate.⁷

A House rule specifically authorizes the Standards Committee to enforce standards of conduct for Members, officers, and employees; to investigate alleged violations of any law, rule, or regulation pertaining to official conduct; and to make recommendations to the House for further action.⁸ Committee rules reflect the Committee's authority to issue letters of reproof and to take other administrative action.⁹ House rules further provide that either with approval of the House or by an affirmative vote of two-thirds of its Members, the Committee may report substantial evidence of violation by a Member, officer, or employee to the appropriate federal or state authorities.¹⁰

Some standards of conduct derive from criminal law. Violations of these standards may lead to a fine or imprisonment, or both. In some instances, such as conversion of government funds or property to one's own use or false claims concerning expenses or allowances, the Department of Justice may seek restitution.

Among the sanctions that the Committee may recommend be imposed upon a Member in a disciplinary matter is the "[d]enial or limitation of any right, power, privilege, or immunity of the Member if under the Constitution the House may impose such denial or limitation."¹¹ The Committee may also recommend sanctions

⁶ U.S. Const., art. I, § 5, cl. 2.

⁷ See generally Joint Comm. on Congressional Operations, House of Representatives Exclusion, Censure, and Expulsion Cases from 1789 to 1973, 93d Cong., 1st Sess. (Comm. Print 1973); Committee Rule 24(e).

⁸ See House Rule 10, cl. 1(q); House Rule 11, cl. 3.

⁹ See Comm. Rule 24(d) and (e)(6).

¹⁰ See House Rule 11, cl. 3(a)(3); Committee Rule 28. See also 5 U.S.C. app. 4 § 104(b), authorizing the Committee to refer to the Attorney General – without seeking approval of the House – individuals who have willfully failed to file or falsified information required to be reported on Financial Disclosure Statements.

¹¹ See Comm. Rule 24(e)(5).

be imposed by the House against an officer or employee of the House. Such sanctions could include dismissal from employment, reprimand, fine, or other appropriate sanction.¹²

Charges of unethical conduct can be evaluated only on a case-by-case basis. As the Committee has noted, “it was for the very purpose of evaluating particular situations against existing standards, and of weeding out baseless charges from legitimate ones, that this committee was created.”¹³

History of the Committee

The first recorded instance of the House of Representatives attempting to take disciplinary action against a Member occurred in 1798. On January 30, Matthew Lyon (of Vermont) spat upon Roger Griswold (of Connecticut) during a vote. A letter of apology was sent; nevertheless, the Committee of the Whole heard the evidence and recommended expulsion. The vote fell two short of the two-thirds majority necessary to expel a Member.¹⁴

From 1798 until 1967, the House undertook disciplinary action against Members over 40 times, with no standardized approach. The offenses ranged from dueling to inserting obscene material in the *Congressional Record*. Some cases were handled directly on the House floor without Committee action, others through the creation of select investigating committees. In at least one case, the accused Member was not allowed to speak on his own behalf or to present any defense.¹⁵ There were even attempts to punish former Members who had resigned.¹⁶

Beginning in the late 1940s, Senators Wayne Morse and Paul Douglas and Representative Charles Bennett advocated the enactment of an official code of conduct. In 1958, the Code of Ethics for Government Service was approved.¹⁷ In 1964, following the investigation of Bobby Baker, Secretary to the Majority in the Senate, the Senate created a Select Committee on Standards of Conduct.

¹² See Comm. Rule 24(f).

¹³ House Comm. on Standards of Official Conduct, *In the Matter of a Complaint Against Representative Robert L.F. Sikes*, H. Rep. 94-1364, 94th Cong., 2d Sess. 8 (1976).

¹⁴ II A. Hinds, *Hinds' Precedents of the House of Representatives of the United States*, §§ 1642-1643 (1907).

¹⁵ *Id.* at § 1256 (In the Matter of Representative Joshua R. Giddings).

¹⁶ *Id.* at §§ 1239 (In the Matter of Representative John T. Deweese), 1273 (In the Matter of Representative Benjamin F. Whittemore).

¹⁷ See note 2, *supra*.

During the 89th Congress, two different actions prompted the creation of the House Committee on Standards of Official Conduct. In 1965, the Joint Committee on the Organization of Congress held hearings in which considerable testimony addressed the ethical conduct of Members, the need for codes of conduct and financial disclosure regulations, and the need for an ethics committee. In its final report, the Joint Committee's recommendations included the creation of a House Committee on Standards and Conduct.¹⁸

The other action involved an investigation by the Special Subcommittee on Contracts of the Committee on House Administration into the expenditures of the Committee on Education and Labor and the conduct of its chairman, Representative Adam Clayton Powell, Jr., of New York. The Subcommittee's report concluded that the chairman and certain employees had deceived House authorities as to travel expenses and also noted strong evidence that the chairman had directed certain illegal salary payments to his wife.¹⁹ No formal action was taken during the 89th Congress against Representative Powell. In the 90th and 91st Congresses, however, he was removed from his chairmanship, denied his seniority, and fined,²⁰ and an attempt was made to exclude him.²¹

Against this backdrop, a Select Committee on Standards and Conduct was established in the closing days of the 89th Congress. The Select Committee's authority was limited to (1) recommending additional rules or regulations to ensure that Members, officers, and employees of the House adhere to proper standards of conduct in the discharge of their official duties; and (2) reporting violations of any law to the proper federal and state authorities.²²

The Select Committee's term was limited.²³ On April 13, 1967, the House established the Committee on Standards of Official Conduct, to be composed of six members of the majority party and six members of the minority party. The Committee was directed to recommend such changes in laws, rules, and regulations as necessary to establish and to enforce standards of official conduct for Members,

¹⁸ Joint Comm. on the Organization of Congress, *Final Report pursuant to S. Con. Res. 2*, S. Rep. 1414, 89th Cong., 2d Sess. 48 (1966).

¹⁹ H. Rep. 2349, 89th Cong., 2d Sess. 6-7 (1966).

²⁰ See H. Rep. 27, 90th Cong., 1st Sess. (1967); H. Res. 2, 91st Cong., 1st Sess., 115 *Cong. Rec.* H21 (Jan. 3, 1969).

²¹ 113 *Cong. Rec.* 26-27 (Mar. 1, 1967).

²² H.R. 1013; see also House Comm. on Rules, Creating a Select Committee on Standards and Conduct, Report to Accompany H.R. 1013, H. Rep. 2012, 89th Cong., 2d Sess. (1966).

²³ See generally House Select Comm. on Standards of Official Conduct, *Report Under the Authority of H.R. 1013*, H. Rep. 2338, 89th Cong., 2d Sess. (1966).

officers, and employees.²⁴ One year later, the House Rules were amended to include a Code of Conduct (currently codified as House Rule 23) and an annual financial disclosure requirement (currently codified as House Rule 26).²⁵ At the same time, the Committee was made a permanent standing committee with authority to investigate alleged violations of the Code of Conduct and to issue advisory opinions interpreting its provisions.²⁶

Four ad hoc groups have influenced the Committee's work: (1) The Commission on Administrative Review (generally known as the "Obey Commission"); (2) the Select Committee on Ethics; (3) the Bipartisan Task Force on Ethics; and (4) the Ethics Reform Task Force. The work of each group is summarized below.

The Obey Commission was established in July 1976 (95th Congress), in the aftermath of Watergate, and directed to make recommendations to the House concerning ethical practices, financial accountability, and administrative operations of the House. These recommendations were set forth in a report entitled *Financial Ethics*²⁷ and a resolution, H. Res. 287. The House's adoption, on March 2, 1977, of H. Res. 287 changed the House rules governing financial disclosure, outside earned income, acceptance of gifts, unofficial office accounts, franking privileges, and travel. The Commission also recommended the creation of a select committee with legislative jurisdiction over these areas.

Based on the Obey Commission's recommendation, the House established the Select Committee on Ethics in March 1977 to provide guidelines and interpretations concerning House rules currently codified as House Rules 23, 24, 25, and 26, and to report legislation. The Select Committee and the Committee on Standards of Official Conduct operated simultaneously, with different jurisdictions. During the two years of the Select Committee's existence, it issued 13 formal Advisory Opinions interpreting the new House rules and recommended that the House rules pertaining to financial disclosure and franking (current House Rules 24 and 26) be enacted into law, which occurred in 1978.²⁸ When the Select Committee completed its task, it issued a *Final Report*,²⁹ and its records and materials were transferred to the Committee on Standards of Official Conduct to assist the latter in rendering

²⁴ H. Res. 418, 90th Cong., 1st Sess. (1967).

²⁵ H. Res. 1099, 90th Cong., 2d Sess. (1968).

²⁶ *Id.*

²⁷ H. Doc. 95-73, 95th Cong., 1st Sess. (1977).

²⁸ See Ethics in Government Act of 1978, now codified, as amended, at 5 U.S.C. app. 4 §§ 101-111 and 39 U.S.C. §§ 3210-3220.

²⁹ H. Rep. 95-1837, 95th Cong., 2d Sess. (1979).

advisory opinions and interpreting House rules relating to financial ethics and standards of conduct.

On February 2, 1989, the Speaker and the Republican Leader of the 101st Congress appointed a Bipartisan Task Force on Ethics to conduct a comprehensive review of House ethics rules and regulations. Co-chaired by Representatives Vic Fazio and Lynn Martin, the Task Force looked anew at the rules concerning gifts, honoraria, outside earned income, financial disclosure, and the use of official resources, as well as considered issues relating to ethics committee procedures and the compensation of Members and other senior government officials. After four public hearings and much internal study, the Task Force issued a report³⁰ and a bill, H.R. 3660. This bill became the Ethics Reform Act of 1989, Pub. L. 101-194, signed into law on November 30, 1989, and amended with technical corrections by Pub. L. 101-280 on May 4, 1990.

The Ethics Reform Act enacted a total ban on honoraria, revisions to the outside earned income limits, new post-employment restrictions, changes to the gift and travel limits, and financial disclosure revisions. The Ethics Reform Act also contained several provisions affecting the Committee on Standards of Official Conduct. In 1990, an Office of Advice and Education was established within the Committee to provide confidential advice to Members, officers, and employees. A statute of limitations of three terms was enacted for investigations of alleged violations. In 1991, the Committee's membership increased from 12 to 14, and it adopted procedures ensuring that the same members do not both recommend charges and sit in judgment of those charges.

In February 1997, following the resolution of a Committee investigation of the Speaker of the House,³¹ the House of Representatives established the Ethics Reform Task Force, chaired by Representatives Robert L. Livingston and Benjamin L. Cardin. The task force was directed to review procedures governing the ethics process and to recommend appropriate reforms. On September 18, 1997, the House adopted the recommendations of the Ethics Reform Task Force with amendments (H.R. 168). The recommended changes to the House ethics rules proposed by the Ethics Reform Task Force were designed to "improve the trust and confidence that the Members, and the American people, have in the House standards process." The recommendations adopted by the House included a requirement that Standards Committee staff be nonpartisan, professional, and available as a resource to all Members of the Committee. Other recommendations adopted by the House

³⁰ 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.* H9253 (daily ed. Nov. 21, 1989).

³¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Newt Gingrich*, H. Rep. 105-1, 105th Cong., 1st Sess. (Jan. 17, 1997).

included reducing the size of the Committee from 14 to 10 Members, expanding due process for respondents, and establishing a pool of 20 members (10 from each party) to be available to serve on an investigative subcommittee as needed by the Committee.³²

Committee Procedures

The Rules of the Committee on Standards of Official Conduct³³ have been periodically revised since the Committee was established to reflect changes in Committee structure and procedures implemented by the House. Current rules also reflect changes necessitated following experience under prior rules. The current rules provide for an Office of Advice and Education within the Committee and the bifurcation of the Committee investigatory and disciplinary process. The rules also govern the issuance of advisory opinions, the receipt of complaints, and the conduct of Committee investigations.

Committee rules now set forth the following requirements for complaints filed with the Committee:³⁴

- A complaint must be in writing, dated, and properly verified.³⁵
- A complaint must set forth the following in simple, concise, and direct statements: the name and legal address of the party filing the complaint; the name and position or title of the respondent; the nature of the alleged violation of the Code of Official Conduct or of other law, rule, regulation, or other standard of conduct applicable to the performance of duties or discharge of responsibilities; and the facts alleged to give rise to the violation.
- A complaint shall not contain innuendo, speculative assertions, or conclusory statements.³⁶
- Information offered as a complaint by a Member of the House of Representatives may be transmitted directly to the Committee; however,

³² *Report of the Ethics Reform Task Force on H. Res. 168*, 105th Cong., 1st Sess. (Comm. Print June 17, 1997).

³³ House Comm. on Standards of Official Conduct, Rules, 110th Cong., 1st Sess. (Comm. Print 2007) (hereinafter “Comm. Rule(s)”), *reprinted in* 153 *Cong. Rec.* H7331-37 (June 27, 2007). The Committee’s rules are also available on the Committee’s website.

³⁴ *See generally* Comm. Rule 15.

³⁵ Committee Rule 15(a) provides that a document will be considered properly verified when a notary executes it with the language, “Signed and sworn to (or affirmed) before me on (date) by (the name of the person).”

³⁶ *See* House Comm. on Standards of Official Conduct *Summary of Activities for the One Hundred Eighth Congress*, H. Rep. 108-806, 2d Sess. (Jan. 3, 2005) at 21 (concerning content of complaint filed by Representative Chris Bell).

information offered as a complaint by an individual not a Member of the House may be transmitted to the Committee, provided that a Member of the House certifies in writing that he or she believes the information is submitted in good faith and warrants the review and consideration of the Committee.

- A complaint must be accompanied by a certification, which may be unsworn, that the complainant has provided an exact copy of the filed complaint and all attachments to the respondent.
- The Committee shall not accept, and shall return to the complainant, any complaint submitted within the 60 days prior to an election in which the subject of the complaint is a candidate.
- The Committee shall not consider a complaint, nor shall any investigation be undertaken by the Committee, of any alleged violation which occurred before the third previous Congress unless the Committee determines that the alleged violation is directly related to an alleged violation which occurred in a more recent Congress.

Committee rules also contain requirements and procedures that follow the filing of a complaint. Initially, a determination is made by the Chairman and Ranking Minority Member of the Committee as to whether a complaint is in compliance with House and Committee rules.³⁷ If it is determined that the complaint submitted meets the requirements for what constitutes a complaint, Committee rules provide for notification of that determination to the respondent, and for an opportunity for the respondent to provide a response.³⁸ The Chairman and Ranking Minority Member may establish an investigative subcommittee or make recommendations to the full Committee as to the disposition of the complaint.³⁹ The recommendations that the Chairman and Ranking Minority Member of the Committee may make include recommending that the Committee dismiss the complaint or any portion thereof, or that it establish an investigative subcommittee.⁴⁰ The rules permit the Chairman and Ranking Minority Member to jointly gather additional information concerning alleged conduct which is the basis for a complaint until the Committee has established an investigative subcommittee or placed the issue of establishing an investigative subcommittee on the agenda of Committee meeting.⁴¹

³⁷ Comm. Rule 16(a).

³⁸ Comm. Rule 17(a) and (b).

³⁹ Comm. Rule 16(b).

⁴⁰ *Id.*

⁴¹ Comm. Rule 17(c).

The rules also permit, notwithstanding the absence of a filed complaint, the Committee to consider any information in its possession indicating that a Member, officer, or employee may have committed a violation of the Code of Official Conduct or any law, rule, regulation, or other standard of conduct applicable to the conduct of such Member, officer, or employee in the performance of his or her duties or the discharge of his or her responsibilities.⁴² Further, the Chairman and Ranking Minority Member may jointly gather additional information concerning such an alleged violation unless and until an investigative subcommittee has been established.⁴³

If an investigative subcommittee is established, the Chairman and Ranking Minority Member designate four Members of the House (with equal representation from the majority and minority parties) to serve on the subcommittee. One of the Members of the investigative subcommittee is designated by the Chairman of the Committee to serve as Chairman of the investigative subcommittee. The Ranking Minority Member of the Committee designates one Member of the investigative subcommittee to be its Ranking Minority Member.⁴⁴

Once appointed, the investigative subcommittee gathers evidence relating to the matter under investigation. Any evidence relevant to the inquiry is admissible unless it is privileged under House rules.⁴⁵ The investigative subcommittee may, by a majority vote of its Members, compel by subpoena the attendance and testimony of witnesses and the production of documents it deems necessary to conduct its inquiry.⁴⁶ In addition, investigative subcommittee staff may interview witnesses and examine documents, among other investigative measures.⁴⁷ The proceedings of the investigative subcommittee, including the taking of witness testimony, are conducted in executive session.⁴⁸ All witnesses and the respondent in an inquiry may be represented by counsel.⁴⁹

At the conclusion of its inquiry, the investigative subcommittee may “adopt a Statement of Alleged Violation if it determines that there is substantial reason to believe that a violation . . . has occurred.”⁵⁰ The Statement of Alleged Violation

⁴² Comm. Rule 18(a).

⁴³ *Id.*

⁴⁴ Comm. Rule 19(a).

⁴⁵ Comm. Rule 19(c)(1).

⁴⁶ Comm. Rule 19(b)(5).

⁴⁷ Comm. Rule 19(b)(4).

⁴⁸ Comm. Rule 19(b)(1).

⁴⁹ Comm. Rules 19(b)(2), 26(c), and 26(m).

⁵⁰ Comm. Rule 19(f).

must contain a plain and concise statement of facts and a reference to the particular standard of conduct violated by the respondent.⁵¹ Prior to adopting the Statement of Alleged Violation, the investigative subcommittee must make exculpatory information received by the investigative subcommittee available to the respondent.⁵² The rules permit a respondent to submit an answer, in writing and under oath, to the Statement of Alleged Violation, as well as to file a Motion for a Bill of Particulars and a Motion to Dismiss.⁵³ If an investigative subcommittee does not adopt a Statement of Alleged Violation, it shall transmit a report to the Committee that contains a summary of the information received during the inquiry along with the conclusions and recommendations, if any, of the investigative subcommittee.⁵⁴

Unless otherwise resolved under Committee and House rules, the next step of the disciplinary process requires the allegations in the Statement of Alleged Violation to be put before an adjudicatory subcommittee that consists of all Members of the Committee who did not serve on the investigative subcommittee.⁵⁵ In a public adjudicatory hearing to determine whether the alleged violations have been proven by clear and convincing evidence, both the respondent and Committee counsel may present evidence.⁵⁶ The burden of proof rests on Committee counsel to establish the facts alleged in the Statement of Alleged Violation by clear and convincing evidence.⁵⁷

If a majority of the members of an adjudicatory subcommittee find that any count of in a Statement of Alleged Violation has been proven by clear and convincing evidence, a public sanction hearing is held before all of the members of the Standards Committee to determine the appropriate sanction to adopt or to recommend to the House.⁵⁸

As noted, the Committee may recommend one or more of several different sanctions to the House of Representatives, including expulsion from the House of Representatives, censure, or reprimand.⁵⁹ The Committee may also send a Letter of

⁵¹ *Id.*

⁵² Comm. Rule 25.

⁵³ Comm. Rule 22(a), (b), and (c).

⁵⁴ Comm. Rule 19(g).

⁵⁵ Comm. Rule 23(a).

⁵⁶ Comm. Rule 23(j).

⁵⁷ Comm. Rule 23(n).

⁵⁸ Comm. Rule 24(b).

⁵⁹ Comm. Rule 24(e).

Reproval to a respondent without recommending further action by the full House.⁶⁰ A Letter of Reproval is “intended to be a rebuke of a Member’s conduct issued by a body of that Member’s peers acting, as the Standards Committee, on behalf of the House of Representatives.”⁶¹

In the entire history of the House of Representatives, five Members have been expelled. Of the five Members, three of them were expelled for conduct traitorous to the Union in the Civil War era. Michael J. Myers was expelled from the House in 1980 following his conviction for bribery in connection with the ABSCAM scandal.⁶² James A. Traficant, Jr., was expelled from the House in 2002, following his trial and conviction for conspiring to violate the bribery statute (18 U.S.C. § 201), acceptance of gratuities, obstruction of justice, conspiracy to defraud the United States, filing false federal income tax returns, and racketeering.⁶³ Since the establishment of this Committee, four Members have been censured by the House after Committee investigations, and seven have been reprimanded. In addition, the Committee has issued five public letters of reproval, without recommending action by the full House, and has publicly admonished several other Members for their conduct. Ten Members left the House after charges were brought by the Committee or court convictions were returned but before House action could be concluded.

Conduct Reflecting Creditably on the House

A Member, Delegate, Resident Commissioner, officer, or employee of the House shall conduct himself at all times in a manner that shall reflect creditably on the House. [House Rule 23, clause 1.]

