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Congressional Gifts and Travel: Proposals in the 109th Congress

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Congressional Gifts and Travel: Proposals in the 109th Congress

Summary

It has been a decade since the House and Senate examined their rules on the acceptance of gifts and travel expenses. Press accounts of alleged excesses in privately funded congressional travel and gifts, particularly from lobbyists, have provided an impetus for proposed changes in the 109th Congress.

On March 29, 2006, the Senate adopted S. 2349, the Legislative and Lobbying Transparency and Accountability Act of 2006, which was sponsored by Senators Trent Lott and Susan Collins. This measure incorporated provisions of S. 2349, reported from the Senate Rules and Administration Committee, and S. 2128, sponsored by Senator John McCain and reported from the Senate Homeland Security and Governmental Affairs Committee. S. 2349 addresses many of the reform proposals discussed in the 109th Congress, including gifts and travel, earmarks, the “revolving door,” lobbying by relatives of Members, floor access by former Members who are lobbyists, and disclosure of employment negotiations.

On May 3, 2006, the House passed a similar measure, H.R. 4975, introduced by Representative David Drier and reported from the Committees on Rules, Government Reform, Judiciary, and House Administration. H.R. 4975 also addresses many of the reform proposals discussed in the 109th Congress, including gifts and travel as well as the denial of pensions to Members convicted of crimes, disclosure of employment negotiations, “earmarks,” and mandatory ethics training. In February 2006, the House banned floor and gym privileges for Members who become lobbyists.

Other measures and nonlegislative proposals suggested during the 109th Congress address issues related to lobbying, gifts, and travel, as well as the internal rules of Congress such as the creation of entities (other than the two congressional ethics committees and the Clerk of the House and Secretary) to enforce lobbying and congressional rules of conduct.

This report provides a brief analysis of the proposals for change introduced or discussed in the 109th Congress and will be updated as events warrant. For additional information, please refer to CRS Report RS22034, *House Ethics Rules Changes in the 109th Congress*, by Mildred Amer; CRS Report RL33065, *Lobbying Disclosure: Background and Legislative Proposals, 109th Congress*, by Eric Peterson; CRS Report RL33234, *Lobbying Disclosure and Ethics Proposals Related to Lobbying Introduced in the 109th Congress, A Comparative Analysis*, by Eric Peterson; CRS Report RL33293, *Lobbying and Related Reform Proposals: Consideration of Selected Measures, 109th Congress*, by Eric Peterson; and CRS Report RL33326, *Lobbying, Ethics, and Related Procedural Reform: Comparison of Current Provisions of S. 2349 and H.R. 4975*, by Eric Peterson.

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Congressional Gifts and Travel: Proposals in the 109th Congress

Introduction

Members, officers, and employees of the House and Senate have strict limits imposed on the receipt of gifts, including the receipt or acceptance of payment of reimbursement for travel expenses from outside, private third party sources.¹ They are prohibited from soliciting or accepting gifts from any private source unless permitted by an exception specified in the congressional rules of conduct.

In general, Members and staff may not accept gifts (including travel and personal hospitality), reimbursements, or payments of their expenses (other than from relatives or personal friends). The House and Senate Rules do however, permit *de minimis* gifts valued under \$50 from private sources, with a maximum of \$100 per calendar year from any one source. Gifts under \$10 need not be counted.

Some travel expenses provided by outside, third parties may also be accepted under limited circumstances if the travel is “officially connected.”² Travel by staff must be authorized in writing in advance by the supervising Member.

Lobbyists and Foreign Agents

Lobbyists and foreign agents fall into a special category of prohibited sources of certain gifts and reimbursements, unless it can be shown that certain gifts were given on the basis of a long-standing personal friendship with a Member, officer, or employee of Congress. The additional prohibitions extend to payments to a legal

¹ U.S.C. § 7353, House Rule XXV, Clause 5 and Senate Rule XXXV. See CRS Report RL33047, *Restrictions on the Acceptance of “Officially Connected” Travel Expenses from Private Sources Under House and Senate Ethics Rules*, by Jack Maskell. See also U.S. Congress, Senate Select Committee on Ethics, *An Overview of the Senate Code of Conduct and Related Laws, 109th Congress, First Session*, committee print, 109th Cong., 1st sess. (Washington: GPO, 2005), pp. 2-4; the Senate Select Committee on Ethics website at [<http://ethics.senate.gov>], under “Recent Updates & Notices” as well as under “Ethics Manual”; and U.S. Congress, House Committee on Standards of Official Conduct, *Rules of the House of Representatives on Gifts and Travel*, 106th Cong., 2nd sess., Apr. 2000, as well as the website of the House Committee on Standards of Official Conduct, available at [http://www.house.gov/ethics/Gifts_and_Travel_Chapter.htm] and [<http://www.house.gov/ethics/Highlights2005a.htm>].

