

United States Senate

SELECT COMMITTEE ON ETHICS
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Senate Select Committee on Ethics' Regulations and Guidelines for Privately-Sponsored Travel

Glossary of Terms

1-Day Trips¹

Subject to all applicable Senate Rules, one-day trips (attendance or participation for one day at an event) may be sponsored by *private entities that employ or retain one or more lobbyists or foreign agents*. By Senate Rule, “one-day’s attendance” is exclusive of travel time and an overnight stay.

2-Night Stay When Practically Required²

Subject to all applicable Senate Rules and on a case-by-case basis, the Ethics Committee *may* allow two-overnight stays, for trips sponsored by *private entities that employ or retain one or more lobbyists or foreign agents*, when practically required. The sponsor or sponsors must request prior written approval from the Committee. The Committee may consider the following factors when deciding whether a two-night stay may be practically required to participate in an event.

- Whether the trip destination is outside the continental United States, for example, travel to Hawaii or Alaska;
- Whether the travel is across the country, for example travel from Washington, DC to San Diego, CA;
- The availability of transportation to or from the location of the one-day event;
- Whether a Member, Senate officer, or employee is participating in a full day’s worth of officially-connected activities (without any substantial gaps in his or her day’s schedule) such that a second night’s stay is necessary to accomplish the purpose of the trip; or

¹ Senate Rule 35.2(a)(2)(A).

² Senate Rule 35.2(a)(2)(B); Cong. Rec. S10712 (Aug. 2, 2007).

- Any other exceptional circumstances which must be described in writing and in detail prior to the travel by the traveler where the Committee finds that a two-day stay is practically necessary to achieve the purpose of the trip.

3-Days for Domestic Trips/7-Days for Foreign Trips³

Subject to all applicable Senate Rules, *entities that do not employ or retain lobbyists or foreign agents* and *501(c)(3) non-profit organizations* (regardless of whether they employ or retain lobbyists or foreign agents) may sponsor domestic trips for no more than three days or foreign trips for no more than seven days. The Committee has determined that the three-day and seven-day time limitations shall be three or seven 24-hour periods, respectively.

Accompanying Spouse or Child⁴

The sponsor of privately-funded travel may pay travel expenses not only for the participating Senator, Senate officer, or employee, but also for the spouse *or* child of the participant, if the Senator, Senate officer or in the case of an employee, the employee's supervising Senator or Senate officer, signs a determination in advance that the attendance of the spouse or child is appropriate to assist in the representation of the Senate. The Committee has concluded that necessary expenses which may be paid by the sponsor of privately-funded travel for a Member, Senate officer, or employee do not include expenses for any individual (aide, fiancée, significant other, etc.) who is not either the spouse *or* a child of the Member, officer, or employee.

Alcoholic Beverages⁵

Alcoholic beverages are not considered to be a reasonable expense.

“At Any Point Throughout the Trip”⁶

For all trips other than one-day trips paid for by entities that employ or retain lobbyists or foreign agents, a lobbyist or foreign agent may not accompany a Member, Senate officer, or employee *at any point throughout the trip*. “At any point throughout the trip” means accompaniment in other than a *de minimis* way. Lobbyist accompaniment is forbidden on any parts of the travel to and from the event, as well as at the event itself or the location being

³ Senate Rule 35.2(a)(1) and (2).

⁴ Senate Rule 35.2(f)(4). *See Senate Ethics Manual* at pp. 44-45 (2003 ed.).

⁵ Honest Leadership and Open Government Act of 2007 (S.1), §544(b) GUIDELINES. *See also* U.S. Senate Handbook, Appendix IV-D: Travel Regulations, Page IV-40.

⁶ Senate Rule 35.2(d); Cong. Rec. S10713 (Aug. 2, 2007).

visited. This standard is a broader prohibition than the “at any segment of a trip” standard (*see* below).

“At Any Segment of the Trip”⁷

For one day trips paid for by entities that employ or retain lobbyists or foreign agents, a lobbyist or foreign agent may not accompany a Member, Senate officer, or employee on *any segment of the trip*. “Any segment of the trip” means any parts of the travel to and from the event, rather than at the event itself or the location being visited.

Coach and Business-Class Fare⁸

Coach or business-class air or train fare (or other mode of transportation) may be accepted.