Members, officers, and employees of the House must observe the broad ethical standards articulated in the Code of Official Conduct (Rule 23) of the Rules of the House of Representatives. The most comprehensive provision, Clause 1, states that a “Member, Delegate, Resident Commissioner, officer, or employee of the House shall conduct himself at all times in a manner that shall reflect creditably on the House.”

⁶⁰ Comm. Rule 24(d).

⁶¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative E.G. “Bud” Shuster*, H. Rep. 106-979, 106th Cong., 2d Sess. (Oct. 16, 2000) at 113; *see also* House Comm. on Standards of Official Conduct, *In the Matter of Representative Earl F. Hilliard*, H. Rep. 107-130, 107th Cong., 1st Sess. (July 10, 2001) at xi-xii.

⁶² House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. 96-1387, 96th Cong., 2d Sess. (Sept. 24, 1980).

⁶³ House Comm. on Standards of Official Conduct, *In the Matter of Representative James A. Traficant, Jr.*, H. Rep. 107-594, 107th Cong., 2d Sess., Vols. I-VI (July 19, 2002).

In interpreting Clause 1 of the Code when first adopted, the Select Committee on Standards of Official Conduct of the 90th Congress noted that this standard was included within the Code to deal with “flagrant” violations of the law that reflect on “Congress as a whole,” and that might otherwise go unpunished.⁶⁴ During floor debate preceding the adoption of the Code, however, Representative Price of Illinois, Chairman of the Select Committee on Standards of Official Conduct, rejected the notion that violations of law are simultaneous violations of the Code:

The committee endeavored to draft a code that would have a deterrent effect against improper conduct and at the same time be capable of enforcement if violated. Initially the committee considered making violations of law simultaneous violations of the code, but such a direct tie-in eventually was ruled out for the reason that it might open the door to stampedes for investigation of every minor complaint or purely personal accusation made against a Member. At the same time there was a need for retaining the ability to deal with any given act or accumulation of acts which, in the judgment of the committee, are severe enough to reflect discredit on the Congress. Stated purposefully in subjective language, this standard [clause 1] provides both assurances.⁶⁵

Later in the floor discussion, another member of the Select Committee, Representative Arends of Illinois, emphasized that the committee intended the proposed rules to focus on official, rather than personal, conduct:

[T]he Congress has the constitutional right to determine its own rules. And this right, too, has its limitations. The rules are applicable only in connection with the operation of the Congress itself. Somehow a line must be drawn as between what is personal conduct and what is official conduct.⁶⁶

During the 110th Congress, the House adopted House Resolution 451,⁶⁷ which provided that

⁶⁴ House Comm. on Standards of Official Conduct, *Report under the Authority of H. Res. 418*, H. Rep. 1176, 90th Cong., 2d Sess. 17 (1968).

⁶⁵ 114 *Cong. Rec.* 8778 (Apr. 3, 1968).

⁶⁶ 114 *Cong. Rec.* 8785 (Apr. 3, 1968).

⁶⁷ 153 *Cong. Rec.* 7331 (June 27, 2007).

[W]henever a Member of the House of Representatives, including a Delegate or Resident Commission to the Congress, is indicted or otherwise informally charged with criminal conduct in a court of the United States or any State, the Committee on Standards of Official Conduct shall, not later than 30 days after the date of such indictment or charge—

(1) empanel an investigative subcommittee to review the allegations; or

(2) if the Committee does not empanel an investigative subcommittee to review the allegations, submit a report to the House describing its reasons for not empanelling such an investigative subcommittee, together with the actions, if any, the Committee has taken in response to the allegations.

The resolution mandates some action by the Committee (either a report to the House or the empanelment of an investigative subcommittee) whenever a Member is charged with criminal conduct, and does not distinguish between felony and misdemeanor criminal charges.

To date, the Committee or the House has invoked Rule 23, clause 1, in investigating or disciplining Members for:

- Failure to report campaign contributions⁶⁸ and making false statements to the Committee⁶⁹ in connection with the Korean Influence Investigation;⁷⁰
- Criminal convictions for bribery⁷¹ or accepting illegal gratuities;⁷²

⁶⁸ House Comm. on Standards of Official Conduct, *In the Matter of Representative John J. McFall*, H. Rep. 95-1742, 95th Cong., 2d Sess. 2-3 (1978) (Count 1); House Comm. on Standards of Official Conduct, *In the Matter of Representative Edward R. Roybal*, H. Rep. 95-1743, 95th Cong., 2d Sess. 2-3 (1978) (Count 1).

⁶⁹ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. 95-1741, 95th Cong., 2d Sess. 4-5 (1978); H. Rep. 95-1743, *supra* note 66, at 3-4 (Counts 3-4).

⁷⁰ See 124 *Cong. Rec.* 36976-84, 37005-17 (Oct. 13, 1978) (House reprimand).

⁷¹ House Comm. on Standards of Official Conduct, *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. 96-1537, 96th Cong., 2d Sess. 4 (1980) (Member resigned); House Comm. on Standards of Official Conduct, *In the Matter of Representative Raymond F. Lederer*, H. Rep. 97-110, 97th Cong., 1st Sess. 4, 16-17 (1981) (Member resigned after Committee recommended expulsion); H. Rep. 96-1387, *supra* note 61, at 2, 5 (vote of expulsion). In another case, the Committee issued a
(con't next page)

- Criminal convictions for conspiring to violate the federal bribery statute, acceptance of gratuities, obstruction of justice, conspiracy to defraud the United States, filing false federal income tax returns, and racketeering;⁷³
- Inflating the salaries of congressional employees in order to enable them to pay the Member's personal, political, or congressional expenses;⁷⁴
- Accepting gifts from persons with interest in legislation in violation of the gift rule (Rule 43, clause 4);⁷⁵
- Engaging in sexual relationships with House pages;⁷⁶
- Making improper sexual advances to a Peace Corps volunteer;⁷⁷
- Writing a misleading memorandum that could have influenced a personal associate's probation and arranging for the improper administrative dismissal of parking tickets;⁷⁸
- Engaging in a pattern and practice of conduct in which campaign funds were converted to personal use;⁷⁹

Statement of Alleged Violation concerning bribery and perjury, but took no further action when the Member resigned (House Comm. on Standards of Official Conduct, *In the Matter of Representative Daniel J. Flood*, H. Rep. 96-856, 96th Cong., 2d Sess. 4-16, 125-126 (1980)).

⁷² House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. 100-506, 100th Cong., 2d Sess. 7, 9 (1988) (Member resigned while expulsion resolution was pending); H. Rep. 107-594, *supra* note 63 (vote of expulsion).

⁷³ H. Rep. 107-594, *supra* note 63.

⁷⁴ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles C. Diggs, Jr.*, H. Rep. 96-351, 96th Cong., 1st Sess. (1979); *see* 125 *Cong. Rec.* 21584-92 (July 31, 1979) (Member censured and required to make restitution); *see also* House Comm. on Standards of Official Conduct, *Summary of Activities, 100th Cong.*, H. Rep. 100-1125, 100th Cong., 2d Sess. 15-16 (1989) (*In the Matter of Delegate Fofo I.F. Sunia*) (Member and aide pleaded guilty to conspiracy to defraud the government and resigned).

⁷⁵ House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. 96-930, 96th Cong. 2d Sess. 4-5 (1980); *see* 126 *Cong. Rec.* 13801-20 (June 10, 1980) (vote of censure); former House Rule 43 cl. 4.

⁷⁶ House Comm. on Standards of Official Conduct, *In the Matter of Representative Gerry E. Studds*, H. Rep. 98-295, 98th Cong., 1st Sess. (1983); House Comm. on Standards of Official Conduct, *In the Matter of Representative Daniel B. Crane*, H. Rep. 98-296, 98th Cong., 1st Sess. (1983); *see* 129 *Cong. Rec.* H5280-95 (daily ed. July 20, 1983) (Committee recommended reprimand; House voted censure).

⁷⁷ House Comm. on Standards of Official Conduct, *In the Matter of Representative Gus Savage*, H. Rep. 101-397, 101st Cong., 2d Sess. 14 (1990) (Committee publicly disapproved conduct; no House action).

⁷⁸ House Comm. on Standards of Official Conduct, *In the Matter of Representative Barney Frank*, H. Rep. 101-610, 101st Cong., 2d Sess. (1990) (Member reprimanded by House).

- Violations of the House gift rule, the performance of campaign work in an official congressional office by congressional employees on official time, and the failure to maintain adequate records to verify the legitimacy of expenditures of campaign funds;⁸⁰ and
- Making statements that impugned the reputation of the House, failing to cooperate fully with fact-finding being undertaken by the Chairman and Ranking Minority Member of the Committee on Standards of Official Conduct, threatening to retaliate against a fellow Member because of the Member's vote on particular legislation, and offering a political endorsement for a relative of a Member in exchange for vote by the Member in favor of particular legislation.⁸¹

A review of these cases indicates that the Committee has historically viewed clause 1 as encompassing violations of law and abuses of one's official position.⁸²

The Spirit and the Letter of the Rules

A Member, Delegate, Resident Commissioner, officer, or employee of the House shall adhere to the spirit and the letter of the Rules of the House and to the rules of duly constituted committees thereof. [House Rule 23, clause 2.]

House Rule 23, clause 2, provides that Members, officers, and employees shall adhere to the spirit and the letter of House and committee rules. The Select Committee on Standards of Official Conduct of the 90th Congress recommended this provision in part to emphasize "the importance of the precedents of decorum and consideration that have evolved in the House over the years."⁸³

⁷⁹ H. Rep. 107-130, *supra* note 61, at 3-9 (Member's conduct was also found to violate provision of Code of Official Conduct prohibiting conversion of campaign funds to personal use and prohibiting expenditure of campaign funds that are not attributable to bona fide campaign or political purposes. *See* House Rule 23, clause 6).

⁸⁰ H. Rep. 106-979, *supra* note 61, at 6-7.

⁸¹ House Comm. on Standards of Official Conduct, *Investigation of Certain Allegations Related to Voting on the Medicare Prescription Drug, Improvement, and Modernization Act of 2003*, H. Rep. 108-722, 108th Cong., 2d Sess. (Oct. 4, 2004).

⁸² In one other case, the Committee never reached a determination as to whether what is now codified as Rule 23, clause 1 would encompass a criminal conviction for contributing to the unruliness of a minor and allegations of improper sexual advances to a congressional employee because the Member resigned prior to the conclusion of the Preliminary Inquiry. *See* Staff of House Comm. on Standards of Official Conduct, *In the Matter of Representative Donald E. Lukens*, 101st Cong., 2d Sess. (Comm. Print 1990).

⁸³ H. Rep. 1176, *supra* note 64, at 17.

Beyond this genteel goal, however, the drafters did assume that the rule would provide a basis for congressional discipline. As summarized by Chairman Price:

This standard was drafted also in general terms rather than attempting to deal more specifically with such things as unfair and dilatory legislative tactics. It did not appear practicable to the committee to attempt to regulate these areas more closely. This standard should provide the House the means to deal with infractions that rise to trouble it without burdening it with defining specific charges that would be difficult to state with precision.⁸⁴

The practical effect of Clause 2 of the Code has been to provide a device for construing other provisions of the Code and House rules. It has been interpreted to mean that Members, officers, and employees may not do indirectly what they would be barred from doing directly. Individuals should thus read House rules broadly. The Select Committee on Ethics of the 95th Congress cited this provision to show that a narrow technical reading of a House rule should not overcome its “spirit” and the intent of the House in adopting that and other rules of conduct.⁸⁵

In addition to using Clause 2 as an aid to interpreting other House rules, this Committee cited its violation in recommending expulsion for two Members convicted in separate cases of bribery in the 96th and 97th Congresses, one Member convicted of accepting illegal gratuities in the 100th Congress,⁸⁶ and one Member convicted during the 107th Congress of conspiring to violate the bribery statute (18 U.S.C. § 201), accepting gratuities, obstructing justice, conspiring to defraud the United States, filing false federal income tax returns, and racketeering.⁸⁷

Refraining From Legislative Activity After Conviction

On April 16, 1975, the House adopted an amendment to the Code of Official Conduct pertaining to convictions. That provision, now clause 10 of Rule 23, states that

A Member, Delegate, or Resident Commissioner who has been convicted by a court of record for the commission of a crime for which a

⁸⁴ 114 *Cong. Rec.* 8778 (Apr. 3, 1968); *see also* 114 *Cong. Rec.* 8799 (statement of Representative Teague, member of the House Comm. on Standards of Official Conduct, 90th Cong.).

⁸⁵ *See* House Select Comm. on Ethics, *Advisory Opinion No. 4*, included as an appendix to H. Rep. 95-1837, *supra* note 29, at 61, and in the appendices of this Manual.

⁸⁶ H. Rep. 96-1387, *supra* note 62, at 5; H. Rep. 97-110, *supra* note 71, at 16 n.8; H. Rep. 100-506, *supra* note 72, at 7.

⁸⁷ H. Rep. 107-594, *supra* note 63.

sentence of two or more years' imprisonment may be imposed should refrain from participation in the business of each committee of which he is a member, and a Member should refrain from voting on any question at a meeting of the House or of the Committee of the Whole House on the state of the Union, unless or until judicial or executive proceedings result in reinstatement of the presumption of his innocence or until he is reelected to the House after the date of such conviction

The Committee cited this rule in 2002 in a publicly-released letter to former Representative James A. Traficant, Jr., following Representative Traficant's conviction in a federal district court of ten felony counts related to public corruption. Citing House Rule 23, clause 10, Representative Traficant was admonished by the Committee that if he violated this provision he would risk disciplinary action by the Committee and the House. The Committee advised Representative Traficant that such disciplinary action would be in addition to any proceedings initiated in connection with his criminal convictions. The *Congressional Record* confirmed that other than during a vote on the House floor to postpone a vote on a resolution to expel him from the House, Representative Traficant did not vote in the House after the date of his criminal convictions.

This Committee's report on the measure noted that the Committee will not, as a rule, take action on a complaint of a statutory violation by a Member while the authorities charged with the statute's enforcement are pursuing the case. However, where the case raises allegations of abuse of official position or where law enforcement authorities do not appear to be acting "expeditiously," the Committee may choose not to defer:

[W]here an allegation is that one has abused his direct representational or legislative position — or his "official conduct" has been questioned — the committee concerns itself forthwith, because there is no other immediate avenue of remedy. But where an allegation involves a possible violation of statutory law, and the committee is assured that the charges are known to and are being expeditiously acted upon by the appropriate authorities, the policy has been to defer action until the judicial proceedings have run their course. This is not to say the committee abandons concern in statutory matters — rather, it feels it normally should not undertake duplicative investigations pending judicial resolution of such cases.⁸⁸

⁸⁸ House Comm. on Standards of Official Conduct, *Policy of the House of Representatives with respect to Actions by Members Convicted of Certain Crimes*, H. Rep. 94-76, 94th Cong., 1st Sess. 2 (1975).

Even if the judicial process has not entirely run its course, such as when appeals are pending, the House may take notice of guilty pleas or verdicts against a Member, since the Member cannot at that point claim the presumption of innocence. As the Committee report noted:

For the House to withhold any action whatever until ultimate disposition of a judicial proceeding could mean, in effect, the barring of any legislative branch action, since the appeals processes often do, or can be made to, extend over a period longer than the two-year term of the Member.

Since Members of Congress are not subject to recall . . . public opinion could well interpret inaction as indifference on the part of the House.

The Committee recognizes a very distinguishable link in the chain of due process — that is, the point at which the defendant no longer has claim to the presumption of innocence. This point is reached in a criminal prosecution upon a plea of guilty or upon conviction by a jury or by a judge (or judges) if jury trial is waived. It is to this condition, and only to this condition, that the proposed resolution is directed.⁸⁹

Where the gravamen of the charges is abuse of official position, the full House may choose to take disciplinary action against a Member even though all appeals in the criminal process have not been exhausted.⁹⁰ Thus, while a Committee rule compels the Committee to undertake an inquiry “with regard to any felony conviction of a Member, officer, or employee of the House of Representatives in a Federal, State, or local court who has been sentenced,”⁹¹ under the same rule, the Committee has the discretion to initiate an inquiry at any time prior to conviction or sentencing.⁹²

⁸⁹ *Id.*

⁹⁰ See H. Rep. 96-351, *supra* note 74; H. Rep. 96-1387, *supra* note 62. In several other cases, Members resigned after conviction but before the House could act. See H. Rep. 96-1537, *supra* note 71; H. Rep. 97-110, *supra* note 71; H. Rep. 100-506, *supra* note 72; House Comm. on Standards of Official Conduct, *Summary of Activities, 101st Cong.*, H. Rep. 101-995, *101st Cong.*, 2d Sess. 12-13 (1990) (*In the Matter of Representative Robert Garcia*); see also H. Rep. 107-594, *supra* note 63.

⁹¹ Comm. Rule 18(e).

⁹² *Id.*

Code of Ethics for Government Service

The Code of Ethics for Government Service articulates broad ethical guidelines for “all Government employees, including officeholders.” The 85th Congress adopted this Code in 1958.⁹³ Among other things, the Code stresses that any person in government service should:

- Adhere to the highest moral principles;
- Give a full day’s labor for a full day’s pay;
- Never discriminate unfairly by dispensing special favors;
- Never accept favors or benefits that might be construed as influencing the performance of governmental duties;
- Make no private promises binding on the duties of office;
- Engage in no business with the Government inconsistent with the performance of governmental duties;
- Never use information received confidentially in the performance of governmental duties for making private profit; and
- Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.

The Code of Ethics for Government Service was adopted as a concurrent resolution expressing the “sense of Congress,”⁹⁴ rather than as a statute. This Committee has concluded, however, that the ethical precepts set forth in this code “represent continuing traditional standards of ethical conduct to be observed by Members of the House at all times.”⁹⁵

Formal charges may be brought against Members of the House for violating this code. Among the violations charged against former Representative Traficant during the disciplinary proceedings that led to his expulsion was that he violated the requirement of the Code of Ethics for Government Service that Members uphold the laws of the United States and never be a party to the evasion of those laws.⁹⁶ In another instance, the House reprimanded a Member based on charges concerning his use of his official position for pecuniary gain and receipt of benefits under circumstances that might have been construed as influencing official duties. There

⁹³ See note 2, *supra*.

⁹⁴ L. Deschler & W. Brown, *Procedure in the U.S. House of Representatives*, 97th Cong., 2d Sess. 373, ch. 24, § 1.3 (4th ed. 1982).

⁹⁵ H. Rep. 94-1364, *supra* note 13, at 3.

⁹⁶ H. Rep. 107-594, *supra* note 63; see also Code of Ethics for Government Service, *supra* note 2, at ¶ 2.

the Member took official actions that enhanced the value of his personal financial holdings.⁹⁷ In another matter, the House reprimanded a Member found responsible for permitting official resources to be diverted to his former law partner (by allowing him use of government furniture, photocopy services, supplies, and long distance telephone service over a nine-year period) in violation of paragraph 5 of the Code of Ethics for Government Service and 31 U.S.C. § 1301(a) (“[a]ppropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law”).⁹⁸

Rules of Members, Officers, Supervisors, and Committees

The standards enforced by this Committee constitute a “floor” of minimally acceptable behavior. Individual Members or supervisors may set more rigorous standards in their own offices. Therefore, employees of the House should ensure that their behavior complies with any additional rules, regulations, or practices that apply to the specific office or unit where they work.

Advisory Opinions

The Committee on Standards of Official Conduct urges individuals to call or to write with any questions regarding the appropriateness of contemplated activity. House rules authorize the Committee “to give consideration to the request of any Member, officer, or employee of the House for an advisory opinion with respect to the general propriety of any current or proposed conduct of such Member, officer, or employee.”⁹⁹ The Ethics Reform Act of 1989 guarantees that no one may be put in jeopardy by making such a request. Anyone who acts in good faith in accordance with a written advisory opinion from the Committee may not then be investigated by the Committee based on the conduct addressed in the opinion,¹⁰⁰ and courts may consider reliance on such an opinion a defense to prosecution by the Justice Department.¹⁰¹ All such inquiries and their responses will be kept confidential by the Committee.

⁹⁷ H. Rep. 94-1364, *supra* note 13, at 3; *see also* Code of Ethics for Government Service at ¶ 5.

⁹⁸ House Comm. on Standards of Official Conduct, *In the Matter of Representatives Austin J. Murphy*, H. Rep. 100-485, 100th Cong., 1st Sess. (1987).

⁹⁹ House Rule 10, cl. 4(e)(1)(D).

¹⁰⁰ 2 U.S.C. § 29d(i)(4); 5 U.S.C. app. 4 § 504(b); Comm. Rule 3(j)-(k).

¹⁰¹ *See United States v. Hedges*, 912 F.2d 1397, 1404-06 (11th Cir. 1990); 5 U.S.C. app. 4 § 504(b).



