

Ethics Corner: Small Get-Togethers and Congressional Gift Rules: What's Permissible in Each Chamber

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When can members of an organization provide a meal at a small gathering with their Representative or Senator? With the change to the Senate gift rule brought about by the Honest Leadership and Open Government Act (HLOGA), the answers to this question by the House Committee on Standards of Official Conduct and the Senate Ethics Committee now differ when the organization providing the meal retains or employs lobbyists.

The House amended its gift rule in early 2007 to ban Members and staff from accepting any gift from a lobbyist, or from a private entity that retains or employs lobbyists, unless the gift is acceptable under one of the rule's 23 exceptions. In its 2008 *House Ethics Manual*, however, the Standards Committee went further: a gift from a private entity that retains or employs lobbyists is also acceptable by a House Member or employee if it meets one of the "general waivers the Standards Committee has issued." One such "general waiver" in the House covers "Events With Constituent Organizations."

This "general waiver" allows House Members and staff to accept free attendance, including meals, at events too small to be considered widely attended events, if the event is sponsored by a constituent organization and if the event is: (1) regularly scheduled (such as a group's annual visit to D.C.); (2) **open to all members of the group** (not just to officers or board members); and (3) **attendance at the event is related to the official duties of the House Member or employee** (as determined by the Member or employee).

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This House "general waiver" for constituent events can apply regardless of the number of constituents attending (so it may be a small group) and regardless of the event location (home district or D.C.). Among the constituent organizations that may sponsor such events are civic associations, senior citizen organizations, veterans groups, and business, trade or professional associations; examples of permissible "regularly scheduled" events are a group's annual visit to Washington, D.C., a periodic luncheon meeting of an organization's membership, or an association's annual dinner.

Another "general waiver" to the House gift rule permits a Member or employee to accept "food or refreshment, 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." The Standards Committee has stated that food accepted under this waiver should be "a *de minimis* amount" (e.g., a meal in the cafeteria of the company being visited); this waiver also permits acceptance of local transportation.

Now to the Senate. Before HLOGA, the 2003 edition of the *Senate Ethics Manual* also set out a "blanket waiver" allowing Senators and staff to accept attendance at "constituent-sponsored meetings," including meals. The requirements for this "blanket waiver" were basically identical to those of the House constituent event waiver already discussed. But, since passage of HLOGA, the Senate Ethics Committee has issued no public guidance as to whether this "blanket waiver" for constituent events is still in effect. More importantly, HLOGA amended the Senate gift rule to add a new (24th) exception to the rule concerning a specific circumstance under which Senators and Senate employees may accept free attendance, including meals, at small gatherings with constituents. Without an affirmative statement from the Senate Ethics Committee that the pre-HLOGA "blanket waiver" survives, it is advisable to treat this new gift rule exception as the only avenue through which Senators and staff may accept, from private entities that retain or employ lobbyists, food and refreshment (including meals) at constituent events that do not meet any other exception to the rule.

Under this new exception to the gift rule, a Senate Member or employee may accept, **in the home state only**, free attendance at an event from the event sponsor if: (1) the **event is sponsored by constituents**, or a group that consists primarily of constituents; (2) the event will be **attended primarily by a group of at least five constituents** of the Member (or of the staffer's employing Member); (3) **no registered lobbyist attends the event**; (4) the **Member or Senate employee participates in the event** as a speaker or panelist, by presenting information relating to Congress or by performing a ceremonial function appropriate to their official position; and (5) **attendance at the event is appropriate to the performance of the Member's or employee's official duties or representative function** (as determined by the Member or employee).

This exception covers attendance in the home state at a site visit or at a conference, panel discussion, dinner event, viewing or other similar event. As with widely-attended events, free attendance under this new exception may include, among other things, a waiver of fees, provision of instructional materials and local transportation. Under this new exception, however (*unlike* under the widely-attended event exception), the total cost of meals provided must be less than \$50.

The Senate Ethics Committee, at some point, may clarify whether the pre-HLOGA "blanket waiver" for constituent-sponsored meetings still applies. Until then, with the ban on gifts from entities that retain or employ lobbyists, the new home state constituent-event exception to the Senate gift rule appears to be the only sure way for a constituent company that retains or employs lobbyists to host, and provide a meal to, a Senator or Senate employee at a small gathering or meeting.