***De Minimis* Exception to Lobbyist/Foreign Agent Accompaniment Standards⁹**

Both lobbyist “accompaniment” standards for accompaniment “at any point throughout the trip” and “at any segment of the trip” include a *de minimis* exception. The term “*de minimis*” means negligible or inconsequential. Therefore, the mere coincidental presence of a lobbyist or foreign agent at an event would likely be considered *de minimis*. However, the Committee will consider the totality of the circumstances, including, but not limited to, the amount of time a lobbyist or foreign agent is present at the event; the amount of direct contact between the lobbyist or foreign agent and the Members, Senate officers and staff; the level of control by the trip sponsor over lobbyist’s or foreign agent’s presence and their contact with Members, Senate officers and staff.

For example, if the trip includes attendance at an event that meets the definition of a widely-attended event under Rule 35(1)(c)(18), the trip sponsor is unlikely to know all attendees at the event. Accordingly, a lobbyist’s or foreign agent’s attendance at a widely-attended event also attended by Senate invitees on the trip would likely be a type of *de minimis* accompaniment. Similarly, an organization cannot possibly know the other passengers that might be on a common carrier used during a trip if the organization has had no contact or coordination with the other passengers. Accordingly, the new rule does not require a sponsor to certify that it knows for certain that no lobbyist or foreign agent will be on such a common carrier.

⁷ Senate Rule 35.2(d)(1)(B); Cong. Rec. S10712 (Aug. 2, 2007).

⁸ Honest Leadership and Open Government Act of 2007 (S.1), §544(b) GUIDELINES.

⁹ Senate Rule 35.2(d)(2); Cong. Rec. S10713 (Aug. 2, 2007).

***De Minimis* Exception to Lobbyist/Foreign Agent Participation, Planning, or Arrangement¹⁰**

Senators, Senate officers, or employees may not participate in trips planned, organized, or arranged by or at the request of a lobbyist or foreign agent in other than a *de minimis* way. The term *de minimis* means negligible or inconsequential. It would be negligible or inconsequential for a lobbyist to respond to a trip sponsor's request that the lobbyist identify Members or staff with a possible interest in a particular issue relevant to a planned trip or to suggest particular aspects of a Member or staffer's interest. Additionally, the mere presence of one or more lobbyists on the board of an organization that is sponsoring travel does not exceed *de minimis* involvement.

If a lobbyist solicits or initiates an exchange of information with a trip sponsor, however, that would go beyond *de minimis* involvement and would not be allowed. Additionally, if the lobbyist has ultimate control over which Members or employees are actually invited on the trip, or determines the trip itinerary, or if a lobbyist actually extends or forwards an invitation to a participant, or if an invitation mentions a referral or suggestion of a lobbyist, this would go beyond *de minimis* involvement and would not be allowed.

For example, if a trip sponsor that is a 501(c)(3) non-profit organization asks a lobbyist which staffers might be most interested in joining a trip to the U.S.-Mexican border and the lobbyist knows that a potential trip participant has a particular interest in the DEA's activities at the border, or in a particular border facility, then the conveyance and receipt of that information (in light of the trip sponsor's request), in and of itself, would not exceed a *de minimis* level of participation and would not be forbidden.

Duty Station¹¹

A Member, Senate officer, or employee may not accept reimbursement for necessary expenses of privately-sponsored fact-finding travel connected with the performance of official duties for travel within a thirty-five (35) mile radius of the Member, Senate officer, or employee's local duty station.

A *Senator's duty station* is the metropolitan area of Washington, DC. During adjournment, *sine die*, or the August recess period, the Senator's usual place of residence in the home state is also considered the Senator's duty station. At the beginning of each Congress, a Senator files with the Disbursing Office his "usual place of residence" in the home state.

¹⁰ Senate Rule 35.2(d)(2) and (e)(1)(D); Cong. Rec. S10713 (Aug. 2, 2007).

¹¹ See *Senate Ethics Manual* at pp. 44-45 (2003 ed.). See also U.S. Senate Handbook, Appendix IV-D: Travel Regulations, Page IV-49.

A Senate employees' duty station, if other than Washington, DC, is designated when an employee is appointed and must be kept up to date in the Disbursing Office.