GIFTS

Overview

Congress has recognized that “public office is a public trust.”¹ Members of Congress hold office to represent the interests of their constituents and the public at large. Members are assisted in these efforts by officers and employees who are paid from United States Treasury funds. The public has a right to expect Members, officers, and employees to exercise impartial judgment in performing their duties.² The receipt of gifts or favors from certain persons or special interests may interfere with this impartial judgment. The recipient of a gift will naturally feel grateful, and the giver may expect favorable treatment or consideration in return.³

A 1951 report entitled *Ethical Standards in Government*, issued by a Senate subcommittee headed by Senator Paul H. Douglas, articulated some of the basic concerns that arise regarding acceptance of gifts by public officials:

What is it proper to offer to public officials, and what is it proper for them to receive? A cigar, a box of candy, a modest lunch . . . ? Is any one of these improper? It is difficult to believe so. They are usually a courteous gesture, an expression of good will, or a simple convenience, symbolic rather than intrinsically significant. Normally they are not taken seriously by the giver nor do they mean very much to the receiver. At the point at which they do begin to mean something, however, do they not become improper? Even small gratuities can be significant if they are repeated and come to be expected

Expensive gifts, lavish or frequent entertainment, paying hotel or travel costs, valuable services, inside advice as to investments, discounts and allowances in purchasing are in an entirely different category. They are clearly improper. . . . The difficulty comes in drawing the line between the innocent or proper and that which is

¹ Code of Ethics for Government Service ¶ 10, H. Con. Res. 175, 85th Cong., 2d Sess., 72 Stat., pt. 2, B 12 (1958).

² *Id.* ¶ 5. See also 135 *Cong. Rec.* H8764 (daily ed. Nov. 16, 1989) (debate on Ethics Reform Act of 1989, quoting Paul Volcker, Chairman of the National Commission on the Public Service); *United States v. Podell*, 436 F. Supp. 1039, 1042 (S.D.N.Y. 1977), *aff'd*, 572 F.2d 31 (2d Cir. 1978).

³ See Paul H. Douglas, *Ethics in Government* 48-49 (1952).

designing or improper. At the moment a doubt arises as to propriety, the line should be drawn.⁴

In 1989 the House Bipartisan Task Force on Ethics articulated the additional concern that gifts to Members may create an appearance of impropriety that may undermine the public's faith in government:

Regardless of any actual corruption or undue influence upon a Member or employee of Congress, the receipt of gifts or favors from private interests may affect public confidence in the integrity of the individual and in the institution of the Congress. Legitimate concerns of favoritism or abuse of public position may be raised by disclosure of frequent or expensive gifts from representatives of special interests, or valuable gifts from anyone other than a relative or personal friend.⁵

In a 1994 Senate committee report on a gift reform proposal, provisions imposing special restrictions on gifts from lobbyists were justified as follows:

[I]t seems appropriate to single out registered lobbyists and foreign agents for special treatment, because this category includes people who are, by definition, in the business of seeking to influence the outcome of public policy decisions. Because registered lobbyists and foreign agents are paid to influence the actions of public officials, including legislative branch officials, their gifts are uniquely susceptible to the appearance that they are intended to purchase access or influence.⁶

However, as the Douglas Subcommittee also recognized, Members and staff historically have been offered a number of gifts that do not raise any genuine ethical concern, including relatively inexpensive gifts that are presented merely as a souvenir of a visit or as a mark of honor or respect. Particularly where the offeror is either a constituent or an acquaintance who is not seeking any official action from the Member, a rule requiring Members to decline gifts of this nature could result in needless embarrassment or hurt feelings.

⁴ Special Subcomm. on the Establishment of a Comm'n on Ethics in Gov't, Senate Comm. on Labor and Public Welfare, *Ethical Standards in Government*, 82d Cong., 1st Sess. 23 (Comm. Print 1951).

⁵ House Bipartisan Task Force on Ethics, *Report on H.R. 3660*, 101st Cong., 1st Sess. 6 (Comm. Print, Comm. on Rules 1989), *reprinted in* 135 *Cong. Rec.* 30740, 30742 (1989) (hereinafter "*Bipartisan Task Force Report*").

⁶ S. Rep. 255, 103d Cong., 2d Sess. 3-4 (1994).

Since 1968 the House rules have included provisions that impose explicit limits on the ability of Members, officers, and employees to accept gifts. This chapter is devoted to the gift rule currently in effect. However, the gift rule also includes a number of provisions relating to travel by Members, officers, and employees, including travel paid by a private source, a state or local government, or a foreign government. Those gift rule provisions are addressed in Chapter 3 on travel.

Since 1989 there has been a statutory underpinning to the House gift rule. A provision of the Ethics Reform Act of 1989, codified at 5 U.S.C. § 7353, generally prohibits federal officials, including House Members and staff, from soliciting or accepting anything of value, except as provided in rules and regulations issued by their supervising ethics office. Under that statute, both the Committee on Standards of Official Conduct and the House as a whole constitute the supervising ethics office for House Members, officers, and employees. Thus, the House gift rule defines the gifts that Members, officers, and employees may accept consistent with the provisions of 5 U.S.C. § 7353.

Statutory Prohibitions

The statutory gift provision, 5 U.S.C. § 7353, also reflects two key prohibitions regarding gifts that each House Member, officer, and employee should be familiar with, as follows:

1. Never accept a gift that is linked to any official action you have taken, or that you are being asked to take. One provision of the gift statute states, “No gift may be accepted [pursuant to gift rules or regulations] in return for being influenced in the performance of an official act.”⁷ Moreover, accepting a gift in these circumstances may constitute a serious violation of criminal law. The criminal statutes on bribery and illegal gratuities are discussed below in the section on “Bribery and Illegal Gratuities.”

2. Never solicit a gift from any person who has interests before the House. 5 U.S.C. § 7353 limits not only what government officials may **accept**, but also that for which they may **ask**. The statute provides in pertinent part:

(a) Except as permitted by [applicable gift rules or regulations], no Member of Congress or officer or employee of the executive, legislative, or judicial branch shall **solicit** or accept anything of value from a person –

⁷ 5 U.S.C. § 7353(b)(2)(B).

(1) seeking official action from, doing business with, or . . . conducting activities regulated by, the individual's employing agency; or

(2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties. [Emphasis added.]

While the House gift rule defines what Members, officers, and employees may **accept** in the way of gifts, the rule does not authorize them to **ask for** any gift. The prohibition against solicitation is very broad. It applies to the solicitation not only of money, but “anything of value.” In addition, the prohibition covers solicitations of things for the personal benefit of the Member, officer, or employee, as well as things that would involve no personal benefit. However, as is explained in a Standards Committee advisory memorandum of April 25, 1997, the Committee has determined that Members and staff **may** solicit on behalf of charitable organizations qualified under § 170(c) of the Internal Revenue Code, subject to certain restrictions.⁸ The Committee will consider requests to make solicitations for other purposes, but as a general rule, the Committee will not approve a solicitation that would result in any personal or financial benefit to Members or staff.

Example 1. An office is throwing a farewell party for a departing staff member, and the office knows of individuals in the private sector, with whom the staff member has worked, who would probably be willing to donate refreshments. The office may **not** request donations from those individuals.

Example 2. One of the cable channels recently showed a documentary that relates to some legislation before a committee. A committee staff person may call the company to inquire if the committee may purchase a tape of the show, but may not request a free copy.

Other prohibitions. Under the Code of Official Conduct, a Member, officer, or employee is expressly prohibited from accepting any gift “except as provided by clause 5 of rule 25.”⁹ The Code of Official Conduct also prohibits a Member, officer, or employee from receiving any benefit “by virtue of influence improperly exerted from his position in Congress.”¹⁰ Similarly, the Code of Ethics for Government Service (§ 5) admonishes every Government employee, “Never discriminate unfairly

⁸ The solicitation guidelines are discussed in detail in Chapter 10 on official and outside organizations.

⁹ House Rule 23, cl. 4.

¹⁰ House Rule 23, cl. 3.

by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for [oneself] or [one's] family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.”

This Committee has cautioned all Members “to avoid situations in which even an inference might be drawn suggesting improper action.”¹¹ Members, officers, and employees must always exercise discretion concerning the acceptance of gifts or favors from persons who are not relatives, and particularly gifts or favors that would not have been offered “but for” the individual’s position in Congress. Among the factors that one must consider are the source and value of a gift, the frequency of gifts from one source, the possible motives of the donor, and possible conflicts of interest with official duties.¹²

Gift Rule History

The first House Code of Official Conduct, which was approved as House Rule 43 in 1968, included, in clause 4, the first House gift rule. From 1968 to 1990, the gift rule restricted the ability of Members, officers, and employees to accept gifts from persons with a direct interest in legislation. When the Bipartisan Task Force on Ethics reviewed the gift rule in 1989, however, it found that standard to be subjective and unworkable: “It is often impractical, if not impossible, for Members to ascertain whether a donor has a direct interest in legislation, particularly in cases where the Member and donor have a long-standing personal relationship.”¹³ The Ethics Reform Act of 1989, as amended by the Legislative Branch Appropriations Act for fiscal year 1992,¹⁴ amended the rule to eliminate the need to make this determination, and substituted instead overall limits on the value of gifts that could be accepted from virtually anyone during a year.

From January 1, 1992, through December 31, 1995, the gift rule prohibited a Member, officer, or employee from accepting gifts worth a total of more than \$250 from any one source in any one year. However, under that rule, Members and staff could accept a range of gifts without regard to this annual limitation, including any

¹¹ House Comm. on Standards of Official Conduct, Investigation of Financial Transactions Participated in and Gifts of Transportation Accepted by Representative Fernand J. St Germain, H. Rep. 100-46, 100th Cong., 1st Sess. 3, 9, 43 (1987).

¹² See House Comm. on Standards of Official Conduct, *In the Matter of Representative Charles H. Wilson (of California)*, H. Rep. 96-930, 96th Cong., 2d Sess. 4-5, 19-20 (1980). See also *In the Matter of Representative Daniel J. Flood*, H. Rep. 96-856, 96th Cong., 2d Sess. 5-15 (1980).

¹³ *Bipartisan Task Force Report*, *supra* note 5, 135 *Cong. Rec.* 30742.

¹⁴ Pub. L. 101-194, § 801(a), 103 Stat. 1716, 1771 (1989), as amended by Pub. L. 102-90, § 314(d), 105 Stat. 447, 469 (1991).

gift worth \$100 or less, gifts of personal hospitality, and gifts from relatives.¹⁵ Also exempted from the annual limitation, pursuant to § 801(e) of the Ethics Reform Act, were “gifts of food and beverages consumed not in connection with gifts of lodging,” *i.e.*, “local meals,” without any restriction as to cost or the source of the payment.

From 1993 to 1995, proposals to tighten the gift rules were considered in both the House and the Senate, and in late 1995, the House approved a new gift rule that imposed significant, new limitations on the ability of Members, officers, and employees to accept gifts.¹⁶ That rule took effect on January 1, 1996, as House Rule 52. The rule was renumbered as House Rule 51 in the 105th Congress, and it was amended and renumbered as clause 5 of House Rule 26 in the 106th Congress. The report of the House Rules Committee on the proposed rule stated three reasons for the action taken by the House in 1995:

- “First, public opinion holds Congress as an institution in low esteem. Much of the rationale for the historic decline in public trust in the institution is due to a perception that special interest groups maintain undue influence over the legislative process, and Members of Congress are granted perquisites and privileges unavailable to average Americans.”
- “Second, there is a recognition that Congress has fallen behind the executive branch in the area of gift reform. For example, executive branch employees are permitted to accept unsolicited gifts having a market value of \$20 or less per occasion, provided that the aggregate market value of individual gifts received from any one person shall not exceed \$50 in a calendar year.”
- “Third, the Senate has already enacted a comprehensive gift ban rule,” referring to the action of the Senate in July 1995 in adopting a gift rule nearly identical to that reported by the Rules Committee.¹⁷

One of the proponents of tightening the gift rule argued that the regular acceptance of meals and tickets from lobbyists was objectionable not merely because it created an appearance problem. Rather, he argued, such conduct is also objectionable because it impacts policy, albeit in a subtle and indirect way. Through such gifts, he asserted, lobbyists “are buying access, and access is power. . . . [T]hey buy good will, even if they do not buy access directly. And good will is also power. It can mean the difference between getting your calls returned or your letter

¹⁵ From January 1, 1990 through December 31, 1991, the gift rule banned the acceptance of gifts worth more than \$200 from any one source in any one year, excepting gifts worth \$75 or less.

¹⁶ 141 *Cong. Rec.* H13073-95 (daily ed. Nov. 16, 1995); *id.* H13844-45 (daily ed. Nov. 30, 1995).

¹⁷ H. Rep. 337, 104th Cong., 1st Sess. 8 (1995).

taken seriously, and that can translate to millions, even billions of dollars, at the expense of ordinary Americans who have no lobbyists to represent them.”¹⁸

The gift rule approved by the House in late 1995 differed in several respects from that approved by the Senate earlier in the year. The most significant of these was that the House rule did **not** include a general provision allowing the acceptance of gifts valued below a specific dollar figure. Instead, all of the categories of acceptable gifts in the House rule were descriptive categories. In contrast, the Senate gift rule that took effect on January 1, 1996, included a provision that generally allowed the acceptance of any gift valued below \$50, with a limitation of less than \$100 in gifts from any single source in a calendar year. However, as detailed below, at the start of the 106th Congress in 1999, the House amended its gift rule so as to incorporate this provision of the Senate rule.¹⁹ The rule was redesignated as Rule 25 in the 107th Congress. As is detailed below, the House Rules for the 108th Congress included two amendments – one on perishable food sent to House offices for staff, and the other on Member and staff travel to charity events.

At the beginning of the 110th Congress, the House amended the gift rule in the wake of several public corruption investigations, and subsequent prosecutions, involving the provision of various high-priced gifts and travel to certain Members, congressional staff, and executive branch officials by lobbyists. One of the proponents of the gift rule amendments described their effect as follows:

Among other things, we will ban gifts, including meals and tickets, from lobbyists and the organizations that employ them. We will ban lobbyists and the organizations that employ them from financing travel for Members or their staffs, except for one-day travel to visit a site, attend a forum, participate in a panel, or give a speech, all obviously in the pursuance of the Members’ duties. We will require Members and staff to obtain preapproval from the Ethics Committee for permitted travel.²⁰

Specifically, the gift rule was amended to prohibit the acceptance of gifts under the less than \$50 provision “from a registered lobbyist or agent of a foreign principal or from a private entity that retains or employs registered lobbyists or

¹⁸ S. 885 – To Modify Congressional Restrictions on Gifts: Hearing Before the Subcomm. on Oversight of the Senate Comm. On Governmental Affairs, 103d Cong., 1st Sess. 5-6 (statement of Sen. Lautenberg).

¹⁹ 145 *Cong. Rec.* H208-H211 (daily ed. Jan. 6, 1999).

²⁰ 153 *Cong. Rec.* H23 (daily ed. Jan. 4, 2007) (statement of Rep. Steny H. Hoyer).

agents of a foreign principal.”²¹ The amendment resulted in significantly limiting the range of gifts that were previously acceptable by House Members, officers, and employees. Changes that were made to the travel provisions of the gift rule are discussed in Chapter 3 concerning travel.

One provision of the gift rule states that all of its provisions are to be interpreted and enforced solely by the Standards Committee (House Rule 25, clause 5(h)). That provision also authorizes the Committee to issue guidance on any matter contained in the rule.

The House Gift Rule

The House gift rule provides that a Member, officer, or employee may not knowingly accept any gift except as provided in the rule. The rule is comprehensive, *i.e.*, a House Member or staff person may not accept **anything** of value from **anyone** – whether in one’s personal life or one’s official life – unless acceptance is allowed under one of the rule’s provisions.

As is detailed below, the rule includes one **general** provision on acceptable gifts, and 23 provisions that describe additional, **specific** kinds of gifts that may be accepted.

- The general gift rule provision states that a Member, officer, or employee may **not** accept a gift from a registered lobbyist, agent or a foreign principal, or private entity that retains or employs such individuals. Definitions of the terms registered lobbyist and agent of a foreign principal are provided in the section “Definitions of Registered Lobbyist and Agent of a Foreign Principal.”²²
- The general provision goes on to state that a Member, officer, or employee may accept from any other source virtually any gift valued below \$50, with a limitation of less than \$100 in gifts from any single source in a calendar year. Gifts having a value of less than \$10 do not count toward the annual limit.
- The other 23 categories of acceptable gifts are descriptive categories, not tied to any specific dollar figure. Among those categories are, for example,

²¹ *Id.* at H19, H26. The new gift rule was effective when passed. (As discussed in Chapter 3 concerning travel, amended rules concerning the acceptance of privately-sponsored, officially-connected travel became effective on March 1, 2007.) The gift rule was amended later in the 110th Congress to clarify the events for which a gift of free attendance is permitted. H. Res. 437 (153 *Cong. Rec.* H5738 (daily ed. May 24, 2007)).

²² Other gifts from lobbyists and agents of a foreign principal that are expressly prohibited by the gift rule are discussed below in the section “Other Expressly Prohibited Lobbyist Gifts.”

informational materials, commemorative items, and free attendance at certain kinds of events.

A gift that satisfies all of the requirements of one of the 23 **specific** categories is acceptable even if its value is \$50 or more, and the value of such a gift does not count against the donor's annual gift limit established under the general gift provision. A gift falling within one of these categories may be accepted even from a registered lobbyist, agent of a foreign principal, or a private entity that retains or employs such individuals.

Gifts from registered lobbyists, foreign agents, and private entities that retain or employ such individuals are **prohibited** under the general gift rule provision. As a result, it is impermissible for Members and staff to accept **small group and one-on-one meals, tickets to (or free attendance at) sporting events and shows, and recreational activities**, such as a round of golf, when such offers originate from a lobbyist, the client of a lobbyist, or another prohibited source. Gifts of these kinds are rarely acceptable under one of the 23 specific categories of acceptable gifts. The prohibition under the general gift rule provision applies not only to gifts given by individual registered lobbyists and foreign agents, but it also applies to gifts given by entities that retain lobbyists or lobbying firms or entities that employ in-house lobbyists. Members and staff should bear in mind that many, if not most, organizations with interests before the House retain or employ lobbyists, including corporations, trade associations, advocacy groups, unions, and other special interest groups. Other lobbyist gifts that are expressly prohibited by the rule are discussed below.

Discussion of each of the provisions of the House gift rule follows. A number of them are based on provisions of the Executive Branch gift rules (5 C.F.R. Part 2635, Subpart B), which were originally issued in 1992. In applying the provisions of the House gift rule, bear in mind that under the House Code of Official Conduct (House Rule 23, clause 2), Members and staff must adhere not only to the letter, **but also to the spirit** of the rules of the House and its committees. Technical readings of the House gift rule should be avoided. It should also be noted that Members are entirely free to establish and maintain, for themselves and their staff, rules on the acceptance of gifts that are more restrictive than those set forth in the House gift rule.

What is a Gift?

The rule defines the term "gift" in an extremely broad manner:

. . . a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. [House Rule 25, clause 5(a)(2)(A).]

This provision goes on to state,

The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

Accordingly, when a Member, officer, or employee is offered a tangible item, a service, or anything else, he or she must first determine whether the item has monetary value. If it does, then the individual may accept it only in accordance with provisions of the gift rule. This is so even if the donor obtained the gift without charge.

Example 3. A Member has been invited to play golf by an acquaintance who belongs to a country club, and under the rules of the club, the guest of a club member plays without any fee. Nevertheless, the Member's use of the course would be deemed a gift to the Member from his host, having a value of the amount that the country club generally charges for a round of golf.

As a general matter, mere attendance at an event such as a meeting or a briefing will not be deemed to have monetary value, unless the sponsoring organization charges an admission fee for the event. However, any food or refreshments served at the event will have monetary value and may be accepted only pursuant to one of the provisions of the gift rule. Accordingly, there may be circumstances in which a Member may attend an event, but the Member would be required to decline or to pay for a meal that is served at the event.

As detailed below, the restrictions of the gift rule do not apply to “[a]nything for which the [official] pays the market value” (House Rule 25, clause 5(a)(3)(A)). Accordingly, there can be an improper gift to a Member, officer, or employee when, for example, he or she is sold property at less than market value, or receives more than market value in selling property. There can also be an improper gift when a Member or staff person is given a loan at a below-market interest rate, or, in the context of outside employment, when a Member, officer, or employee is compensated in an amount greater than the value of the services rendered.

Who Is Subject to the Gift Rule?