² CRS Report RL33047, *Restrictions on the Acceptance of “Officially Connected” Travel Expenses from Private Sources Under House and Senate Ethics Rules*, by Jack Maskell.

defense fund; personal hospitality of an individual; payments for a conference, or similar event connected to a Member, officer, or employee of Congress; any payments made to an entity maintained or controlled by a Member of Congress; and charitable contributions made on the recommendation of a Member, officer, or employee (other than one in lieu of an honorarium). The expenses of “officially connected travel” also may not be paid for by a registered lobbyist or a foreign agent. The prohibition also applies even if these prohibited sources will be reimbursed by a nonlobbyist client.

Under the House and Senate gift rules, a lobbyist is defined as one registered under the Lobbying Disclosure Act of 1995, and a foreign agent is defined as an agent of a foreign principal registered under the Foreign Agents Registration Act. According to interpretations of the rules by the Senate Select Committee on Ethics and the House Committee on Standards of Official Conduct, those required to file as lobbyists under the 1995 act include individual lobbyists as well as organizations that employ in-house lobbyists, and lobbying firms with one or more employees who are lobbyists for outside clients.³

An organization that employs lobbyists solely to represent its interests or its members’ interests is not itself considered a lobbyist for purposes of the gift rules and can sponsor or reimburse for officially related travel. A lobbying firm that provides services for others, however, is covered by the gift and travel restrictions. Thus, while lobbyists and lobbying firms are covered by the congressional gift and travel rules, the clients or employers of the lobbyists or lobbying firms are not considered lobbyists unless they actually do lobbying.

Current Issues

In spite of the restrictions on and disclosure requirements for congressional gift and travel reimbursements for officially connected travel, critics point to the absence of a total ban on these items from private sources and allegations of abuse of current rules.⁴ An October 2005 Associated Press-Ipsos poll found “only one-third of Americans give Congress good ratings for its ethics and honesty.”⁵ A January 2006 *Washington Post-ABC News* poll showed that 58% of those polled thought a recent corruption case involving a well-known lobbyist was evidence of widespread corruption in Washington, and 90% thought it should be illegal for registered

³ U.S. Congress, Senate Select Committee on Ethics, *Senate Ethics Manual*, 108th Congress, 1st Session, S.Pub. 108-1 (Washington: GPO, 2003), p. 43, and the Senate Select Committee website at [<http://ethics.senate.gov/>] and refer to the *Ethics Manual* at that site. See also [http://www.house.gov/ethics/Gifts_and_Travel_Chapter.htm#_Toc476623599], and U.S. Congress, House Committee on Standards of Official Conduct, *Gifts and Travel*, 106th Cong., 2nd sess., Apr. 2000, pp. 55-56, 76.

⁴ John Bresnahan, “Travel Scandal Fallout Ensnarers Both Parties,” *Roll Call*, May 5, 2005, p. 1.; “Time to Tighten Lobbying Laws,” *Lexington (Kentucky) Herald Leader*, May 10, 2005, p. A9; and “Sensible Lobbying Reform,” *Washington Post*, May 9, 2005, p. A22.