Earmarking

Earmarking would include any direction, agreement, or suggestion, formal or informal, to use donated funds, goods, or services or other in-kind contributions for a particular trip or a particular purpose.

Extension of Travel for Personal or Official Senate Business Reasons¹²

As a general rule, if Senate Members, Senate officers, or employees extend their stay for personal reasons, they are personally responsible for the cost of any incremental increases in expenses incurred because of their personal travel (including any food, lodging, or incremental increases in airfare or other transportation costs due to the extension of the travel). Similarly, if Senate Members, Senate officers, or employees extend their stay for official Senate business, the Senate office or committee is responsible for the cost of any incremental increases in expenses incurred because of the official travel (including any food, lodging, or incremental increases in airfare or other transportation costs due to the extension of the travel).

In addition, one should consider the length of the personal or official Senate business travel in relation to the length of the privately-sponsored fact-finding travel. If the time spent on personal or official Senate business travel is essentially equal to or greater than the time spent on privately-sponsored fact-finding travel, one should consider that, at a minimum, the appearance may arise that private third-party funds are being used for personal or official Senate purposes. Therefore, in advance of such trip arrangements, a staffer's supervising Senator as well as the Ethics Committee should be made aware of all the circumstances surrounding the trip, including a staffer's intention to undertake personal travel or official Senate business travel in conjunction with the fact-finding travel and the length of the personal or official Senate business travel in relation to the length of the privately-sponsored fact-finding portion of the trip.

First Class Fare¹³

First-class air, train fare or first class fare for any other mode of transportation may be permitted only under the following limited conditions and only with specific prior written approval by the Ethics Committee:

- When the cost of the first class fare does not exceed the cost of business-class transportation;

¹² See *Honest Leadership and Open Government Act of 2007* (S.1), §544(b) GUIDELINES.

¹³ *Honest Leadership and Open Government Act of 2007* (S.1), §544(b) GUIDELINES. See also U.S. Senate Handbook, Appendix IV-D: Travel Regulations, Page IV-64.

- When the traveler’s frequent flyer or similar benefits are used to upgrade to first class;
- When first-class travel is necessary due to a disability of the traveler;
- When there are genuine security concerns such that first-class seating is required;
- When the flight is in excess of 14 hours; or
- When exceptional circumstances are demonstrated in writing by the private sponsor.

Foreign Agent (for Purposes of the Gifts Rule)¹⁴

A Member, Senate officer, or employee may not accept reimbursement from a foreign agent for privately-sponsored travel. Under the Senate Gifts Rule, an agent of a foreign principal is defined as an agent of a foreign principal registered (or required to be registered) under the Foreign Agents Registration Act.

Lobbyist (for Purposes of the Gifts Rule)¹⁵

A Member, Senate officer, or employee may not accept reimbursement from a registered lobbyist for privately-sponsored travel. Under the Senate Gifts Rule a “registered lobbyist” is a lobbyist registered (or required to be registered) under the Lobbying Disclosure Act of 1995. Pursuant to the Lobbying Disclosure Act, in addition to individuals who must register, many organizations are required to act as registrants, as, for example, organizations employing in-house lobbyists, and lobbying firms (entities with one or more employees who act as lobbyists for outside clients).

For purposes of applying the special restrictions on lobbyists in the Gifts Rule, an organization employing lobbyists (outside or in-house) to represent solely the interests of the organization or its members will not be considered to be a “lobbyist.” Thus, a corporation, trade association, or labor union that employs lobbyists to serve only the interests of the corporation or the members of the trade association or union would not be a “lobbyist” for purposes of the Gifts Rule. On the other hand, a lobbying firm—that is, a firm that provides lobbying services for others—will be considered a lobbyist for purposes of these restrictions. Thus, the law firm that provides lobbying services for the firm’s clients through an individual registered (or required to be registered) as a lobbyist will also be considered to be a “lobbyist” for purposes of the Gifts Rule, and may not reimburse for privately-sponsored travel.

¹⁴ See *Senate Ethics Manual* at p. 43 (2003 ed.), Senate Rule 35.2.

¹⁵ See *Senate Ethics Manual* at p. 43 (2003 ed.), Senate Rule 35.2.

Local Transportation¹⁶

Local transportation provided during a trip must be reasonable and customary for the location and must not be related to personal or recreational activities.