In General. The rule by its terms applies to all Members, Delegates, officers, and employees of the House, and the Resident Commissioner of Puerto Rico.²³ Under clauses 4 and 18(a) of House Rule 23, the term “officer or employee” means

²³ For the sake of convenience, the term “Member” as used hereafter in this publication refers to House Members, the Delegates to the House, and the Resident Commissioner.

any individual whose compensation is disbursed by the Chief Administrative Officer of the House. In addition, under clause 18(b) of House Rule 23, individuals whose services are compensated by the House pursuant to a consultant contract are subject to the gift rule. As a general rule, a newly elected House Member becomes subject to the House rules when his or her pay and allowances begin: on January 3 for those elected in a regular election, and the day following a special election for those elected to fill a vacant seat.²⁴

The gift rule applies with full force to **every** employee of the House – employees in district offices as well as those in the Washington office; and permanent employees as well as non-permanent employees, including part-time employees, paid interns, and employees who are on Leave Without Pay status.

As a general matter, the gift rule does not by its terms apply to an individual who serves in a House office without being paid by the House, *i.e.*, a volunteer, fellow, or unpaid intern. However, the Standards Committee strongly advises that each office using the services of such an individual require that he or she adhere to all of the rules applicable to House employees, including the gift rule.

As to executive branch fellows, the Standards Committee understands that they continue to be bound by the gift and travel rules of their employing agency. Executive branch employees who are detailed to a House committee under 2 U.S.C. § 72a(f) should consult with both their Designated Agency Ethics Official and the Standards Committee on the rules applicable to them.

Applicability to Spouses, Family Members, and Others. Under certain circumstances, a gift to a family member of a Member, officer, or employee – or, for that matter, any other individual – will be deemed a gift to the official, and hence will be subject to the restrictions of the gift rule. Under clause 5(a)(2)(B)(i) of House Rule 25, a gift to a family member or another individual will be deemed to be a gift to the official when two circumstances are present:

- The gift was given with the knowledge and acquiescence of the Member or staff person; and
- The Member or staff person has “reason to believe the gift was given because of his official position” with the House.

Example 4. A Member is throwing a graduation party for her daughter. A lobbyist who does not know the Member’s daughter offers

²⁴ While a newly elected House Member generally is not subject to the gift rule, a Member-elect is subject to the statutory ethics provisions – *e.g.*, bribery, illegal gratuity. See 18 U.S.C. § 201(a). For further information on these provisions is provided later in this chapter.

to buy the daughter a television. The television would be considered a gift to the Member and must be declined.

Example 5. A lawyer offers tickets to a sporting event to a Member without charge. The Member does not want the tickets, and he suggests instead that the lawyer give them to a friend of the Member. In these circumstances, a gift of the tickets to the Member's friend would be deemed a gift to the Member himself and would be permissible only if the Member himself could accept the tickets under the gift rule.

However, a different rule (House Rule 25, clause 5(a)(2)(B)(ii)) applies when a **meal** is provided to a Member or staff person and his or her spouse at the same time and place. Under this provision, when a meal is provided to a Member or staff member and his or her spouse or dependent at the same time and place, only the value of the meal provided to the Member or staff member is treated as a gift and counts against the dollar limitations of this provision.

Additionally, the statutory limitations on accepting certain gifts from a **foreign government or an international organization** are also applicable to a spouse or dependent of a Member or employee.

Gifts Valued at Less Than \$50

A Member, officer, or employee may accept a gift, other than cash or cash equivalent, having a value of less than \$50, **provided** that the source of the gift is not a registered lobbyist, foreign agent, or private entity that retains or employs such individuals. The cumulative value of gifts that may be accepted from any one source in a calendar year must be less than \$100. Gifts having a value of less than \$10 do not count toward the annual limit. While the rule does not require Members and staff to maintain formal records of the gifts accepted under this provision, the rule does require that Members and staff make a good faith effort to comply with its terms (House Rule 25, clause 5(a)(1)(B)).

The figures of \$50, \$100, and \$10 are actually dollar limits of, respectively, \$49.99, \$99.99, and \$9.99. Gifts of "cash or cash equivalent" are not acceptable under this provision. Hence, under this provision, one may not accept a gift of cash or, for example, a check, use of a credit card, or a security, even if the gift would be within the stated dollar limitations. The Standards Committee has determined that **gift cards** which are redeemable for purchases at a retail establishment or restaurant are the equivalent of cash and therefore may **not** be accepted under the gift rule.

Definitions of Registered Lobbyist and Agent of a Foreign Principal. The gift rule defines the term "registered lobbyist" as "a lobbyist registered under the

Federal Regulation of Lobbying Act or any successor statute,” and the term “agent of a foreign principal” as “an agent registered under the Foreign Agents Registration Act” (House Rule 25, clause 5(g)).

With regard to registered lobbyists, the Lobbying Disclosure Act of 1995 (Pub. L. 104-65) is a successor statute to the Federal Regulation of Lobbying Act. The Lobbying Disclosure Act in turn defines the term “lobbyist” to mean “any individual” who engages in certain activities set forth in the act. 2 U.S.C. § 1602(10). Accordingly, the Committee interprets the prohibitions on registered lobbyists that are set forth in the gift rule to apply to the **individuals** who are registered as lobbyists under that Act, as well as to lobbying firms.

Application of the Rule in Specific Circumstances

In accepting any gift under the general gift rule provision, a Member, officer, or employee must comply with the following interpretative rules:

No “Buydowns.” A Member or staff person may not “buy down” the value of a gift in order to bring it within the dollar limitations of the provision.

Example 6. A staff member taken to a restaurant by a local businessman may not order an expensive meal and simply pay his host the amount by which the bill for his food and beverages exceeds \$49.99. If the bill for his food and beverages exceeds \$49.99, he must pay the entire bill himself.

Example 7. A Member is offered a skybox ticket to a baseball game valued at \$60. The Member may **not** accept the ticket simply by paying the offeror \$11. If the Member wishes to accept the ticket, he must pay the offeror \$60.

Example 8. During the year, a staff member has accepted meals and other gifts from a corporation that does not retain or employ lobbyists or registered foreign agents, each of which had a value of \$10 or more, and the cumulative value of which is \$85. The staff member may not then accept a meal having a value of \$20 from that corporation simply by paying the corporation \$6. Instead, he must either decline the meal or personally pay its cost in full.

However, when an individual is offered a gift with a value of \$50 or more that is naturally divisible – such as multiple tickets to an event, or bottles of wine – the individual may accept one or more items that total less than \$50 in value and either pay market value for or decline the others.

Example 9. A staff person is offered four tickets to a baseball game, each having a value of \$15. The staff person may accept three of the tickets, but he must either decline or pay the full price of the fourth ticket.

The “Source” of a Gift. A gift received from an individual affiliated with an organization counts against the annual gift limitation of **both** the individual and the organization.

Example 10. A committee staff person accepts a lunch valued at \$15 from a representative of a nonprofit organization that does not retain or employ lobbyists or registered foreign agents. Both the representative and the organization are deemed to be the “source” of the lunch, and the annual gift limit of both for that staff person will be reduced accordingly.

“Simultaneous Gifts.” Generally, when multiple items, each individually worth less than \$50, are offered simultaneously to any individual, the “gift” being offered is deemed to be the aggregate of all the items.

Example 11. A corporation that does not retain or employ lobbyists or registered foreign agents sends a Member a box of samples of its products. The box includes 6 products, each of which has a value of about \$10.00. The box cannot be accepted under this provision, as its total value exceeds the per-gift limit of less than \$50.

Valuation of Gifts. Under the gift rule, items are generally valued at their retail, rather than wholesale, price. The lowest price at which an item is available to the public may be used. However, for the purpose of simplicity, tax that would be imposed on the sale of the item, as well as gratuities, are excluded in determining the value of any gift.

For further information on the valuation of gifts – including tickets to sporting events and shows – see the section below entitled “Pay Market Value for the Gift.”

Recipient of a Gift. At times a question may arise as to who is the recipient of a gift: a Member or individual members of his or her staff. As a general matter, this question is to be decided according to the expressed intent of the donor. Thus, for example, when an individual delivers several tickets to a sporting event to an office and indicates that the tickets are for use by the staff, the tickets are treated as a gift to each individual staff person who uses them, rather than as a single gift to the Member. If, however, the donor indicates that the tickets are for the Member’s use, all of the tickets will be treated as a gift to the Member.

Another example concerns the **delivery of perishable food**, such as pizza, to a House office for consumption by staff. In such an instance, the gift of food sent to a House office is deemed to be a gift to the individual recipients, and not to the employing Member. Thus, when a private source sends perishable food to a House office for staff, each staff member may accept food having a value of up to \$49.99, subject to the following restrictions and limitations –

- If the source of the gift of food is a registered lobbyist, agent of a foreign principal, or private entity that retains or employs such individuals, the food may **not** be accepted. Because it is often a lobbyist or client of a lobbyist that is the source of the food being sent to a House office, Members and staff should exercise caution before accepting the food. Even if the food is from a permissible source, the following **limitations** must be observed.
- Each staff member must comply with the annual gift limitation of less than \$100 from any source in a calendar year. Any gift having a value of less than \$10 does not count against the annual limitation. In order to comply in good faith with the dollar limitation on gifts, a staff member who is offered such a gift of food must learn both the identity of the donor and the dollar value of the food provided.²⁵
- While, as noted above, the gift rule provides that a gift valued at less than \$10 is generally acceptable, the Committee has long advised that to accept such a gift from one source on a repetitive basis is contrary to the spirit of the gift rule, and hence is not permissible under the House Code of Official Conduct.²⁶ Accordingly, it would be impermissible for a staff member to accept gifts of perishable food, even if valued at less than \$10 each, from any one source on a repetitive basis.
- The Committee has also long advised that a gift of food sent to a House office for staff, even if within the dollar limits of the gift rule, must be refused if the person offering it has a direct interest in the particular legislation or other official business on which staff is working at the time. In addition to possibly violating the gift rule restriction on accepting lobbyist gifts, as discussed above, the gift of food may also be considered an improper gratuity or inducement to take a particular action.
- While the gift rule sets out the categories of gifts that a Member of staff person may accept if offered, Members and staff are generally prohibited

²⁵ It is important to bear in mind that a gift from an individual who is employed by or similarly affiliated with any organization is deemed to be a gift from both that individual and the affiliated organization, as discussed in the text above.

²⁶ House Rule 23, cl. 2.

from soliciting gifts. Accordingly, a Member or a staff person may never request or suggest that anyone send a gift of food to a House office.

Members and staff should also note that this gift rule provision (House Rule 25, clause 5(a)(1)(B)) does **not** affect the prohibition against accepting food or beverages from any private organization or individual for any **event** sponsored by a House office, such as a meeting, a conference, or a briefing. A separate rule (House Rule 24, clause 1 to 3) generally prohibits Members and staff from accepting private subsidy for official House business, including events sponsored by a Member, committee or leadership office, a caucus, or any other House office.

On the other hand, when a House office fields **a sports team** in, for example, a local softball league or joins with others in fielding a team, and an outsider offers to sponsor the team by providing caps, T-shirts, or other benefits to team members, a different application of the gift rule applies. In such a case, the benefits provided to the staff members are treated as one gift to the employing Member, valued at their total fair market retail value. Any such gift is acceptable only if its total value is less than \$50 (and the gift is not from a lobbyist or entity that employs a lobbyist), and the Member may not accept gifts from that source having a value of \$100 or more in a calendar year. In addition, with regard to sponsorship of a House office team, an offer of an outsider to pay any league entry fee may **not** be accepted.

Adhering to the Spirit of the Rule. Under the House Code of Official Conduct, Members and staff must adhere to the spirit as well as the letter of the Rules of the House (House Rule 23, clause 2). To repeatedly accept gifts valued at under \$10 from a source would violate the spirit of the gift rule and hence be impermissible.

Relationship of the General Provision on Acceptable Gifts to the Specific Provisions

When a gift satisfies each of the requirements of any of the specific provisions of the gift rule on acceptable gifts – for example, a book under the “informational materials” provision (House Rule 25, clause 5(a)(3)(I)) – the gift may be accepted even if its value is \$50 or more. Furthermore, in that circumstance, the value of the gift does **not** count against the donor’s annual gift limitation of less than \$100.

In addition, the gift rule does not restrict Members and staff from accepting, even when the donor is a registered lobbyist, agent of a foreign principal, or private entity that retains or employs such individuals, gifts that fall within one of the specific gift rule provisions (often referred to as the “exceptions” to the rule) or general waivers the Standards Committee has issued. Those specific provisions are discussed below.

Other Acceptable Gifts

The various specific categories of gifts that Members, officers, and employees may accept under the gift rule are set forth in clause 5(a)(3) of House Rule 25. These categories may be summarized as follows.

Gifts Given on the Basis of Personal Friendship

A Member, officer, or employee may accept any gift that is given by an individual on the basis of personal friendship, unless the official has reason to believe that, under the circumstances, the gift was provided because of his or her official position with the House, and not because of the personal friendship (House Rule 25, clause 5(a)(3)(D)). However, a gift exceeding \$250 in value – including, for example, a trip – may **not** be accepted on the basis of personal friendship unless the Standards Committee issues a written determination that the personal friendship provision applies (House Rule 25, clause 5(a)(5)).

This provision of the gift rule further states that in determining whether a gift is provided on the basis of personal friendship, a Member or staff person must consider the circumstances under which the gift was offered, such as (1) the history of the official’s relationship with the donor, including any previous exchange of gifts, (2) whether, to the official’s knowledge, the donor personally paid for the gift, or whether the donor sought a tax deduction or business reimbursement for it, and (3) whether, to the official’s knowledge, the donor at the same time gave the same or similar gifts to other Members or staff.

The word “friend” may be used in different ways, and at times this provision of the gift rule has been mischaracterized as requiring Members and staff to decide who is, and who is not, a “friend.” Instead, when a Member or staff person wishes to rely on this provision of the rule, the individual must consider **each gift individually** – whether the gift is a meal, tickets to a game, or anything else – and the individual must determine whether **that particular gift** was offered “on the basis of personal friendship.” That determination is to be made using the criteria set forth in the rule.

When the offeror is **a lobbyist or someone else who has interests before Congress**, Members, officers, and employees have the most reason to be concerned about whether a gift is offered for a reason other than personal friendship. In that circumstance, the criteria set forth in the rule are especially helpful. For example, if the gift was paid for by a business or will be charged to a firm or corporate credit card – as opposed to being paid for out of the offeror’s own pocket – it is likely that the gift is based on business concerns, rather than personal friendship.²⁷ Likewise,

²⁷ See H. Rep. 337, 104th Cong., 1st Sess. 13 (1995).

if, in a relationship, all of the gifts have gone to the Member or staff person, and there has not been reciprocal gift giving, it is likely that the gifts have a business purpose. Thus, when a Member or staff person is offered a gift by a lobbyist or someone else who has interests before Congress and either of these circumstances is present (*i.e.*, the gift is not paid for personally, or there has not been reciprocal gift-giving), the official should **not** accept the gift on the basis of the personal friendship provision. Unless the gift is acceptable under another provision of the gift rule, the Member or staff person should either decline the gift or pay for it personally.

Example 12. A Member's former college roommate, who is also a lobbyist, offers to take the Member to a baseball game. The college roommate had paid for the Member's ticket personally, and the Member's family and the roommate's family often exchange presents during the holidays. The roommate does not contact the Member on official matters. The Member may accept the ticket.

Example 13. Through her House work over the years, a committee staff person has come to know a lobbyist. The staff person often sees the lobbyist at officially-related events, but they do not see each other socially or exchange gifts. The lobbyist offers to take the staff person to dinner at the lobbyist's expense. The staffer may not accept the dinner. However, the staff person may accompany the lobbyist to the restaurant and pay for her own meal and drinks.

As noted above, when a Member, officer, or employee wishes to accept a gift on the basis of the personal friendship provision, and the value of the gift exceeds \$250, the official must first obtain the written approval of the Standards Committee. This requirement may apply when, for example, one wishes to accept a friend's invitation to go on a vacation trip.²⁸

The Standards Committee will grant written approval for a personal friendship gift exceeding \$250 in value only in response to a written request. The request should identify the donor and briefly describe the donor's line of work and any interests before Congress, the history of the relationship, and the nature of the gift. The request should also state whether the donor will be paying for the gift personally. Under Committee Rule 3(i), the Committee keeps confidential any such request and the Committee's response. (Indeed, this confidentiality requirement applies to any advisory opinion request made by a Member, officer, or employee and the response thereto.) However, as noted below in the section on "Gift Disclosure," Members and officers, as well as employees who are required to file a Financial

²⁸ However, gifts from one's fiancé or fiancée are acceptable under the rule's provision on gifts from relatives, and so the requirements of the personal friendship provision need not be observed regarding those gifts.

Disclosure Statement, will have to disclose any gift exceeding \$335 in value on their statement, unless the Committee grants a waiver of the reporting requirement.

Attendance at Events (Including Meals)

Under provisions of the gift rule and related general waivers granted by the Standards Committee, Members, officers, and employees may accept invitations to the following kinds of events, provided that certain requirements are satisfied:

- A “widely attended” event, when the individual’s attendance is in connection with the performance of his or her official duties;
- A charity fundraising event;
- A fundraising or campaign event sponsored by a political organization;
- An educational event sponsored by a university, foundation, or similar nonprofit, nonadvocacy organization; or
- A regularly scheduled event sponsored by a constituent organization.

Members and staff can accept a meal at these kinds of events, provided that the applicable requirements are satisfied. The circumstances in which an invitation to these events may be accepted are detailed below. One common limitation in these gift rule provisions and waivers is that invitations can be accepted **only** from the organization that is actually **sponsoring** the event. An invitation may **not** be accepted from an individual or organization that merely bought a block of tickets to or a table at the event.

“Widely Attended” Events. The gift rule provision on widely attended events can apply to a broad range of events: a convention, conference, symposium, forum, panel discussion, dinner, viewing, reception,²⁹ and similar events (House Rule 25, clause 5(a)(4)(A)). An unsolicited offer of free attendance³⁰ at such an event can be accepted when three requirements are satisfied: (1) The event is “widely attended,” as defined below, (2) the invitation came from the sponsor of the event, and (3) the attendance of the Member or staff person is related to his or her official duties.

As to the **first** of these requirements, the Standards Committee has determined that an event is “widely attended” if (a) there is a reasonable

²⁹ However, when an event, such as a reception, will involve only “[f]ood or refreshments of a nominal value offered other than as a part of a meal,” Members and staff may participate in it under a separate provision of the gift rule, described below, even if the reception does not satisfy the requirements for a widely attended event.

³⁰ The items encompassed in the term “free attendance” as used in the gift rule are described below.

expectation that **at least 25 persons**, other than Members, officers, or employees of Congress, will attend the event, **and** (b) attendance at the event is open to individuals from throughout a given industry or profession, or those in attendance represent a range of persons interested in a given matter.³¹ Individuals who are officials of other branches or levels of government count toward the required minimum of twenty-five, but spouses and others who accompany the congressional members and staff do **not** count toward the required minimum.

The types of events that typically satisfy this first requirement are Chamber of Commerce and Rotary Club lunches and dinners, and meetings of the membership of trade or professional associations.

Example 14. One of the departments of a large corporation has a weekly staff meeting and luncheon that is attended by at least 30 employees. These meetings do **not** constitute a widely attended event as that term is used in the gift rule, however, because attendance at the event is not open to individuals from throughout a given industry or profession, and those present do not represent a range of persons interested in a given matter.

As to the **second** requirement, the term “sponsor” refers to the person, entity, or entities that are primarily responsible for organizing the event. An individual or entity that merely contributes money to an event is **not** considered to be a sponsor of the event for purposes of the gift rule. Elaboration on this requirement appears below, in the section entitled “Source of Invitations for Widely Attended and Charity Events.”

The **third** requirement is satisfied when (a) the Member, officer, or employee will be participating in the event by speaking or performing a ceremonial role, or (b) he or she determines that attendance at the event is appropriate to the performance of his or her official duties or representative function. The responsibility for making this determination rests with the invited Member or officer, or the invited employee and the employing Member, but the determination must be made in a reasonable manner. Some relevant factors might include the opportunity to meet with constituents at the event, the desirability of representing one’s constituency at an event where other elected or appointed officials will be present, or the opportunity to present or receive information that is pertinent to one’s district or to a legislative proposal. With regard to a staff member, the nature of the individual’s 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

³¹ See H. Rep. 337, 104th Cong., 1st Sess. 12 (1995).

handles environmental issues, but not for a staff member who handles banking issues only.

In deciding whether attending an event would be appropriate to the individual's official duties, one must also bear in mind the legislative history of the gift rule, which states that an event **may not be merely for the personal pleasure or entertainment of the Member or staff person.**³² Accordingly, an invitation that would involve nothing more than viewing a sporting event, a movie, or a show will rarely be acceptable under the widely attended event provision.

Example 15. Knowing that a district office staff person is a fan of his team, the owner of a local sports team offers the staff person free tickets to an upcoming game. Even though the source of the tickets would be the event sponsor, and there will be far more than 25 individuals in attendance at the game, the staff person may not accept the tickets under the widely attended event provision, in that his attendance would bear no relationship to the performance of his official duties.

