Chapter 22: Congressional Ethics: Gifts, Travel, and Income Limits

22-3 Gifts

HLOGA made significant changes to the congressional gift rules and the enforcement regime underlying them. It effected these changes in two principal ways: first, by prohibiting lobbyists and their clients from giving anything of value to a Member or staffer unless an exception in the gift rules would expressly permit it; and second, by imposing this restriction directly on LDA registrants and individual lobbyists themselves, rather than leaving it as a rule that applies to Members and staffers only.

22.3.1 and 22.3.2 The Basic Rules

HLOGA's gift rule amendments revoked the $49.99 per occasion/$99.99 aggregate annual gift limit allowances for any gifts provided by a lobbyist, lobbying firm, or organization that retains or employs lobbyists. As amended, the rules now flatly prohibit a Member, officer, or employee of either house from accepting anything of value from a lobbyist or a lobbying firm, or from a client that retains or employs a lobbyist, unless one of the exceptions applies.

The exceptions to the gift rule, discussed in detail in the chapter, still exist virtually unchanged (but for the exception for privately-funded travel, discussed later in this update). These exceptions have taken on new importance with the removal of the $49.99 allowance. A lobbyist or client who wishes to create a lobbying opportunity must do so either without incurring any costs, or within the confines of one of the technically-defined exceptions discussed in the chapter.

A keen observer will note that without the $49.99 allowance, neither the lobbyist nor the client may fund meals or entertainment shared between only the lobbyist and the Member or staffer. None of the exceptions are explicitly designed to facilitate one-on-one interaction of that kind.

22-3.5 Special Restrictions on Lobbyists

In light of the gift ban, the most significant of these is now the gift prohibition: that a lobbyist, lobbying firm, or lobbying client may not give a gift of any value to a Member or staffer unless the gift complies with one of the exceptions. There is also an additional prohibition on privately-funded travel when paid for by LDA registrants and clients of lobbyists, discussed further below.

22-4 Travel

HLOGA's amended rules clamped down hard on the ability of corporations and other outside groups to pay for Members and staff to take out of town trips. Lobbyists and lobbying firms are still entirely prohibited from paying for such trips, which were usually to conventions, site visits, or other fact-finding events, but which were often viewed (by the public and press at least) as ways for private organizations to lavish attention on, and gain legislative favor with, Members of Congress and staff.

Under the amended rules, a corporation that employs or retains a lobbyist may still pay for travel for Members and staff, but the time periods of those trips are greatly reduced. In addition, the character of the expenses that may be provided is now further restricted, and lobbyists themselves generally may not participate in putting the trips together.

The rules allow an organization or corporation that has lobbyists, whether in-house or outside, to pay for a trip of up to only one day in length for a Member or staffer, providing only a single night's stay. (With advance approval, two nights may be permitted if the extra night is necessary, for logistical or other reasons, in order to participate in the event.) Lobbyists generally may not participate in planning or organizing the trips (although *de minimis* involvement is permitted, restrictively defined); nor may they ride along on the airplanes or other transportation with the Members or staff to or from the events.

In addition, both Houses now require robust disclosure, in advance, of the expenses to be provided, and the appropriate Ethics Committee must review and approve those expenses before the trip. To help facilitate this approval, the House and Senate provide detailed guidance on the kinds of expenses that are permissible and on those that are not. A review of the guidance makes clear that extravagant, vacation-like trips are not what the Committees have in mind. Corporate jets generally may not be provided for this kind of travel, and, at least in the House, first class airfare is permissible only in certain very limited circumstances. Hosts are similarly constrained with respect to the kinds of food they may provide; they are counseled, for example, in the House to refer to GSA *per diem* rates when choosing menus for events planned specifically for Members.

Organizations that do not have lobbyists, and certain non-profit entities (501(c)(3) organizations in the Senate, and universities in the House) may continue to provide travel expenses under the time periods provided in the old rules.

22-5.2.1 Post-Employment Restrictions

HLOGA also made significant changes to Section 207 of the federal criminal code, which slows down the so-called "revolving door" between federal government service and private employment.

First, it sharpened the law's impact on Senators and Senate staff. The black-out period for Senators and Senate staff now extends to two years. For senior staff, the black-out period remains the same (one year), but the classification of individuals whom may not be lobbied is extended from just those working for the employing Senator to all Senators and officers and employees of the Senate.

Second, HLOGA amended House and Senate ethics rules to require Members and staff to disclose certain negotiations for future employment, and bans negotiation for future employment under certain circumstances.

Under the amended House rules, unless his successor has already been elected, a Member of the House must report any negotiations for post-congressional employment to the House Ethics Committee within three business days after negotiations begin. Senior staff must also report their negotiations for future employment. And both Members and staffers must recuse themselves from working on any matters that present a conflict of interest between a potential future employer and their official duties.

Senators and Senate staff face the same negotiation restrictions, recusal requirement, and reporting requirement, but with one notable additional prohibition. Under the new rules, a Senator may not negotiate for or agree to take on post-congressional employment that would involve consulting on lobbying projects until his successor has been elected.