⁵ Will Lester, *Associated Press*, Oct. 29, 2005.

lobbyists to give Members of Congress gifts, trips, or other things of value.⁶ A Pew poll taken about the same time showed, however, that “most people around the country aren’t paying close attention” to the corruption scandal involving the lobbyist.⁷

Even if the actions taken by Members and congressional staff are legal under laws and internal rules, the “appearance” factor places them in the position of abiding by the rules in place, but possibly engaging in behavior that gives the appearance of being in “that gray area” between what is “as clean as a hound’s tooth and that which is obviously improper and illegal.”⁸

Examples of action permitted under congressional rules but open to criticism because of the “appearance factor” include (1) accepting any gifts from lobbyists, even if these gifts are within the permissible limits established by Congress; (2) accepting “officially connected” travel reimbursements from “lobbyists” who do not fall within the definition of lobbyists for purposes of the House and Senate gift rules; (3) traveling on corporate aircraft or other forms of transportation with registered lobbyists or foreign agents, because there are no restrictions on the traveling companions of Members and staff; and (4) the absence of guidelines or limits for “reasonable” expenses for travel and lodging, and “necessary expenses” in connection with officially connected travel (such as for a speech or fact-finding trip) that is allowed under House and Senate Rules.⁹

For corporate aircraft travel, Members and staff must make some form of reimbursement. The costs of such trips, if not for officially connected travel, is often covered by a Member’s campaign committee if the trip is for a campaign event. The payments, however, often do not cover the actual costs. Defenders of the practice point to the busy schedules of Members and their need to quickly reach destinations that often are not served by commercial airlines.¹⁰

⁶ Richard Morin and Claudia Deane, “In Abramoff Case, Most See Evidence of Wider Problem,” *Washington Post*, Jan. 10, 2006, p. A7.

⁷ Will Lester, “Corruption Scandal That Rocked Washington Draws Little Scrutiny Elsewhere,” *Associated Press*, Jan. 11, 2006.

⁸ Ralph Eisenberg, “Conflict of Interest Situations and Remedies,” *Rutgers Law Review*, vol. 13: 666 (1959).

⁹ “See the World,” *Roll Call*, Apr. 27, 2005, p. 4; Jim Drinkard, “Travel by Congress Often Paid Privately,” *USA Today*, Apr. 25, 2005, p. 1, and “Trips Leave Ethics Behind,” *USA Today*, May 2, 2005, p. A10.

¹⁰ R. Jeffrey Smith and Derek Willis, “Hill Leaders Often Take Corporate Jets,” *Washington Post*, May 6, 2005, p. A1.

Current Legislative Proposals¹¹

In the current Congress, there have been discussions, as well as numerous legislative proposals to change the congressional gift and travel rules, with particular emphasis on gifts from lobbyists. However, S. 2349 and H.R. 4975 are the measures that are being actively considered. On March 29, 2006, the Senate adopted S. 2349, the Legislative and Lobbying Transparency and Accountability Act of 2006.¹² The measure, sponsored by Senators Trent Lott, chairman of the Senate Rules and Administration Committee and Susan Collins, chairman of the Senate Homeland Security and Governmental Affairs Committee, combines portions of S. 2349, which was introduced by Senator Lott and reported from the Rules Committee, and S. 2128, introduced by Senator John McCain and reported from the Homeland Security and Governmental Affairs Committee. Both committees held hearings and markups prior to reporting the legislation.

In addition to provisions relating to enhanced disclosures by lobbyists under the Federal Regulation of Lobbying Act and the disclosure of lobbying activities by certain coalitions and associations, S. 2349

- bans most gifts (including meals) and travel from lobbyists;
- requires Senators to list on their official website (within 15 days) any meals or refreshments (within the \$50 single and \$100 annual limits) given to them or their staff;
- requires Senators and staff to have prior written travel approval from the Senate Ethics Committee for paid, nongovernmental trips and to provide a detailed report within 30 days of each trip (this information would also have to be posted on Senators' websites);
- requires written certification before a proposed nongovernmental trip that the trip would not be financed by or connected directly or indirectly to a lobbyist or foreign agent;
- requires Senators and staff to disclose private aircraft travel;

¹¹ This report highlights the key proposals in each bill that are related to gifts and travel. See also CRS Report RS22034, *House Ethics Rules Changes in the 109th Congress*, by Mildred Amer; CRS Report RL33065, *Lobbying Disclosure: Background and Legislative Proposals, 109th Congress*, by Eric Peterson; CRS Report RL33234, *Lobbying Disclosure and Ethics Proposals Related to Lobbying Introduced in the 109th Congress, A Comparative Analysis*, by Eric Peterson; CRS Report RL33293, *Lobbying and Related Reform Proposals: Consideration of Selected Measures, 109th Congress*, by Eric Peterson, and CRS Report RL33326, *Lobbying, Ethics, and Related Procedural Reform: Comparison of Current Provisions of S. 2349 and H.R. 4975*, by Eric Peterson.