Example 16. A new concert hall is opening in Member A's district. The symphony invites a number of officials, including Member A, to attend the inaugural concert, sit in a place of honor, and be recognized for their help in making the new hall a reality. In view of the circumstances, Member A may reasonably determine that it is appropriate to his official duties or representative function to attend, and that hence the invitation is acceptable under the widely attended event provision.

Example 17. Member B has announced that this will be her last term in office. In honor of her career, a group of corporations and associations is hosting a dinner for her, to which hundreds of people from the private and public sectors, including many House Members and staff, will be invited. Those who deem their attendance at the dinner to be appropriate to their official duties or representative function may accept an invitation to the dinner from the host committee.

When the requirements of the widely attended event provision are satisfied, a Member or staff person may also accept a sponsor's unsolicited offer of free attendance at the event for **an accompanying individual** (House Rule 25, clause 5(a)(4)(B)). While the accompanying individual need not be the spouse or child of

³² H. Rep. 337, 104th Cong., 1st Sess. 12 (1995).

the invitee – it may be, for example, a friend or a colleague – the rule provides for only **one** accompanying individual. Thus, for example, an invitee may not accept an offer of free attendance for both a spouse and child under this provision.

Charity Fundraising Events. Subject to the restrictions noted below, a Member, officer, or employee may accept an unsolicited offer of free attendance³³ at a charity event (House Rule 25, clause 5(a)(4)(C)). This provision extends to charity events such as lunches, dinners, golf or tennis tournaments, races, and cook-offs. The purpose of the charity event provision of the gift rule is to enable Members and staff “to lend their names to legitimate charitable enterprises and otherwise promote charitable goals.”³⁴ The requirements that apply to attendance at such events are as follows.

First, in order to be a “charity event” as that term is used in the rule, the **primary purpose** of the event must be to raise funds for an organization that is qualified under § 170(c) of the Internal Revenue Code to receive tax deductible contributions. Thus, the mere fact that a donation to a charity will result from an event does **not** necessarily mean that a Member or staff person may accept from the sponsor an offer of free attendance at, or travel expenses to, the event. An event will likely be deemed a “charity event” for purpose of the rule when the participants or attendees pay an admission fee, and more than half of the fee paid is tax deductible as a charitable donation. When an event has any other format, a Member or staff person considering attending the event should first consult with the Standards Committee to ensure that it constitutes a “charity event” for purposes of the gift rule.

Example 18. Each year a business pays for a golf outing for several of its employees and their guests, and if there are any funds left after payment of expenses, it donates the excess to charity. This outing would not qualify as a charity event for purposes of the rule because its primary purpose is not to raise funds for charity.

Example 19. A lobbying firm wishes to hold a dinner for Members and staff, at which it will announce that the firm has made a substantial donation to charity. The dinner would not qualify as a charity event for purposes of the rule because its primary purpose is not to raise funds for charity.

³³ The items encompassed in the term “free attendance” as used in the gift rule are described below.

³⁴ H. Rep. 337, 104th Cong., 1st Sess. 12 (1995).

Example 20. For the same reason, the regular performances of a theater that is organized under § 501(c)(3) of the Tax Code are not deemed to be charity events. However, such an entity may have a special fundraising performance that would qualify as a charity event.

Second, as noted above, Members and staff may accept an invitation to a charity event only from the sponsor of the event. As with widely attended events, the sponsor of a charity event is the person or persons primarily responsible for organizing the event, and a person who simply contributes money or buys tickets to an event is **not** considered a sponsor of that event. This matter is elaborated on below, in the section entitled “Source of Invitations for Widely Attended and Charity Events.”

Third, Members and staff invited to attend a charity event may accept **local** transportation from the event sponsor. In addition, when certain requirements are satisfied, they may also accept reimbursement for travel and lodging in connection with a charity event. Those requirements are discussed in Chapter 3 on travel. Before accepting travel to a charity event, a Member or staff person should make inquiry to the charitable organization to ensure that it understands the applicable rules and is acting consistently with them.

“Free Attendance” for Purposes of Widely Attended and Charity Events. The gift rule provides that when the requirements set forth above are satisfied, Members, officers, and employees may accept “free attendance” at the event. As used in the rule, free attendance includes “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.” (House Rule 25, clause 5(a)(4)(D)). However, this term does **not** include either “entertainment collateral to the event,” or “food or refreshments taken other than in a group setting with all or substantially all other attendees” (*id.*), which therefore may not be accepted under the gift rule.

Example 21. In connection with its annual meeting in Washington, an association will hold a banquet and has arranged for the attendees to see a show at a downtown theater. Upon invitation from the association, a Member may attend the banquet if the requirements for a “widely attended” event are satisfied. However, he may not attend the show under this provision, in that it is not part of the banquet, but is instead entertainment that is collateral to that event.

Example 22. A charity will be holding a fundraising reception, and immediately after the reception the charity will hold a dinner to which only certain VIP’s will be invited. A Member may accept an invitation

from the charity to attend the reception under the charity event provision, but he could not attend the dinner under that provision.

At times at charity fundraising events in particular, the sponsor may offer attendees a souvenir, gift, or prize. A Member or staff person may accept a baseball cap or T-shirt from the event sponsor under the “item of nominal value” provision of the gift rule, which is summarized below. In addition, under the general provision on acceptable gifts, as explained above, the official may also accept an item that has a value of less than \$50 (provided that the sponsor is not a lobbyist, foreign agent, or employer of such an individual, and the official has not accepted other gifts from the sponsor that would cause the annual gift limit of less than \$100 per source to be exceeded). When a Member or staff person is accompanied at a charity event by a spouse or dependent, the official should bear in mind that any such gifts given to the accompanying individual are deemed to be gifts to the official and count against the gift rule dollar limits applicable to that official.

Source of Invitations for Widely Attended and Charity Events. The gift rule is clear that Members, officers, and employees may accept an invitation to a widely attended or charity event **only** from the sponsor of the event. The report of the House Rules Committee on the gift rule defines the term “sponsor” as follows:

The term “sponsor of the event” refers to the person, entity, or entities that are primarily responsible for organizing the event. An individual who simply contributes money to an event is not considered to be a sponsor of the event.³⁵

Accordingly, under the gift rule, the term “sponsor” has a definition that is narrower than the manner in which it is commonly used. Often the large financial supporters of an event are termed as “sponsors” of the event. However, such entities are **not** sponsors of an event for purposes of the gift rule unless they also have a substantial role in organizing the event.³⁶

Example 23. Foundation A, a § 501(c)(3) organization under the Tax Code, organizes a \$1,000-per-plate fundraising dinner to support its charitable activities. Member B may accept complimentary tickets to the dinner from Foundation A, for himself and his spouse, under the charity event provision.

³⁵ *Id.*

³⁶ Sound guidance on the possibility of multiple sponsors for an event was provided in a Senate committee report on an earlier version of the gift rule. “[T]here may be more than one sponsor of an event if more than one entity plays a significant, active role in organizing the event in a manner that is roughly comparable to another sponsor or sponsors.” S. Rep. 255, 103d Cong., 2d Sess. 14 (1994).

Example 24. Corporation C buys a table at the fundraising dinner of Foundation A. Member B may **not** accept tickets to the dinner from Corporation C under the charity event provision. In accordance with the previous example, Member B may accept tickets from Foundation A, and if it chooses to do so, Foundation A may seat B at the corporation's table.

Contributors to a widely attended or charity event may request that the sponsor invite particular Members or staff to sit with them at the event. However, the invitation will **not** be acceptable under these provisions unless the sponsor retains ultimate control of the guest list and the seating arrangements, and the invitation neither references any contributor nor is extended by anyone other than the sponsor. Put another way, all communications with Members or staff regarding the event should be made by the event sponsor, because a communication from an event contributor may be deemed an impermissible invitation from the contributor.

The Standards Committee has made an exception to the above rules on the proper source of invitations for the large media-related events that take place in Washington, such as the White House Correspondents' Dinner sponsored by the Correspondents' Association. Traditionally invitations to those events are extended not by the sponsoring organization, but instead by journalists or news organizations that are members of the sponsoring organization. Accordingly, the Committee has granted a general gift rule waiver to enable a House Member or staff person to accept an offer of free attendance at one of these media-related events from a journalist or a news organization that is a member of the media organization sponsoring the event.

Fundraising or Campaign Events Sponsored by Political Organizations. Members, officers, and employees may accept food, refreshments, and other benefits provided by a political organization in connection with a fundraising or campaign event sponsored by that organization (House Rule 25, clause 5(a)(3)(G)(iii)). Under this provision, Members, officers, and employees may also accept transportation and lodging from the sponsoring political organization in connection with such an event, provided that the travel rules are observed. In addition, they may participate in a golf tournament or attend a show or sporting event sponsored by the political organization, provided that the event is a **bona fide** fundraiser. The term "political organization" is defined in this provision by reference to § 527(e) of the Internal Revenue Code.³⁷

³⁷ Briefly stated, under that statute, a political organization is an entity organized and operated primarily for the purpose of accepting contributions or making expenditures for the purpose of influencing the election of any individual to a public or political office.

Under this provision of the gift rule, like the provisions concerning widely attended and charity fundraising events, Members and staff may accept an invitation only from the event sponsor. They may not accept a ticket from a person that has simply donated money or purchased tickets to the event.

In addition, a meal with a lobbyist or other individual during which the individual gives a Member a campaign contribution is not a fundraising or campaign event under this provision of the gift rule, unless the meal is sponsored and paid for by a political organization, and the expenditures are reported as required by Federal Election Commission regulations or applicable state or local laws.

Example 25. Members and staff may accept complimentary tickets to a Republican National Committee fundraising dinner from the RNC.

Example 26. A political action committee buys a table at a DCCC fundraising dinner. A House staff member may **not** accept a ticket to the dinner from the PAC under this provision of the gift rule.

Educational Events. Soon after the gift rule took effect, the Standards Committee recognized that there are certain events that are worthwhile for Members or staff to attend, but that do not meet the numeric requirement for widely attended events (*i.e.*, at least 25 non-congressional attendees). Among such events are those designed for a small group in order to facilitate discussion. Accordingly, the Committee granted a general gift rule waiver allowing Members and staff to accept invitations to events (including meals offered as part of these events) that, while they do not meet the numeric requirement for widely attended events, are:

- Educational (for example, lectures, seminars and discussions); and
- Sponsored by universities, foundations, “think tanks,” or similar nonprofit, nonadvocacy organizations.

As under the gift rule provisions summarized above regarding events, Members and staff may accept such an invitation from the event sponsor only.

In keeping with the gift rule’s intent, this waiver does not extend to meals in connection with presentations sponsored by lobbyists, lobbying firms, or advocacy groups. Moreover, this waiver does not extend to meals in connection with legislative briefings or strategy sessions, even if the sponsoring entity has educational status under the Tax Code.

Example 27. A nonpartisan, nonprofit “think tank” hosts a luncheon series featuring distinguished speakers from academia discussing

foreign policy topics. The organization invites about 15 individuals to each luncheon, including some House staff members. The staff members may attend and accept the lunch under this waiver.

Example 28. A trade association establishes a nonprofit educational foundation. The foundation sponsors a monthly forum at which experts from the field explain aspects of their industry and the ramifications of various legislative proposals for that industry. A dozen House staff members are invited to these presentations, which occur over lunch. The staff members may attend, but they may not accept the lunch under the terms of this waiver. This is so because these events are legislative briefings, and as noted above, this waiver does not extend to such events.

Events With Constituent Organizations. The Standards Committee has also recognized that the gift rule was not intended to interfere with Members carrying out their conventional representational duties, and that meetings or events with constituent organizations may sometimes be attended by only a few constituents, particularly when the organization is from a state with a small or diffuse population. Such events may not satisfy the numeric requirement for widely attended events.

Accordingly, the Committee has also granted a general waiver for Members and staff to accept free attendance (including meals) at meetings or events sponsored by constituent organizations, regardless of the number of constituents in attendance or the location of the event, provided that the meeting or event is:

- Regularly scheduled (such as an annual visit to Washington, D.C.);
- Related to the official duties or representative function of the Member or employee attending the event; and
- Open to members of the constituent organization (as opposed to only officers or board members).

Examples of constituent organizations covered by this waiver include, but are not limited to, civic associations, senior citizens organizations, veterans groups, and business, trade or professional associations (*e.g.*, associations of lawyers, nurses, bankers, teachers, or farmers).

Example 29. A civic association in a small town in Member A's district invites him to one of its periodic luncheon meetings of its membership. If the Member determines that his attendance would be related to his official duties or representative function, he may attend and accept the lunch under this waiver.

Example 30. A veterans group in Member B's district invites her to a Veterans Day dinner with its members at the local VFW hall. If B determines that her attendance would be related to her official duties or representative function, she may attend and accept the dinner.

Example 31. The real estate agents association of a state holds its annual Washington "fly-in." All members of the association are invited, and usually about 20 agents come. One of the events on the agenda is a dinner for the congressional delegation. Each delegation member who determines that attendance would be related to his or her official duties or representative function may attend and accept the dinner.

Example 32. A real estate agent comes to Washington for the association "fly-in" described in the previous example. He is the only agent from Member C's district who makes the trip, and he would like to have lunch with his representative. Since the lunch is not an association event, the Member cannot accept the lunch under this waiver.

Food or Refreshments of a Nominal Value (Attendance at Receptions)

Members and staff frequently receive invitations to attend events that are less elaborate or formal than the ones for which a sponsor's offer of free attendance may be accepted under one of the gift rule exceptions or general waivers the Committee has issued for events which include a *meal* (i.e., widely attended events, charity fundraising events, fundraising or campaign events sponsored by a political organization, educational events, and regularly scheduled events sponsored by a constituent group). These events may take different forms but often are in the setting of a business meeting, reception (including a holiday or other social event), or similar gathering that includes *nonmeal* food items and drinks. In these circumstances, Members and staff should consider whether the invitation may be accepted under the gift rule exception for "[f]ood or refreshments of a nominal value offered other than as a part of a meal" (House Rule 25, clause 5(a)(3)(U)). However, several limitations of this provision should be noted.

Questions will arise as to whether it is permissible to accept nominal value food or refreshments offered *other* than in a business meeting, reception, or similar setting. In its report prior to the original enactment of this provision in 1995, the House Rules Committee indicated that the exception covers "reception food."³⁸ Soon

³⁸ See H. Rep. 104-337, 104th Cong., 1st Sess., at 11 (1995) ("Food and refreshments of nominal value not offered as part of a meal (reception food)").

after the new gift rule was adopted, the Committee indicated that the types of food that could be accepted under the provision include “coffee and donuts, hors d’oeuvres at a reception.”³⁹ In 2000, the Standards Committee issued further written guidance that specifically described the kinds of food and refreshments that may be accepted under the provision, including coffee, juice, pastry, or bagels usually offered at a breakfast reception or meeting, and hors d’oeuvres, appetizers, and beverages usually offered at an evening reception.⁴⁰

Also in this regard, the intent of the gift rule enacted at the beginning of the 110th Congress to ban most gifts from lobbyists and organizations that employ them should be taken into account. Accordingly, food and refreshments of the nature described above may be accepted under this provision **only** when offered at a business meeting, reception, or similar gathering. It is now impermissible, for example, for a Member or staff person to accept food or refreshments under this provision in a one-on-one setting with a registered lobbyist.⁴¹

Even if offered in an appropriate setting, food or refreshments that exceed “a nominal value” may **not** be accepted under this provision. The rule does not define “nominal value,” and Members and staff are accordingly cautioned to exercise reasonable judgment in accepting food or refreshments having a value greater than the examples given above.

Furthermore, the provision does **not** allow the acceptance of a meal, or of food or refreshments offered as part of a meal. Thus even a low-cost meal (for example, sandwiches or hot dogs) may not be accepted under this provision.

Example 33. A trade association invites House staff to attend a holiday reception in its offices featuring hors d’oeuvres and drinks. Provided that the food and refreshments are of “nominal value” and offered “other than as part of a meal,” House staff may attend the reception and accept these items.

³⁹ House Comm. on Standards of Official Conduct, *New Gift Rule*, at 3 (Dec. 7, 1995).

⁴⁰ House Comm. on Standards of Official Conduct, *Gifts and Travel* booklet, at 32 (April 2000).

⁴¹ Under the gift rule in effect prior to the 110th Congress, it was permissible for Member and staff to accept gifts, including food and refreshments, from virtually any individual or organization under the less than \$50 provision of the gift rule (subject to the cumulative limit of less than \$100 from a single source in a calendar year), even if the source was a registered lobbyist, agent of a foreign principal, or a private entity that retains or employs such individuals. As a result, it was not necessary for the Committee to determine the context in which this provision applied. With the gift rule amendments in the 110th Congress, the Committee has concluded that the provision allows acceptance of such food and drink only at business meetings, receptions, or similar events. The Committee intends that this determination be applied prospectively only, given the absence of previous definitive guidance on this point.

Example 34. A lobbyist invites a staff person out for a cup of coffee to discuss the status of a pending bill. The staff person is free to meet with the lobbyist, but because the occasion is not a reception the staff person may not accept a cup of coffee from the lobbyist even though the item is of low cost and offered other than as a part of a meal.

Meal or Local Transportation Incident to a Visit to a Business Site

The Standards Committee has recognized that at times in the course of performing one's official duties at House expense, a Member or staff person will be offered a *de minimis* amount of food or transportation as a courtesy. For example, one might be offered a meal in the company cafeteria while touring a facility in one's district, or a ride from the airport to a site being visited as part of a committee-sponsored trip. In the Committee's view, the acceptance of such occasional, incidental courtesies does not violate the spirit of the gift rule. Accordingly, the Committee has granted a general waiver of the gift rule to enable a Member, officer, or employee to accept the following items incidental to legitimate official activity:

- Food or refreshments, including a meal, offered by the management of a site being visited, (1) on that business's premises, and (2) in a group setting with employees of the organization; and
- Local transportation, outside of the District of Columbia, provided by the management of a site being visited in the course of official duties, between the airport or other terminus and the site, or at the site being visited (*e.g.*, in connection with a tour of a large manufacturing facility).

However, this waiver does **not** extend to car service made available from the same source on a regular basis, transportation in the District of Columbia, or meals at the Washington, D.C.-area offices of lobbying or law firms.

In addition, acceptance of a meal or transportation incident to a business site visit will not be deemed to violate the prohibition against private subsidy of official activities (House Rule 24, clauses 1 to 3). In this regard, it should be stressed that this waiver applies when a Member or staff person is traveling in the Member's own district, or is traveling elsewhere at House expense. As is detailed in the Committee guidance on the travel rules, when a Member or staff person is taking an officially related trip at the expense of a **private source** consistent with the provisions of the gift rule, it is generally permissible to may generally accept meals and transportation from that source **without** regard to the limitations noted above. However, when officially related travel is appropriately paid for by a private source, all of the expenses paid by the private source must be publicly disclosed.

An Item of Nominal Value

Members, officers, and employees may accept “[a]n item of nominal value such as a greeting card, baseball cap, or a T-shirt” (House Rule 25, clause 5(a)(3)(W)). Through the 105th Congress, the Committee permitted Members and staff to accept a variety of low value, tangible items under this provision. With the adoption of the general gift rule provision at the start of the 106th Congress, however, the Committee determined that such a reading of the nominal value provision was no longer appropriate. Accordingly, as a general matter, Members and staff should **not** rely on the nominal value provision in accepting any item having a value of \$10 or more, except for the items that are explicitly referred to in that provision (*i.e.*, a baseball cap or a T-shirt).

Example 35. A baseball team in a Member’s district sends the office eight of its baseball caps along with a letter suggesting that one be given to the Member and to each staff person who wants one. The Member and the staff persons may each accept one of the caps under the nominal value provision.

Commemorative Items

“A plaque, trophy, or other item that is substantially commemorative in nature and that is intended for presentation” may be accepted (House Rule 25, clause 5(a)(3)(S)). There are several points to note regarding this provision.

First, in contrast to other provisions of the gift rule, this one refers to “presentation,” and thus the concept of the provision is that there will be an **in-person presentation** of the item to the Member or staff person.

Second, in order to be acceptable under this provision, an item must be “substantially commemorative in nature.” Usually there is little question as to the commemorative nature of a plaque or trophy.⁴² As to other items that may be presented to a Member or staff person at an event – for example, an expensive pen or a crystal bowl – such items are **not** commemorative in nature merely because they were presented at an event. Instead, in order to fall within this provision, an item must have some commemorative characteristic or feature. It would be impossible to enumerate all of the features that would cause an item to be deemed commemorative, but an item that is inscribed or engraved with the Member’s name, the name of the presenting organization, and the date of the presentation will likely be deemed commemorative in nature.