¹² "Legislative Transparency and Accountability Act," *Congressional Record*, daily edition, v. 152, Mar. 29, 2006, pp. S2940-2511.

- bans senior congressional staff from lobbying *any* congressional office within one year of leaving;
- increases from one to two years the post employment lobbying ban on Members of Congress who become lobbyists;
- prohibits employment negotiations by any Senator until after a successor has been elected unless a public report is filed with the Secretary of the Senate about the negotiations; and
- eliminates Senate floor privileges for former Senators and Senate officers who become lobbyists;
- prohibits the spouse or other family members of Senator from lobbying that Member's staff;
- denies salary adjustments to any Senator who voted against any provision for an adjustment;
- mandates ethics training for Senators and staff;
- requires annual reports from the House Committee on Standards of Official Conduct and Senate Select Committee on Ethics; and
- establishes the Commission to Strengthen Confidence in Congress, composed of current and former Members of Congress.

On March 16, 2006, Representative David Dreier introduced H.R. 4975, the Lobbying Accountability and Transparency Act of 2006. It was referred to the Committees on Judiciary, House Administration, Rules, Standards of Official Conduct, and Government Reform and reported on April 25, 2006.¹³ On April 27, 2006, the House adopted H.Res. 783, which provided the rules for floor

¹³ U.S. Congress, House Committee on Judiciary, *Lobbying Accountability and Transparency Act of 2006*, report to accompany H.R. 4975, 109th Cong., 2nd sess., H.Rept. 109-439, Part 1 (Washington, GPO, 2006); U.S. Congress, House Administration Committee, *Lobbying Accountability and Transparency Act of 2006*, report to accompany H.R. 4975, 109th Cong., 2nd sess., H.Rept. 109-439, Part 2 (Washington, GPO, 2006); U.S. Congress, House Committee on Rules, *Lobbying Accountability and Transparency Act of 2006*, report to accompany H.R. 4975, 109th Cong., 2nd sess., H.Rept. 109-439, Part 3 (Washington, GPO, 2006); U.S. Congress, House Committee on Government Reform, *Lobbying Accountability and Transparency Act of 2006*, report to accompany H.R. 4975, 109th Cong., 2nd sess., H.Rept. 109-439, Part 4 (Washington, GPO, 2006).

consideration.¹⁴ H.R. 4975 was adopted on May 3, 2006; a conference with the Senate is expected.¹⁵ H.R. 4975

- requires enhanced, quarterly, electronic filings by lobbyists;
- mandates disclosure by registered lobbyists of permissible gifts to Members, officers, and employees of the House;
- requires disclosure by Members of Congress of employment negotiations;
- requires Committee on Standards of Official Conduct pre-certification of privately funded travel to ensure that such travel is in compliance with House rules;¹⁶
- suspends privately funded travel through June 15, 2006, unless approved by a 2/3 vote of the Committee in Standards of Official Conduct on a case by case basis;
- directs the Committee on Standards of Official Conduct to study the current travel rules and report recommendations by June 15, 2006;
- directs Committee on Standards of Official Conduct to study and report any recommended changes to the House Gift Rule XXV;
- prohibits registered lobbyists from accompanying a Member, officer, or employee of the House on corporate flights;
- values a gift to a sporting or entertainment event at the “face value” or highest cost of the tickets to the event;
- bans pensions for Members convicted of abusing “the public trust;” and

¹⁴ “Lobbying Accountability and Transparency Act of 2006,” *Congressional Record*, daily edition, v. 152, Apr. 27, 2006, pp. H1855-1872, H1877-H1888; and U.S. Congress, House, Committee on Rules, *Providing for Consideration of H.R. 4975, Lobbying Accountability and Transparency Act of 2006*, report to accompany H.Res. 783, 109th Cong., 2nd sess., H.Rept. 109-441 (Washington, GPO, 2006).

¹⁵ “Lobbying Accountability and Transparency Act of 2006,” *Congressional Record*, daily edition, v. 152, May 3, 2006, pp. H2011-H2057.