⁴² A separate provision of the gift rule, described below, applies to bona fide public service awards presented to Members or staff.

Finally, as a general matter, the items acceptable under this provision may not have significant utilitarian or artistic value. Thus, for example, a television would not be acceptable under this provision, no matter how elaborate an inscription appears on the television. The types of items that can be accepted under this provision, if commemorative in nature by reason of an inscription or otherwise, include a framed photo or print, a figurine, or a clock.

When a Member or staff person is presented with an item of unusually high value, or receives information that a group intends to present an item of such value, the official should contact the Standards Committee for guidance. A commemorative item that exceeds \$335 in value will have to be disclosed on Schedule VI of one's annual Financial Disclosure Statement (see the section on "Gift Disclosure" below).

Example 36. After a Member speaks at an event, the sponsoring organization presents him with an expensive pen that is inscribed with his name only. Because the inscription is limited to the Member's name, the pen is not commemorative in nature and thus may not be accepted.

Example 37. A Member visits an Indian tribe, and during her visit, the tribal leaders present her with a blanket that was handmade by members of the tribe. Because the blanket has a traditional tribal design, the Member may accept it as a commemorative item.

Example 38. An aircraft manufacturer in a Member's district sends the Member, through the mail, a high-quality model of one of the airplanes it builds. While the Member probably could have accepted the model as a commemorative item had it been presented to him in person, he may not accept it under this provision since it was merely mailed to him.

Books, Periodicals, and Other Informational Materials

A Member, officer, or employee may accept "[i]nformational materials that are sent to [his or her] office . . . in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication" (House Rule 25, clause 5(a)(3)(I)). The purpose of this provision is to ensure that Members have access to information sources or reference tools useful in the conduct of official duties. Several points should be noted regarding informational materials.

First, under long-standing Committee guidance, a subscription to a periodical may be accepted only from the publisher or distributor of the periodical. In other words, Members and staff may **not** accept a gift subscription that was paid for by a third party.

Second, the provision specifies that informational materials “sent to the office” may be accepted. The intent of this language is that a Member or staff person may not accept, under this provision, an additional courtesy copy of a publication that is sent to his or her home.⁴³ The intent of that language is **not** to preclude acceptance of a book or other appropriate informational material at, for example, a reception or other event.

Third, while the provision allows acceptance of a set of materials (such as, for example, a PBS documentary on alternative energy sources), it does not permit acceptance of specialized reporting services or other collections that are periodically updated, such as the U.S. Code annotated or an encyclopedia.

Fourth, at times a Member is offered multiple copies of a book or similar item for the purpose of distributing the copies to his or her colleagues or others. As a general matter, a Member may accept multiple copies of an item in these circumstances, provided that the copies are intended for distribution to a particular audience and are not for the Member’s unrestricted use, and provided further that the item was not created especially for the Member.

Finally, at times a Member, officer, or employee may be offered computer software. Neither application software (*e.g.*, Microsoft Word or WordPerfect), developmental software (*i.e.*, software that enables one to generate or edit code), nor entertainment software is acceptable under this provision of the gift rule, as such materials do not constitute informational materials within the meaning of this provision. Informational software may be acceptable, but only if the database is entirely self-contained, such as on a compact disc. Software that provides access to a database that otherwise is available only on a subscription basis (*e.g.*, LEXIS-NEXIS or Westlaw) is not acceptable under this provision. However, demonstration or evaluation copies of software that a business generally makes available to prospective customers may be acceptable under a different gift rule provision (see the section below entitled “Widely Available Opportunities and Benefits”).

Things Paid for by the Federal Government, or by a State or Local Government

“Anything that is paid for by the Federal Government, by a State or local government, or secured by the Government under a Government contract” is acceptable (House Rule 25, clause 5(a)(3)(O)). This is a broad provision, which extends to tangible items of all kinds, as well as meals, services, and travel – provided, however, that the gift is paid for by a government agency or entity. Insofar as this provision concerns in-kind services provided by a federal, state, or local government agency, this provision mirrors the Standards Committee’s

⁴³ H. Rep. 337, 104th Cong., 1st Sess. 11 (1995).

interpretation of the ban on unofficial office accounts (House Rule 24, clauses 1 to 3) under which Members and staff may accept in-kind services and functions from government agencies for official House activities.

Example 39. A state university in a Member’s district offers the Member tickets to an upcoming home game of one of its teams. The Member may accept the tickets under this provision. (However, as a general matter, sporting event tickets may be accepted from a private university only under the general provision on acceptable gifts, *i.e.*, if their value is less than \$50, and the private university does not retain or employ lobbyists.)

The “paid for by” language of this provision is especially important. Thus, under this provision, Members and staff may not accept a gift from a government agency when the gift was donated to the agency by a third party, and the agency is merely acting as a conduit. In addition, Members and staff may **not** accept, under this provision, a meal or other gift that is paid for by an outside consultant or lobbyist for a government agency – even though the cost of the gift will ultimately be reimbursed by the government.⁴⁴

Questions may arise as to whether a particular entity, such as an airport authority, port authority, or public utility, is a government agency for purposes of this provision. An entity is a government agency for purposes of this provision only if, under the law, it is treated as a government agency for other purposes. For example, an interstate compact entered into by the State of Maryland, the Commonwealth of Virginia, and the District of Columbia, which was also approved by Congress, established the Washington Metropolitan Area Transit Authority (or WMATA) as a governmental agency, with funding derived from the federal government and state governments, as well as from rider fares. In addition, the Committee has determined that the Tennessee Valley Authority is a governmental agency.⁴⁵ Conversely, federal law provides that Amtrak is not a department, agency, or instrumentality of the United States government (49 U.S.C. § 24301(a)(3)), and thus Amtrak is not a government agency for purposes of this gift rule provision. Similarly, the Committee has concluded that the regional Federal Home Loan Banks are private entities under the House gift rule. The Committee’s staff should be consulted for guidance on the status of a particular entity.

The commonwealths and territories of the United States are deemed to be part of the federal government and hence are treated as government entities.

⁴⁴ *Id.*

⁴⁵ The Committee has also determined that certain quasi-municipal corporations, *e.g.*, the Metropolitan Water District of Southern California, are governmental agencies under state law.

However, Indian tribes are not treated as a state or local government for purposes of the gift rule. The Standards Committee considered this matter carefully and found nothing in the legislative history of the current gift rule or its predecessors indicating an intent to treat Indian tribes as state or local government entities for these purposes.

The language of this provision regarding things secured by the government under a government contract applies, by its terms, only to things secured under a contract of the **federal** government. This language was derived from a comparable provision of the gift regulations that govern the Executive Branch (5 C.F.R. § 2635.203(b)(7)). The stated intent of that provision was to cover only items that “the Government procures for use by its employees under a Government contract or knowingly obligates itself to pay for” (57 Fed. Reg. 35,014 (1992)) – for example, a health club membership that the owner of a building in which the federal government leases space makes available to building tenants.

Gifts From Foreign Governments and International Organizations

Members, officers, and employees may accept “[a]n item, the receipt of which is authorized by the Foreign Gifts and Decorations Act, the Mutual Educational and Cultural Exchange Act, or any other statute” (House Rule 25, clause 5(a)(3)(N)).

Special rules apply to gifts from foreign governments. The Constitution prohibits federal government officials, including Members and employees of Congress, from receiving “any present . . . of any kind whatever” from a foreign state or a representative of a foreign government without the consent of the Congress.⁴⁶ Congress has consented, through the vehicles of the Foreign Gifts and Decorations Act (“FGDA”)⁴⁷ and the Mutual Educational and Cultural Exchange Act (“MECEA”)⁴⁸, to the acceptance of certain gifts from foreign governments. The FGDA defines “foreign government” to include not only foreign governments *per se*, but also international or multinational organizations whose membership is composed of units of foreign governments, and any agent or representative of such a government or organization while acting as such.⁴⁹ That Act also covers gifts from “quasi-governmental” organizations closely affiliated with, or funded by, a foreign government.

⁴⁶ Art. I, § 9, cl. 8.

⁴⁷ 5 U.S.C. § 7342.

⁴⁸ 22 U.S.C. § 2458(a).

⁴⁹ 5 U.S.C. § 7342(a)(2)(B).

MECEA and the FGDA provisions concerning the acceptance of travel and travel expenses are addressed in the Committee's guidance on the travel provisions of the gift rule.

In addition to its travel provisions, however, the FGDA authorizes House Members, officers, and employees to accept "a gift of minimal value tendered and received as a souvenir or mark of courtesy."⁵⁰ Under implementing regulations issued by this Committee,⁵¹ the term "minimal value" as used in the Act is currently defined, by reference to a statutory formula, as \$335.⁵²

This provision on minimal value gifts clearly applies to gifts of tangible items. In addition, the Standards Committee has interpreted this provision to permit Members and staff to accept, from a foreign government, meals, entertainment, and local travel in the United States when related to official duties. However, since providing lodging in the United States is not normally viewed as within the realm of diplomatic courtesy, it may not be accepted. Similarly, the Committee's interpretation does not allow the acceptance of such meals, entertainment, or local travel offered by a lobbyist or agent of a foreign government, because such gifts are not properly deemed as having been "tendered as a souvenir or mark of courtesy" as required by the FGDA.

Example 40. An embassy in Washington has invited a Member to attend a dinner at the embassy. The Member may accept the invitation under the minimal value provision of the FGDA.

Example 41. An embassy official in Washington has invited a staff member to lunch at a local restaurant to discuss pending legislation concerning his country. The staff member may accept the invitation under the minimal value provision of the FGDA.

Example 42. An attorney who is a registered foreign agent has invited a staff member to lunch to discuss pending legislation concerning his client. The staff member may not accept the lunch.

The FGDA further allows a Member or staff person to accept (but **not** to retain) a gift of more than minimal value, as defined above, when refusal of the gift "would likely cause offense or embarrassment or otherwise adversely affect the

⁵⁰ 5 U.S.C. § 7342(c)(1)(A).

⁵¹ The Committee's implementing regulations are issued pursuant to 5 U.S.C. § 7342(a)(6)(A), (g)(1) and apply to House Members and staff. The regulations were first published on Jan. 23, 1978 (124 *Cong. Rec.* 452-53) and are reprinted in their current form in the appendix.

⁵² 5 U.S.C. § 7342(a)(5)(A); 73 Fed. Reg. 7475 (Feb 8, 2008).

foreign relations of the United States.”⁵³ Such gifts, however, are deemed to be accepted on behalf of the United States and become the property of the United States. Within 60 days of accepting such a gift, a Member or staff person must turn the gift over to the Clerk of the House for disposal or, with the consent of this Committee, the recipient may retain the gift for display in his or her office or other official use.⁵⁴

At the time such a gift is deposited for disposal or official use, the recipient must also complete and sign a foreign gifts disclosure form, and file it with the Standards Committee.⁵⁵ Copies of the form are available from the Committee office or its website, www.house.gov/ethics. If a Member or employee is uncertain whether the value of a gift exceeds “minimal value” as defined above, the Clerk’s office can arrange for an appraisal.⁵⁶ Under the Committee’s foreign gifts regulations, the disclosure statements filed by Members and employees are publicly available at the Committee’s office, and their contents are published annually in the *Federal Register*.⁵⁷

Additionally, the FGDA allows a Member or employee to accept a gift of an educational scholarship or medical treatment from a foreign government.⁵⁸

Furthermore, the FGDA applies not only to Members and employees but also to the spouse or dependant of a Member or employee.⁵⁹

Benefits Resulting from Outside Business and Other Activities

Subject to two restrictions that are described below, Members, officers, and employees may accept benefits (including food and refreshments) that result from any of the following activities:

- Outside business or employment activities of the Member or staff person;
- Other outside activities of the Member or staff person that are not connected to the duties of the individual as an officeholder; or
- Outside business or employment activities of the spouse of the Member or staff person.

⁵³ *Id.* § 7342(c)(1)(B).

⁵⁴ *Id.* § 7342(c)(2), (a)(6)(A).

⁵⁵ *Id.* § 7342(c)(3).

⁵⁶ *Id.* § 7342(g)(2)(B), (a)(6)(A).

⁵⁷ *Id.* § 7342(f).

⁵⁸ *Id.* § 7342(c)(1)(B).

⁵⁹ *Id.* § 7342(a)(1)(G).

The restrictions on the acceptance of such benefits are that (1) the benefits may not have been offered or enhanced because of the official position of the Member or staff person, and (2) they must be benefits that are “customarily provided to others in similar circumstances” (House Rule 25, clause 5(a)(3)(G)(i)). (This provision also allows the acceptance of transportation and lodging under the same terms.)

This is a common-sense provision that allows Members and staff to accept things of value that essentially have nothing to do with their position with the House, but instead are the result of outside business or other activities. However, before accepting anything under this provision, a Member or staff person must be satisfied that the benefit was neither **offered** nor **enhanced** because of his or her official position. The provision also requires that the benefit be one that is “customarily provided to others in similar circumstances.”

Example 43. A Member serves, on an uncompensated basis, as a member of the board of directors of a nonprofit organization. The board holds monthly dinner meetings, and the organization also provides each director with a free subscription to its monthly publication. The Member may attend the dinner meetings and accept the subscription.

Example 44. The spouse of a staff member is a partner in a law firm that leases a skybox in a pro football stadium. Each partner may attend games with his or her spouse or a guest. The staff member may attend games with his spouse.

Example 45. A Member who was a star tennis player as a youth is invited to a banquet honoring retired greats. The Member may accept.

Example 46. A pro sports team has established an “honorary board of advisers,” which is to be composed largely of government officials from the area, and it has asked the local Member to join. Each member of the honorary board will be given season tickets for the team’s home games. While the Member may join the honorary board if he chooses, he may not accept the season tickets under this provision, because in effect the tickets are being offered because of the Member’s official position.

As a related matter, Members and staff are also allowed to accept benefits (including food, refreshments, and travel) “customarily provided by a prospective employer in connection with bona fide employment discussions” (House Rule 25, clause 5(a)(3)(G)(ii)).

Example 47. During the course of employment discussions with a lobbying firm, a staff member is offered use of the firm's beach condo for a weekend. Unless the firm has a history of making the same offer to comparable prospects in the private sector, the offer is not acceptable under this provision.

Questions in this area can also arise in connection with a **severance package** that a Member, officer, or employee may receive from a former employer that is separate from or in addition to continuing participation in a pension or other employee welfare or benefit plan (*see* House Rule 25, clause 5(a)(3)(H)). Such packages may take any number of forms, and they may include the award of a performance bonus or the retention of benefits accrued through an incentive program, but generally they are awarded based on services rendered to an outside employer **prior** to the individual's congressional service. A severance package may be accepted if it meets the following criteria: (a) The former employer regularly gives its employees a severance package as part of the individual's compensation for services performed; (b) the package constitutes compensation for services the individual performed prior to employment with the House; (c) the package is no greater than that given to similar employees who do not work for the House; and (d) the monetary value of the package has in no way been enhanced because of the individual's employment with the House. Any severance package that is not offered along these lines would raise concerns that the benefits being conferred involve an improper gift.⁶⁰

Personal Hospitality of an Individual

A Member, officer, or employee may accept a gift of personal hospitality of an individual, **except from a registered lobbyist or an agent of a foreign principal** (House Rule 25, clause 5(a)(3)(P)).⁶¹ This provision incorporates the definition of the term "personal hospitality" that is provided in § 109(14) of the Ethics in Government Act:

[H]ospitality extended for a non-business purpose by an individual, not a corporation or organization, at the personal residence of that

⁶⁰ Furthermore, a severance package or other post-employment benefit (such as participation in a partnership's retirement plan) may implicate provisions of the federal criminal code. For example, 18 U.S.C. § 203, prohibits federal employees (including House Members, officers, and staff) from accepting, "directly or indirectly," compensation for representational services before federal agencies. Members and employees should consult the Committee staff for guidance concerning the application of this provision to their particular circumstances.

⁶¹ The definitions of the terms "registered lobbyist" and "agent of a foreign principal" as used in the gift rule are provided above in the section "Definitions of Registered Lobbyist and Agent of a Foreign Principal."

individual or his family or on property or facilities owned by that individual or his family.

When the requirements of this provision are satisfied, a Member or staff person may accept, for example, a meal at an individual's residence, and may also accept lodging. It is not required that the host be present; thus, use of a personally owned vacation home is permissible even if the owner is not present. However, this provision does **not** allow the acceptance of either meals or entertainment outside the home, or travel expenses. In addition, in order for this provision to apply, the property or facilities must be **personally owned**. Property or facilities owned by a corporation or a firm may not be used under this provision, even if the corporation or firm is wholly owned by an individual. Likewise, as a general rule, a residence or other property that the individual owner rents out to others or otherwise uses for business purposes may not be used under this provision.

The aspect of the rule requiring that the personal hospitality be for a "non-business purpose" should also be noted. Thus, when an individual invites a Member or staff person to a dinner at the individual's home for the purpose of discussing pending legislation, the invitation may not be accepted under this provision. Similarly, the provision does not apply when the expenses that an individual incurs in providing personal hospitality are either to be reimbursed by a business, or deducted as business expenses.⁶²

Example 48. Mr. and Mrs. Z (neither of whom is a registered lobbyist or foreign agent) invite Member A and spouse to spend the weekend with them at their home. Provided that there is no business purpose for the visit, the Member may accept under this provision.

Example 49. A Member receives an invitation from an individual (who is neither a registered lobbyist nor a foreign agent) to spend a week at a vacation home. The Member may accept if (1) the home belongs to the host personally (as opposed to a corporate employer), (2) the costs of the visit will **not** be reimbursed by an employer or deducted from taxes as a business expense, and (3) there is no business purpose for the visit.

Example 50. An individual (who is neither a registered lobbyist nor a foreign agent) invites a Member to spend the weekend with him at his condominium in Aspen. The individual offers to fly the Member out on his private plane and to pay for his ski rentals and lift tickets. While

⁶² *Bipartisan Task Force Report, supra* note 5, 135 *Cong. Rec.* 30743.

the Member may accept the weekend lodging, the travel and ski expenses are not acceptable under this provision.

As noted above, Members and staff may **not** accept personal hospitality from a registered lobbyist or foreign agent under this provision. However, it is possible for the benefits encompassed in the personal hospitality provision – for example, a meal or lodging at a private home – to be accepted from a lobbyist or foreign agent under the **personal friendship provision** of the gift rule.⁶³ The restrictions on the acceptance of things of value under the personal friendship provision are described above, and as is noted there, Members and staff must be especially cautious in relying on the personal friendship provision where the offeror is a registered lobbyist or foreign agent.

Briefly stated, a Member or staff person may accept such hospitality from a lobbyist or foreign agent under the personal friendship provision of the gift rule when the following circumstances are present: (1) All of the requirements of the personal hospitality provision are satisfied, including that the property is individually owned, and that there is no business purpose underlying the offer, (2) in addition, there is a history of reciprocal gift exchange between the offeror and the Member or staff person, and (3) if the value of the hospitality exceeds \$250, the advance, written approval of the Standards Committee is obtained. The acceptance of hospitality from a registered lobbyist or foreign agent exceeding \$335 in value must be reported on Schedule VI of one's annual Financial Disclosure Statement.

Contributions to a Legal Expense Fund, and Pro Bono Legal Services

A Member, officer, or employee may accept “a contribution or other payment to a legal expense fund established for the benefit of [the official] that is otherwise lawfully made in accordance with the restrictions and disclosure requirements of the Committee on Standards of Official Conduct” (House Rule 25, clause 5(a)(3)(E)). However, such a contribution or other payment may **not** be accepted from a registered lobbyist or an agent of a foreign principal (House Rule 25, clause 5(e)(3)).⁶⁴

The Committee issued Legal Expense Fund Regulations in an advisory memorandum dated June 10, 1996, which is reprinted in revised form in the appendix. **Those regulations generally prohibit Members and staff from soliciting or receiving donations to pay legal expenses without the prior written permission of**

⁶³ See H. Rep. 337, 104th Cong., 1st Sess. 11 (1995).

⁶⁴ The definitions of the terms “registered lobbyist” and “agent of a foreign principal” as used in the gift rule are provided at the beginning of this chapter.

the Committee.⁶⁵ It should be noted that this prohibition generally applies to **in-kind donations** – including pro bono legal services – as well as **cash donations**. However, as detailed below, Members and staff may accept pro bono legal assistance for certain purposes without Committee permission.

Merely because a Member or staff person is incurring or will incur legal expenses does not necessarily mean that the individual may establish a fund to defray those expenses. Under the Committee's regulations, a fund may be established only when the legal expenses arise in connection with one of the following matters:

- The individual's candidacy for or election to federal office;
- The individual's official duties or position in Congress (including a matter before the Standards Committee);
- A criminal prosecution; or
- A civil matter bearing on the individual's reputation or fitness for office.

The Committee will **not** grant permission to establish a fund when legal expenses arise in connection with a matter that is primarily personal in nature, such as a matrimonial action.

The rules governing the operation of a Legal Expense Fund include the following. A fund must be established as a trust, administered by a trustee who is entirely independent of the Member or staff person who is the trust's beneficiary. No contribution may be solicited for or accepted by a fund prior to the Committee's written approval of the completed trust document and the trustee. Trust funds can be used only to pay legal expenses, or the expenses incurred in soliciting for or administering the trust. Excess funds must be returned to the contributors. A fund may not accept more than \$5,000 in a calendar year from any individual or organization, but in accordance with the gift rule, no contribution may be accepted from a registered lobbyist or foreign agent. A fund may not pay for legal services for anyone other than the named beneficiary except with the Committee's written permission. Written Committee permission is also required for any amendment of the trust document and any change in the trustee.

The regulations also require extensive public disclosure regarding each Legal Expense Fund. After the Committee has approved a trust document, the beneficiary must file a copy of it with the Legislative Resource Center (Room B-106,

⁶⁵ The only donations that may be solicited or received without prior permission are donations from relatives, and donations of up to \$250 that are given on the basis of personal friendship (as discussed above).

Cannon House Office Building) for public disclosure. In addition, reports on contributions to and expenditures from a fund must be filed with both the Committee and with the Legislative Resource Center on a quarterly basis. Contributions exceeding \$335 in a calendar year from any source (other than a relative of the beneficiary) must also be reported on Schedule VI of the beneficiary's annual Financial Disclosure Statement (see the section on "Gift Disclosure" below).

As to pro bono legal assistance, a Member, officer, or employee may accept such assistance without limit for the following purposes:

- To file an amicus brief in his or her capacity as a Member of Congress;
- To participate in a civil action challenging the validity of any federal law or regulation; or
- To participate in a civil action challenging the lawfulness of an action of a federal agency, or an action of a federal official taken in an official capacity, provided that the action concerns a matter of public interest, rather than a matter that is personal in nature.

Acceptance of pro bono legal assistance for any other purpose is permissible only with Committee authorization pursuant to an advisory opinion, or as a contribution to a Committee-approved legal expense fund.

In certain circumstances, campaign funds may also be used to pay legal expenses. The Federal Election Commission has issued a number of advisory opinions on this matter pursuant to its rules barring personal use of campaign funds (11 C.F.R. Part 113). Both the Standards Committee and the FEC should be consulted before campaign funds are used to pay any legal expenses.

"Home State" Products

A Member may accept "[d]onations of products from the district or State that the Member . . . represents that are intended primarily for promotional purposes, such as display or free distribution, and are of minimal value to any single recipient." (House Rule 25, clause 5(a)(3)(V)). Several points to bear in mind regarding this provision are as follows:

- This provision applies to tangible items only. Thus, for example, tickets to a museum or a show in a Member's district may not be accepted under this provision.
- To be acceptable under this provision, an item must be produced or grown in the Member's home state.

- If the item is to be distributed for free, it must be of “minimal value” – candy bars, apples, and peanuts that are produced or grown in a Member’s state are common examples.
- The provision applies not only to small items that can be given away, but also to home-state items that can be displayed in the office – for example, a Christmas tree grown in the Member’s home state.
- The provision allows acceptance of items “that are intended primarily for promotional purposes.” Accordingly, any give-away items must be available to office visitors, and not merely to Members and staff. Likewise, any display item must be placed in the reception area of the office.

Honorary Degrees and Nonmonetary Public Service Awards

Honorary degrees are acceptable, as are travel, food, refreshments, and entertainment that are provided in connection with the award of an honorary degree (House Rule 25, clause 5(a)(3)(K)). In addition, under the same provision of the gift rule, “bona fide, nonmonetary awards presented in recognition of public service” are acceptable, along with food, refreshments, and entertainment provided in connection with the presentation of such awards.

This provision allows only the acceptance of a “bona fide” award – a condition that is particularly significant when the award is an item having significant monetary value, such as a crystal sculpture. In determining whether an award is indeed “bona fide,” among the important considerations are the nature of the awarding organization, whether the award is made as part of an established program and has been made on a regular basis, whether in the past non-congressional individuals have been recipients of the award, and whether there are specific, written criteria for the selection of the awardees. If the award is an item that exceeds \$335 in value, and the recipient is a Member or officer, or an employee who files a Financial Disclosure Statement, the award must be disclosed on Schedule VI of the individual’s filing for the year in which the award was received (see the section on “Gift Disclosure” that follows).

A public service award that consists of an amount of money is not acceptable under this provision. Similarly, where an award includes both an item and an amount of money, the monetary aspect of the award is not acceptable under this provision. A Member, officer, or employee who is offered a public service award that consists of or includes an amount of money may submit a written request for a gift rule waiver to the Committee. In considering any such request, the Committee will closely examine the factors noted above that bear on whether the award is a “bona fide” one.

Training in the Interest of the House

Training is acceptable, “if such training is in the interest of the House.” (House Rule 25, clause 5(a)(3)(L)). Also acceptable under this provision are “food and refreshments furnished to all attendees as an integral part of the training.”

This provision may apply to, for example, vendor promotional training, *i.e.*, training provided by a company for the purpose of promoting its products or services. However, the acceptance of training may implicate the prohibition against private subsidy of official activity (House Rule 24, clauses 1 to 3), and thus Members and staff should consult with the Committee before accepting training under this provision. This provision does **not** extend to meals in connection with presentations made by lobbyists or advocacy groups, or to meals in connection with briefings or discussions relating to issues before the Congress.

Widely Available Opportunities and Benefits

Members, officers, and employees may accept certain opportunities and benefits that are similarly available to individuals outside the House (House Rule 25, clause 5(a)(3)(R)). Specifically, Members and staff may accept opportunities and benefits that are –

- (1) “[A]vailable to the public or to a class consisting of all Federal employees, whether or not restricted on the basis of geographic consideration;”
- (2) “[O]ffered to members of a group or class in which membership is unrelated to congressional employment;”
- (3) “[O]ffered to members of an organization, such as an employees’ association or congressional credit union, in which membership is related to congressional employment and similar opportunities are available to large segments of the public through organizations of similar size;”
- (4) “[O]ffered to a group or class that is not defined in a manner that specifically discriminates among Government employees on the basis of branch of Government or type of responsibility, or on a basis that favors those of higher rank or rate of pay;” or
- (5) “[I]n the form of reduced membership or other fees for participation in organization activities offered to all Government employees by professional organizations if the only restrictions on membership relate to professional qualifications.”

Example 51. A hotel chain offers a discounted rate to all federal employees, regardless of whether they are on official travel. House

employees may take advantage of the reduced rate under category No. 1 above.

Example 52. A staff person accumulates sufficient “frequent flyer” miles on personal travel to receive complimentary airfare to Europe. He may accept the award under category No. 2 above because the “frequent flyer” program is available to all travelers.

Example 53. An alumni association offers reduced-price travel and other benefits to its members. A staff member who is a member of the association may, under category No. 2 above, accept from the association any benefits that it makes available to all of its members.

Example 54. A local health club offers reduced membership fees to congressional staff members. Because the offer is not made to federal employees generally, and because of the limitations set forth in category Nos. 1 and 4 above, House staff may not accept the offer under this provision. A House staff member could accept such an offer under category No. 1 above if it were made to all federal employees in the Washington, D.C. area.

Example 55. An association of tax attorneys holds monthly lunch meetings, and the admission fee charged to federal tax attorneys is lower than that charged to private sector tax attorneys. A House staff member who is a tax attorney may attend the lunch meetings at the reduced fee under category No. 5 above, provided that the only restrictions on membership in the association relate to professional qualifications.

Loans

Members, officers, and employees may accept opportunities and benefits that are “in the form of loans from banks and other financial institutions on terms generally available to the public” (House Rule 25, clause 5(a)(3)(R)(v)). In addition, as reflected in a Committee advisory memorandum of May 23, 1997, a copy of which is reprinted in the appendix, the Committee has determined that Members and staff may accept a loan from a person other than a financial institution, provided that the loan is on commercially reasonable terms, including requirements for repayment and a reasonable rate of interest. That determination was based on a separate provision of the gift rule, clause 5(a)(3)(A), which allows the acceptance of “[a]nything for which the Member, . . . officer, or employee pays the market value.”

Whether a loan from a person other than a financial institution is on terms that are “commercially reasonable,” and hence acceptable under the Committee’s

determination, will depend on a number of facts and circumstances. Thus, *before* entering into a loan arrangement with a person other than a financial institution, Members and staff should contact the Committee for a review of the proposed terms, and a determination by the Committee on whether the loan is acceptable under the gift rule.

Awards and Prizes

Members, officers, and employees may accept “[a]wards or prizes that are given to competitors in contests or events open to the public, including random drawings” (House Rule 25, clause 5(a)(3)(J)). Thus, for example, a Member or employee who purchases a lottery ticket and wins a cash prize may accept the prize.

The Committee has also determined that a Member, officer, or employee may accept a prize won in a drawing, raffle or other contest that is not necessarily open to the public – for example, a drawing held at a charity fundraising event – but **only** if **most** of the entries in the contest were from individuals other than Members, officers, or employees of Congress (and their accompanying spouses or other individuals).

Any prize that exceeds \$335 in value will have to be disclosed on Schedule VI of the official’s annual Financial Disclosure Statement (see the section on “Gift Disclosure” below).

Gifts From Relatives

A gift from a relative is acceptable (House Rule 25, clause 5(a)(3)(C)). This provision incorporates the definition of the term relative that is provided in the Ethics in Government Act (5 U.S.C. app. 4 § 109(16)):

“relative” means an individual who is related to the [official] as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, or who is the grandfather or grandmother of the spouse of the [official], and shall be deemed to include the fiancé or fiancée of the [official].

Fiancés and fiancées are included in this definition, and thus engagement rings and other gifts exchanged by engaged couples are acceptable under this provision. However, a gift may not be accepted under this provision when a relative of a Member, officer, or employee is merely passing along a gift from some other person.

Gifts From Other Members, Officers, or Employees

Members, officers, and employees may accept “[a] gift from another Member, . . . officer, or employee of the House or Senate.” (House Rule 25, clause 5(a)(3)(F)). However, federal law generally bars government employees from giving gifts to their official superiors.⁶⁶ While the Committee has recognized common-sense exceptions for voluntary gifts on special occasions,⁶⁷ as a general rule, Members may not accept things of value from their staff members, and higher level staff members may not accept things of value from those who work for them. In addition, a gift may not be accepted under this provision where a Member, officer, or employee is merely passing along a gift from some other person.

Things for Which a Gift Rule Waiver Is Granted

A Member, officer, or employee may accept “[a]nything for which, in an unusual case, a waiver is granted by the Committee on Standards of Official Conduct.” (House Rule 25, clause 5(a)(3)(T)).

General Waivers for Wedding and Baby Gifts. Upon receipt of an advance, written request, the Committee will grant a Member, officer, or employee a general waiver for gifts received in connection with his or her wedding, or in connection with the birth of a baby. Such general waivers are issued primarily for the convenience of the requester, and notwithstanding the issuance of the waiver, recipients should exercise caution in accepting any gift that likely would not have been offered but for the individual’s official position. As to any such gift, the individual should consider its source, nature and value, and any possible conflict with official duties.

A Member, officer, or employee who receives wedding or baby gifts that otherwise are not acceptable under the gift rule, but did not submit an advance request for a general waiver, may submit a waiver request for those gifts. However, such post-event requests should include, at a minimum, a description of each gift for which a waiver is requested, including its market value, and the identity of the donor.

The grant of a gift rule waiver by the Committee does **not** waive the requirement for reporting certain gifts on Schedule VI of one’s annual Financial Disclosure Statement. The requirement for disclosure of certain gifts, and the Committee’s authority to waive disclosure in certain instances, are noted below in the section on “Gift Disclosure.” Generally the Committee will waive the

⁶⁶ 5 U.S.C. § 7351.

⁶⁷ For example, a birthday, holiday, marriage, the birth of a child, anniversary, retirement, and like occasions when gifts are traditionally given.

requirement for disclosure of wedding and baby gifts, but a separate letter requesting the disclosure waiver must be submitted to the Committee. In contrast to requests for gift rule waivers, which are kept confidential by the Committee, a request for waiver of the disclosure requirement is required by law to be made publicly available.

Other Waivers. In addition to gifts received in connection with a wedding or the birth of a baby, the Committee will also grant gift rule waivers in other “unusual case[s],” provided that “there is no potential conflict of interest or appearance of impropriety.”⁶⁸ For example, when a Member or a family member becomes seriously ill, the Committee will generally grant a gift rule waiver for any flowers or floral arrangements that are received.

Any Member, officer, or employee who is offered a gift that is not otherwise acceptable under the rule, but who believes that acceptance of the gift should be allowed, should submit a written request to the Committee for a waiver. 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 its acceptance.

Other Acceptable Gifts

Under the gift rule, Members, officers, and employees may also accept the following gifts:

- “A contribution, as defined in section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431) that is lawfully made under that Act.” (House Rule 25, clause 5(a)(3)(B));
- “[A] lawful contribution for election to a State or local government office.” (*Id.*, clause 5(a)(3)(B));
- “Bequests, inheritances, and other transfers at death.” (*Id.*, clause 5(a)(3)(M)).

Other Expressly Prohibited Lobbyist Gifts

As noted above (in the section “Overview of the Gift Rule”), a Member, officer, or employee may not accept **any** gift, except as the rule specifically provides. Thus, unless a gift falls into one of the categories of acceptable gifts described above, it may not be accepted. In addition to the prohibition on lobbyists and foreign agent gifts under the general gift rule provision, the rule also expressly prohibits the

⁶⁸ *Bipartisan Task Force Report*, *supra* note 5, 135 *Cong. Rec.* 30743.

acceptance of certain other gifts from registered lobbyists and foreign agents. The other gifts that are expressly prohibited are as follows:

- “Anything provided by a registered lobbyist or an agent of a foreign principal to an entity that is maintained or controlled by a Member, . . . officer, or employee of the House.” (House Rule 25, clause 5(e)(1));
- “A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a registered lobbyist or an agent of a foreign principal on the basis of a designation, recommendation, or other specification of a Member, . . . officer, or employee of the House (not including a mass mailing or other solicitation directed to a broad category of persons or entities), other than a charitable contribution [made in lieu of an honorarium].” (*Id.*, clause 5(e)(2));
- “A contribution or other payment by a registered lobbyist or an agent of a foreign principal to a legal expense fund established for the benefit of a Member, . . . officer, or employee of the House.” (*Id.*, clause 5(e)(3)); and
- “A financial contribution or expenditure made by a registered lobbyist or an agent of a foreign principal relating to a conference, retreat, or similar event, sponsored by or affiliated with an official congressional organization, for or on behalf of Members, . . . officers, or employees of the House.” (*Id.*, clause 5(e)(4)).

The prohibition against accepting a contribution or other payment to a legal expense fund from a registered lobbyist or foreign agent was noted above (in the section “Contributions to a Legal Expense Fund, and Pro Bono Legal Services”). Registered lobbyists and foreign agents are also singled out in the gift rule provisions on personal hospitality of an individual (discussed above) and officially related travel (discussed in the travel section). The rationale for these special restrictions on gifts from lobbyists is noted above.

The definitions of the terms “registered lobbyist” and “agent of a foreign principal” are provided at the beginning of this chapter. The Committee does not interpret the provisions described in this section to apply to the clients of lobbyists and lobbying firms (unless the client is also a lobbyist or is a lobbying firm).

As a related matter, clause 8 of House Rule 25 prohibits a Member from participating in certain events held in honor of the Member during a political convention if those events are paid for by a lobbyist. This provision is discussed below in the section on “Events in Honor of a Member, Officer, or Employee.”

Handling Unacceptable Gifts

When a Member, officer, or employee receives a gift that is not acceptable under the gift rule, and for which a gift rule waiver is not available, there are generally two options: pay the donor the “market value” of the gift, or return the gift to the donor. However, when the unacceptable gift is a perishable item, such as flowers or a fruit basket, the rule also provides the options of donating the item to charity or destroying it. In addition, other options may be available for a gift that is unusual in nature, such as a work of art from one’s home state. These options are detailed below.

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. Members and staff should always feel free to contact the Committee’s Office of Advice and Education on such matters.

Pay Market Value for the Gift

In General. The gift rule provides that a Member, officer, or employee may accept “[a]nything for which the [official] pays the market value.” (House Rule 25, clause 5(a)(3)(A)). Generally, for the purpose of the gift rule, items are valued at their retail, rather than wholesale prices. Often an item may be priced differently at different stores. A gift may be valued at the lowest price at which the item is available to the general public. Committee guidance on the value of certain specific kinds of gifts is as follows.

Tickets to Sporting Events and Shows. The gift rule provides that a ticket to a sporting or entertainment event is “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.” (House Rule 25, clause 5(a)(1)(B)(ii)). To address the issue of artificially low face values, the gift rule also provides that the “price printed on the ticket shall be deemed its face value only if it also is the price at which the issuer offers that ticket for sale to the public.” (*Id.*). Thus, for a ticket to a skybox or other private luxury box with no face value or an artificially low face value, the value of the ticket is the price of the highest individually-priced ticket for the event. Other methods of valuation, such as calculating a pro-rata, pro-event cost for a season ticket, are not permitted under the gift rule. The Committee should be contacted for advice on the value of tickets for an event for which individually priced tickets are not made available for sale to the public.⁶⁹

⁶⁹ The guidance set forth above applies to the valuation of tickets for purposes of the House gift rule. Members and staff should contact the Federal Election Commission for guidance regarding the valuation of tickets for campaign events.

For many sporting or entertainment events, especially those taking place in the Washington, D.C. or other major metropolitan areas, the value of a ticket may exceed \$50. When the value equals or exceeds \$50, the invitee must either decline the ticket or pay for the ticket according to the method set forth in the rule. In addition to paying the cost of any ticket(s), Members and staff must pay the market value of any other benefits that are accepted in connection with the event, including food, beverages, or parking that exceed the gift rule limits. Of course, as explained above, if the ticket is from a lobbyist or private entity that retains or employs lobbyists, a Member or staff person may not accept free attendance, even if the ticket is valued under \$50.

Tickets to Charity or Political Fundraisers. Under a policy established by the House Select Committee on Ethics, a ticket to a charity or political fundraising dinner is valued at the cost of the dinner, rather than the cost of the ticket to the purchaser.⁷⁰

Honorary Memberships. Membership in a club or other organization typically involves an initiation fee, periodic dues, and usage charges. An “honorary” membership usually involves a waiver or reduction in the normal fee or dues levied on members. For purposes of the gift rule, an honorary membership is valued at the total market price of the organization’s normal initiation fee, periodic dues, and usage charges. The value of an honorary membership to a Member or staff person is not diminished merely because the individual does not use the membership, or because the honorary membership does not carry voting rights or an equity interest.

Example 56. A Member is offered a complimentary membership in a health club. Normally, new members are assessed an initiation fee of \$45 and annual dues of \$500. The Member may not accept the membership.

Prompt Return to the Donor

The restrictions of the gift rule do not apply to anything that a Member, officer, or employee “does not use and promptly returns to the donor” (House Rule 25, clause 5(a)(3)(A)). As noted above, the rule provides additional options only with regard to perishable items: “When it is not practicable to return a tangible item because it is perishable, the item may, at the discretion of the recipient, be given to an appropriate charity or destroyed” (*id.*, clause 5(a)(6)). Thus, a perishable item may be donated to a local hospital, homeless shelter, religious organization, or other charity.

⁷⁰*Final Report of the Select Comm. on Ethics*, H. Rep. 95-1837, 95th Cong., 2d Sess. 9.

However, when a Member, officer, or employee receives a nonperishable gift that cannot be accepted under the gift rule, he or she has no choice but to return the item to the donor promptly. One wishing to return a gift by mail should consult with the Commission on Congressional Mailing Standards (the Franking Commission) to determine if the item is frankable. If the item is not frankable, it will be necessary to purchase postage stamps using the Members' Representational Allowance in order to return it by mail.

Artwork and Other Gifts of an Unusual Nature

At times a Member has been offered, for display in his or her office, a work of art having significant value. Members have also been offered gifts of an unusual nature, the value of which is not readily ascertainable. Gifts in this category have ranged from works of art and antiques to items emblematic of the donor's cultural group. The gift may represent the personal efforts of an individual, or may symbolize the esteem of a constituent group, and thus a Member may feel awkward about declining such a gift.