¹⁶ On May 10, 2006, the Committee on Standards of Official Conduct issued a memorandum on the “Interim Process for Voluntary Certification of Privately Funded Travel in Connection With Official Duties.” This memorandum was issued to clarify officially connected to travel until the enactment of H.R. 4975. For more information please refer to [http://www.house.gov/ethics/m_travel_rules_advisory.htm].

- requires mandatory ethics training for House employees and lobbyists, and voluntary ethics training for Members within 100 days of being sworn in office.

Other Proposals/Actions

In addition to the proposed legislation introduced thus far in the 109th Congress, Members of Congress and other individuals have been discussing wide-ranging changes in the access that lobbyists have as well as changes in the congressional gift and travel rules.

On January 23, 2006, seven public interest groups unveiled six principles for lobbying reform that also included campaign finance reform.¹⁷ Their suggestions include

- a ban on gifts to Members of Congress, including parties held to honor them;
- a ban on private groups providing travel for Members, congressional staff, and executive branch officials, including a prohibition on private corporations making chartered aircraft available to Members of Congress at the cost of a first class ticket;
- the establishment of an independent Office of Public Integrity in Congress;
- a change (from one to two years) in the time after leaving Congress that former Members and senior staff, who become paid lobbyists, could lobby former colleagues;
- a requirement for electronic filing and internet access of the lobbying disclosure reports as well as the annual public financial disclosure reports required of Members of Congress and senior staff; and
- stricter limits on campaign contributions by lobbyists.

Other ideas that have reportedly been discussed include requiring Members of the House to secure approval in advance of privately sponsored, officially connected trips.¹⁸ Currently, only House and Senate employees must receive advance, written authorization for such travel from the Member or officer under whose direct

¹⁷ [http://www.citizen.org/congress/govt_reform/_government_/articles.cfm?ID=14877], visited Jan. 24, 2006.

¹⁸ Mike Allen, "House GOP to Consider Tougher Lobbying Rules," *Washington Post*, May 5, 2005, p. A10; and Mike Allen, "House GOP Weighs Preapproval of Sponsored Travel," *Washington Post*, May 11, 2005, p. A5. Note: this idea is included in S. 2349, adopted by the Senate on Mar. 29, 2006.

supervision they work.¹⁹ In addition, Members, officers, and employees are required to give a full disclosure (including dates, itinerary, expenses, and sponsors) to the Clerk of the House or the Secretary of the Senate within 30 days after completion of the travel.²⁰

In July 2005, Speaker of the House J. Dennis Hastert asked the House Committee on Standards of Official Conduct to devise a new system to review privately funded travel by Members and staff and to create a formal “approval system” for congressional travel paid for by corporations, nonprofit, groups, and trade associations.”²¹ In response, the ranking member of the House Committee on Standards of Official Conduct, asserted that “the committee already has a system in place to vet privately funded trips.”²² However, he stressed the continued need for the Ethics Committee to educate Members and staff on the House rules of conduct and to encourage them to seek advice from the committee when they receive an invitation.²³ In December 2005, Speaker Hastert suggested new ethics training for Members of the House.²⁴

Finally, other reported actions include those of Representative Robert Ney, who, as chairman of the House Administration Committee, directed the Clerk of the House to develop an electronic system for lobbying disclosures as well as travel and honoraria reports.²⁵ As of January 1, 2006, the Clerk began receiving the lobbying reports electronically.

¹⁹ House Rule XXV, Clause 5(b)(1)(A)(I); Senate Rule XXXV, Clause 2(a)(1)(A).

²⁰ House Rule XXV, Clause 5(b)(1)(A)(ii); Senate Rule XXXV, Clause 2(a)(1)(B).

²¹ John Bresnahan, “Hastert Asks for Travel Review,” *Roll Call*, July 28, 2005, pp. 1, 22.

²² John Bresnahan, “Mollohan Brushes Off Request for New Travel System,” *Roll Call*, [http://www.rollcall.com/issues/1_1breakingnews/10257-1.html], visited Aug. 2, 2005.

²³ *Ibid.*

²⁴ Carl Hulse, “House Speaker Suggests New Ethics Training for Lawmakers,” *New York Times*, Dec. 8, 2005, p. A27.

²⁵ Kate Ackley, “Ney Orders House to Go Digital on Disclosure Forms,” *Roll Call*, June 30, 2005, pp. 3, 23.