A Member may accept a loan of a painting or other work of art from his or her home state for the purpose of displaying the item in the Member's House office. It should be clearly established in correspondence between the Member and the item's owner that the Member is holding the item on a loan basis only, and that the item will be returned to the owner upon the soonest of the item being removed from display, the Member leaving office, or the owner requesting its return. In addition, a written statement of the value of the item should be obtained from the owner, and if possible, it is advisable to place a sticker or other marking on the item that states that the item is on loan and identifies the owner. Finally, the Member should enter into a written agreement with the owner that provides for liability in the event of damage or loss, since official allowances may not be used to repair or replace personal property. On the latter point, staff of the Committee on House Administration should be contacted.

In addition, in certain circumstances, the Standards Committee may consent to a Member receiving a gift of a work of art or similar item for the sole purpose of facilitating its donation to, for example, a museum in the home district or the House Fine Arts Board.⁷¹ Provided that the recipient agrees, such an item may be loaned back to the Member, on a temporary basis, for display in the Member's office. Any Member having a question about the proper manner to handle a gift of this nature should contact the Standards Committee for advice.

⁷¹ The Board has statutory authority to accept, on behalf of the House, gifts of works of fine art, historical objects, and similar property.

Gifts From a Foreign Government

Instances may arise when a Member, officer, or employee is presented with a gift of more than minimal value when refusal would be deemed likely to cause offense or embarrassment or otherwise adversely affect United States foreign relations. In such an instance, the gift may be accepted on behalf of the United States and becomes the property of the United States. Within 60 days of accepting such a gift, a Member or staff person must turn the gift over to the Clerk of the House for disposal or, with the consent of this Committee, the recipient may retain the gift for display in his or her office or other official use. The regulations on gifts from foreign governments are reprinted in the appendix.

Events in Honor of a Member, Officer, or Employee

At times an outside organization wishes to hold a reception or other event in honor of a Member, officer, or employee. As long as the identity of the sponsor (that is, the person that is organizing and paying for the event) is made clear to all participants (*e.g.*, on the invitations), an event nominally “in honor of” a Member or group of Members is **not** generally considered a gift in itself to the honoree(s). However, the Members being recognized should not identify themselves as hosts or receive any particular benefit from the event. If they do, the entire cost of the event may be viewed as a gift to the honoree(s).

Thus, for example, a Member with a strong record on environmental issues might be honored at a reception hosted by a nonprofit organization interested in those issues without raising concerns under the gift rule. If the same Member were an amateur photographer, however, and the event was set up to provide the Member with a forum for selling his or her photographs of wildlife, the Committee could find that the entire cost of the reception was a gift from the organization to the Member. The Committee could also make such a finding if the honoree assumes any role in organizing the event, such as hosting the event in the honoree’s home. Put another way, the event must genuinely be the event of the outside sponsor, and it is the sponsor who must determine the nature of the event and the guest list.

Of course, whether a Member, officer, or employee may attend such an event will depend on whether attendance would be permitted under the gift rule. As discussed previously, it is permissible for a Member, officer, or employee to accept a gift (*e.g.*, a meal) that has a value of less than \$50, and gifts having a cumulative value of less than \$100 from a single source in a calendar year. However, if the host of the event is a private entity that retains or employs registered lobbyists, reliance on the less than \$50 provision of the gift rule would be impermissible. On the other hand, depending on the circumstances, such an event may qualify as a “widely attended” event, permitting an invitee to accept food and refreshments furnished to

all attendees as an integral part of the event.⁷² In addition, it is permissible for a Member, officer, or employee to accept at a reception “[f]ood or refreshments of a nominal value offered other than as a part of a meal” (House Rule 25, clause 5(a)(3)(U)).

Furthermore, it would **not** be permissible for a Member, officer, or employee to solicit another individual or group to hold a reception or event in his or her honor. Similarly, it would **not** be permissible for a Member, officer, or employee who is being honored at a reception or event to solicit support for the event.

Political Conventions

In the 110th Congress, a new provision was added to House Rule 25 prohibiting Member participation in certain events held during a national political convention.⁷³ The provision (House Rule 25, clause 8) provides as follows:

During the dates on which the national political party to which a Member (including a Delegate or Resident Commissioner) belongs holds its convention to nominate a candidate for the office of President or Vice President, the Member may not participate in an event honoring that Member, other than in his or her capacity as a candidate for such office, if such event is directly paid for by a registered lobbyist under the Lobbying Disclosure Act of 1995 or a private entity that retains or employs such a registered lobbyist.

Under this provision, a Member may not “participate^[74] in an event honoring that Member” if the event takes place during a national political convention, other than to participate in the Member’s capacity as a candidate for President or Vice President, and when certain other criteria are met. Member participation prohibited under the provision is for an event when the Member is named, including through the use of any personal title, as an honoree (including as a “special guest”) in any invitations, promotional materials, or publicity for the event. Member participation also would be prohibited if the Member were to receive, through the Member’s participation in the event, some special benefit or opportunity that would

⁷² For guidance on “widely attended” events, see discussion on “Attendance at Events (Including Meals).”

⁷³ See The Honest Leadership and Open Government Act of 2007, Pub. L. 110-81, § 305, 121 Stat. 735, 753 (Sept. 14, 2007).

⁷⁴ The term “participate” is not defined in the underlying Act or the House rule. In the Committee’s view, the prohibition on participation in the events that are the subject of the provision concerns Member attendance at the event. Members should contact the Committee with any questions regarding whether activities other than attendance may constitute participation in such events.

not be available to some or all of the other participants, such as if the sponsor were to offer the Member an exclusive speaking role or a very prominent ceremonial role.

According to the legislative history of this provision, the restriction set forth above is intended to have the “effect of preventing lobbyists or an entity employing such lobbyists from directly paying for a party to honor a *specific* Member.”⁷⁵ Thus, an event that is organized to honor a delegation or caucus, without naming any specific Member of the delegation or caucus, or providing any special benefit or opportunity to a particular Member, would be an event that Members may participate in under clause 8 of House Rule 25 – provided that, as discussed below, attendance at the event otherwise would be in compliance with clause 5 of House Rule 25 (the gift rule). There is no numerical requirement on the size of the delegation or caucus participating in the event. Furthermore, a Member would not be prohibited from participating in an event taking place during a national convention if the Member’s name appears, for example, in a listing of the names of the honorary host committee members for the event if that listing includes the names of non-congressional host committee members.

The provision is very specific in prohibiting Member participation in an event that is “directly paid for” by a lobbyist or private entity that retains or employs lobbyists. The fact that a private organization received some of its funding for an event taking place during a national convention from a lobbyist or private entity that retains or employs lobbyists, by itself, would not disqualify a Member from participating in the organization’s event.

The provision also states that Member participation is prohibited only at certain events taking place “[d]uring the dates” on which a national convention is held. Accordingly, the rule does not prohibit Member participation in an event that takes place on a date other than the dates on which the national convention is held.

It is important to note that the provision does not establish a new type of event for which free attendance may be accepted under the gift rule. In other words, a Member may accept an offer of free attendance at an event taking place during a national political convention only in accordance with the gift rule – that is, the event is a reception or it satisfies all of the criteria of a widely attended event, a charity event, or a fundraising or campaign event sponsored by a political organization.

⁷⁵ 153 *Cong. Rec.* E1759 (daily ed. Aug. 4, 2007) (statement of Rep. John Conyers, Jr.) (emphasis added).

Bribery and Illegal Gratuities

The solicitation or acceptance of a gift that is tied to an official act may implicate the U.S. criminal code. The federal bribery statute makes it a crime for a public official, including a Member, officer, or employee of the House, to ask for or receive gifts, money, or other things of value in connection with the performance of official duties. Bribery occurs when a federal official “directly, or indirectly, corruptly” receives or asks for “anything of value personally or for any other person or entity, in return for . . . being influenced in the performance of any official act.”⁷⁶ An illegal gratuity results when an official directly or indirectly seeks or receives personally anything of value other than “as provided by law . . . for or because of any official act performed or to be performed.”⁷⁷ In a leading decision, the U.S. Supreme Court discussed the distinguishing features of the two sections:

[F]or bribery there must be a *quid pro quo* – a specific intent to give or receive something of value *in exchange* for an official act. An illegal gratuity, on the other hand, may constitute merely a reward for some future act that the public official will take (and may already have determined to take), or for a past act that he has already taken.⁷⁸

In that decision, the Supreme Court held that in order to establish a violation of the illegal gratuity statute, “the Government must prove a link between a thing of value and a specific ‘official act’ for or because of which it was given.”⁷⁹ According to the court, the illegal gratuity statute is not violated in the absence of such a link, such as when one gives a federal official a gift “because of his official position – perhaps, for example, to build a reservoir of goodwill that might ultimately affect one or more of a multitude of unspecified acts, now and in the future.”⁸⁰

Thus, both the bribery statute and the illegal gratuity statute require as an element of the offense that the thing of value be related in some manner to an official act, that is, the thing of value must be offered or requested either “in return for being influenced in” or “for or because of” an official act. This element distinguishes a bribe or illegal gratuity from a mere gift. A gift, as generally defined, is a “voluntary transfer” of property, made “without consideration.”⁸¹ A bribe induces an official act; an illegal gratuity rewards an official act; a gift has no connection to any official act.

⁷⁶ 18 U.S.C. § 201(b)(2)(A).

⁷⁷ *Id.* § 201(c)(1)(B).

⁷⁸ *United States v. Sun-Diamond Growers*, 526 U.S. 398, 404 (1999).

⁷⁹ *Id.* 414.

⁸⁰ *Id.* 405.

⁸¹ *Black’s Law Dictionary* 709 (8th ed. 1999).

While responsibility for enforcing this statute rests with the Justice Department, in the view of this Committee, these provisions do not extend to token gifts of appreciation or goodwill, intended as courtesy, and consisting of either:

- Perishable items (*e.g.*, candy or flowers) that the Member or employee shares with staff and constituents or donates to charity; or
- Decorative items that are displayed in the office or donated to charity.

This view as to perishable items is similar to that in regulations of the Executive Branch's Office of Government Ethics.⁸²

Example 57. A lobbyist offers a Member a substantial campaign contribution if the Member will introduce certain legislation. The lobbyist has violated the bribery law, as will the Member if he accepts.

Example 58. A Member introduces H.R. 1776 and manages the bill through passage solely because she believes the legislation will be good for the country. A lawyer also favors the legislation because it will benefit his clients. The lawyer sends the Member a clock radio valued at less than \$50, with a note saying, "In appreciation for your good work on H.R. 1776." The Member must send the clock radio back because it is an illegal gratuity.

Example 59. In mid-December, a trade association sends a small basket of fruit to Member A's office, with a note saying, "Season's Greetings to Member A and staff." Acceptance of the basket is not prohibited by the bribery and illegal gratuity statutes.

Example 60. A caseworker helps B, a constituent with a VA claim. The following week, the caseworker receives a \$25 gift certificate for a local restaurant with a note from B saying, "I'll never be able to repay you for what you've done for me." The caseworker must return the gift certificate; it is an illegal gratuity.

Example 61. A caseworker helps a constituent with her Social Security claim. In gratitude, the constituent brings a box of home-baked cookies to the office for the caseworker and the rest of the staff. The caseworker may accept the cookies.

⁸² 5 C.F.R. § 2635.205(a)(2) (Example 1).

Example 62. Member C's office helps a constituent with a Medicare claim. In gratitude, the constituent embroiders C's name on a small piece of fabric, for C to display in the office. C may accept the embroidery as a token decorative item.

Example 63. A citizens group sends a Member a framed reprint of the Constitution with a note saying, "Thank you for being a responsible voice for good government." Because the gift is not tied to any specific official act, its acceptance is not prohibited by the bribery and illegal gratuity statutes.

A person found guilty of bribery may be fined up to three times the value of the bribe, imprisoned for up to 15 years, and disqualified from holding any federal office.⁸³ A person found guilty of seeking or receiving an illegal gratuity may be fined, imprisoned for up to two years, or both.⁸⁴ Violation of these laws may also lead to disciplinary action by the House.

Several recent examples concerning the bribery statute are worth noting. During the 109th Congress, a Member resigned from the House after pleading guilty in federal court to engaging in tax evasion and criminal conspiracy to violate, among other things, the bribery statute through his acceptance of a wide variety of extravagant items and millions of dollars worth of payments, travel, and other benefits.⁸⁵ Following his resignation, there were continuing reports concerning possible violations of House rules and standards, including that the Member had been provided with hotel rooms, limousines, and other services in exchange for performing official acts.⁸⁶

Although he was not prosecuted under the bribery statute, during the 109th Congress another Member resigned from the House after pleading guilty in federal court to conspiracy to commit honest services fraud and other offenses (making false statements and aiding and abetting in the violation of his former chief of staff's one-year lobbying ban), and with making false statements to the House. As a part of his plea agreement, the Member admitted that he corruptly solicited and accepted trips, meals, concert and sporting tickets, thousands of dollars in gambling chips, tens of thousands of dollars of campaign contributions and in-kind donations with the intent to be influenced and induced to take official actions.⁸⁷

⁸³ 18 U.S.C. § 201(b).

⁸⁴ *Id.* § 201(c).

⁸⁵ *United States v. Randall "Duke" Cunningham*, Doc. No. 05-CR-2137 (S.D. Cal. 2005).

⁸⁶ House Comm. on Standards of Official Conduct, *Summary of Activities, 109th Congress*, H. Rep. 109-744, 109th Cong., 2d Sess. 20 (2007).

⁸⁷ *United States v. Robert W. Ney*, Doc. No. 06-CR-272 (D.D.C. 2006).

During the 107th Congress, a Member was convicted of, among other things, conspiracy to violate the federal bribery statute by agreeing to and performing official acts for various individuals in exchange for free labor, materials, supplies, and equipment for use at the Member's farm.⁸⁸ In a subsequent Committee investigation, the investigative subcommittee stated in a letter transmitting the Statement of Alleged Violations that such acts included, for example, intervening in matters pending before federal and state authorities.⁸⁹ The Committee found that the conduct by the Member violated clauses 1-3 of the Code of Official Conduct. On the basis of this violation, as well as other conduct found to be in violation of the Code of Official Conduct which taken together were "of the most serious character meriting the strongest possible Congressional response,"⁹⁰ the Committee recommended that the House of Representatives adopt a resolution that the Member be, and he later was, expelled.⁹¹

In the 1980s, the Committee on Standards conducted a number of investigations into allegations that Members of Congress accepted bribes or illegal gratuities. In one case, the Member was alleged to have received not cash, but free vacation trips from a creditor of a government contractor on whose behalf the Member had intervened with local authorities.⁹² In the 96th and 97th Congresses, the Committee investigated three Members on charges – arising out of the Department of Justice's "ABSCAM" probe – that they had accepted money in exchange for promising to aid purportedly wealthy foreigners seeking to immigrate to the United States.⁹³ Also in the 96th Congress, the Committee investigated a Member for allegedly receiving payments, either directly or through an assistant, from a series of individuals over a five-year period, in exchange for agreements to

⁸⁸ *United States v. James A. Traficant, Jr.*, Crim. No. 4:01-CR-207 (N.D. Ohio 2002).

⁸⁹ House Comm. on Standards of Official Conduct, *In the Matter of Representative James A. Traficant, Jr.*, H. Rep. 107-594, 107th Cong., 2d Sess. 119-20 (2002).

⁹⁰ *Id.* at 2.

⁹¹ See H. Res. 495, 107th Cong., 2d Sess. (148 *Cong. Rec.* H5375-01 (July 24, 2002)).

⁹² See House Comm. on Standards of Official Conduct, *In the Matter of Representative Mario Biaggi*, H. Rep. 100-506, 100th Cong., 2d Sess. (1988). The Committee recommended expulsion, but the Member resigned before the House could act.

⁹³ See House Comm. on Standards of Official Conduct, *In the Matter of Representative Michael J. Myers*, H. Rep. 96-1387, 96th Cong., 2d Sess. 5 (1980); House Comm. on Standards of Official Conduct, *In the Matter of Representative John W. Jenrette, Jr.*, H. Rep. 96-1537, 96th Cong., 2d Sess. 10 (1980); House Comm. on Standards of Official Conduct, *In the Matter of Representative Raymond F. Lederer*, H. Rep. 97-110, 97th Cong., 1st Sess. 16 (1981).

attempt to influence various government agencies.⁹⁴ These cases resulted in one expulsion⁹⁵ and four resignations from Congress.

In addition to the bribery and illegal gratuities statute, several other provisions of the federal criminal code restrain Members, officers, and employees from accepting private compensation in matters of federal concern. Section 203 of Title 18 prohibits House Members and employees from accepting compensation for representing anyone before a federal department, agency, officer, or court in any particular matter in which the United States is a party or has a direct and substantial interest. Even if Members and employees are acting properly and within their official capacities, they may not receive compensation, other than their congressional salaries, for acts before a unit of federal government.⁹⁶ Nor may an individual solicit or receive anything of value (including campaign contributions) in return for supporting someone for, or using influence to obtain for someone, a federal job.⁹⁷ A Member, officer, or employee should therefore be wary of accepting any gifts, favors, contributions, or entertainment from persons whom the individual has assisted with job applications or other dealings with the agencies of the federal government.

Fundraisers and Testimonials

A provision of the House Code of Official Conduct (House Rule 23, clause 7) requires that Members treat the proceeds of any testimonial dinners or other fundraising events as campaign contributions, subject to all the restrictions on campaign funds.⁹⁸ Such funds must be disclosed as required by Federal Election Commission regulations⁹⁹ and used by the Member **only** for bona fide campaign or political purposes.¹⁰⁰ The money may not be treated as unrestricted personal gifts.

⁹⁴ House Comm. on Standards of Official Conduct, *In the Matter of Rep. Daniel J. Flood*, H. Rep. 96-856, 96th Cong., 2d Sess. 125 (1980).

⁹⁵ 126 *Cong. Rec.* 28953-78 (Oct. 2, 1980).

⁹⁶ *May v. United States*, 175 F.2d 994 (D.C. Cir.), *cert. denied*, 338 U.S. 830 (1949). Indeed, if an employee is acting outside his or her official duties, the employee may not act as anyone's agent or attorney before any federal agency or officer in a matter in which the United States has an interest, *whether or not* compensation is received. 18 U.S.C. § 205(a).

⁹⁷ 18 U.S.C. § 211.

⁹⁸ This provision was a recommendation of the House Commission on Administrative Review. *See* House Comm'n on Admin. Review, *Financial Ethics*, H. Doc. 95-73, 95th Cong., 1st Sess. 14 (1977).

⁹⁹ Title 11, C.F.R.

¹⁰⁰ House Rule 23, cl. 6.

House rules prohibit the conversion of campaign funds to personal use or official congressional purposes.¹⁰¹

The House Select Committee on Ethics determined that a direct mail solicitation by a Member or a Member's spouse constituted a "fund-raising event" for the purposes of Rule 23, clause 7. Proceeds from such a solicitation **must** be treated as campaign contributions that may **not** be converted to personal use by the Member. In reaching this decision, the Select Committee noted that a major purpose of revisions to the Code of Official Conduct was to prevent Members from "cashing in" on their official position in the Congress.¹⁰² The Select Committee also found that a Member may not accept for unrestricted personal use the proceeds of a fundraiser conducted by a group independent of the Member.¹⁰³

Gift Disclosure

Under the Ethics in Government Act of 1978, Members, officers, and certain employees must disclose information in annual financial statements. Schedule VI of the statements concerns gifts received by the reporting individual, and in general, the donor, description and value of all gifts aggregating more than \$335 from a single source during the year must be disclosed on that schedule.¹⁰⁴ Information on certain gifts received by the spouse or dependent of the Member or employee may need to be disclosed as well.¹⁰⁵ However, the statute also provides that in an "unusual case," a gift need not be aggregated "if a publicly available request for a waiver is granted."¹⁰⁶ A House Member or staff person wishing a waiver of the reporting requirement must submit a written waiver request to the Standards Committee. Additional information on the reporting of gifts on one's annual Financial Disclosure Statement, and the criteria for granting a waiver of the reporting requirement, are provided in the Financial Disclosure Instructions booklet issued by the Standards Committee.

In addition, as noted above (in the section "Gifts From Foreign Governments and International Organizations"), tangible gifts of over minimal value that may be

¹⁰¹ House Rule 23, cl. 6; House Rule 24, cl. 1-3.

¹⁰² House Select Comm. on Ethics, *Advisory Opinion No. 4* (Apr. 6, 1977), *reprinted in* H. Rep. 95-1837, *supra* note 64.

¹⁰³ House Select Comm. on Ethics, *Advisory Opinion No. 11* (May 11, 1977), *reprinted in* H. Rep. 95-1837, *supra* note 64.

¹⁰⁴ 5 U.S.C. app. 4 § 102(a)(2).

¹⁰⁵ *Id.* § 102(e)(1)(C).

¹⁰⁶ *Id.* § 102(a)(2)(C).

received from foreign governments must be disclosed at the time such gifts are required to be turned over to the United States, that is, within 60 days of receipt.