Lodging and Food Expenses¹⁷

As a general and initial matter, the Committee will consider the maximum *per diem* rates for official Federal Government travel published annually by the General Services Administration, the Department of State, and the Department of Defense when judging the reasonableness of food and lodging expenses on privately-sponsored fact-finding travel. The Ethics Committee will consider these rates for general comparative purposes; thus, where feasible and available, trip expenses for lodging and meals should generally be comparable with these government *per diem* rates. The Ethics Committee recognizes, however, that the circumstances of a particular trip may legitimately require lodging and meal expenses that exceed these rates. Such circumstances may include, for example, whether the trip includes attendance at an event organized without regard to congressional participation.

If an *event is organized without regard to congressional participation* (for example, annual meetings, conferences, seminars, and symposiums of trade associations, professional societies, business associations, and other membership organizations), the Committee may, but is not required to, allow greater flexibility when authorizing lodging and food expenses in order for Members and staff to participate in or appear at events that are organized principally for the benefit of non-congressional attendees. The Committee may, but is not required to, allow Members, Senate officers and employees to accept lodging and food that is commensurate with what is customarily provided to or purchased by the non-congressional attendees in similar circumstances. The quality or location of the accommodations or meals may not be enhanced because of the official position of the Member, Senate officer, or employee. The Committee will consider any other factor deemed relevant by the Committee.

If the *event is organized specifically for congressional participation*, the Committee will take into consideration the cost of the facility, the location of the facility, the facility's proximity to any sites' being visited, the quality of the conference facility, any security concerns, the size of the facility in relation to the number of attendees, any special needs of or accommodations required by any invitees, the federal government *per diem* rates for meals, and any other factor deemed relevant by the Committee. The location and lodging selected must be reasonable in light of the nature of the event and should not create the appearance that the Member, Senate officer or employee attending the event is using his or her public office for personal gain, including for purposes of recreation.

¹⁶ Honest Leadership and Open Government Act of 2007 (S.1), §544(b) GUIDELINES.

¹⁷ Honest Leadership and Open Government Act of 2007 (S.1), §544(b) GUIDELINES. *See also* U.S. Senate Handbook, Appendix IV-D: Travel Regulations, Page IV-50.

Miscellaneous Expenses¹⁸

Members, Senate officers, and employees may accept reasonable miscellaneous expenses such as interpreter fees, visa fees, conference fees and similar expenses that are necessary for the officially-connected purpose of the trip. Such expenses may not include personal expenses or recreational expenses (for example, personal telephone calls, sightseeing tours, theater or concert visits).

Necessary Expenses¹⁹

Necessary expenses are generally limited to reasonable expenditures for transportation, lodging, conference fees and materials, and food and refreshments. Necessary expenses may also include reasonable miscellaneous expenses such as interpreter fees, conference fees, visa fees and similar expenses that are necessary for the officially-connected purpose of the trip. However, necessary expenses do not include expenses for entertainment other than that provided to all attendees as an integral part of the event, and in no event may they include expenditures for recreational activities. Necessary expenses may also include travel expenses for the spouse *or* child of a Member, Senate officer, or employee, if a written determination has been made by the supervising Member that the attendance of the spouse *or* child is appropriate to assist in the representation of the Senate and if the sponsor has issued an unsolicited invitation for a spouse *or* child to accompany the Member, Senate officer, or employee.

Private or Charter Aircraft²⁰

Provision of transportation on a private or charter aircraft is not considered to be a reasonable expense. Thus, travel on private or charter aircraft is not permitted for privately-sponsored travel.

Reasonableness of Expenses²¹

As a threshold matter, the Ethics Committee will give weight to the Member's or Senate officer's determination (either for that Member or Senate officer, or for an employee supervised by that Member or Senate officer) that the travel will not create the appearance that the Senate traveler is using his or her public office for private gain. The Committee will consider that this determination by the Member or Senate officer includes the Member's or Senate officer's evaluation that the expenses for the trip are necessary and reasonable. When evaluating a trip

¹⁸ Honest Leadership and Open Government Act of 2007 (S.1), §544(b) GUIDELINES.

¹⁹ Senate Rule 35.2(a)(3). *See also Senate Ethics Manual* at pp. 46-47 (2003 ed.)

²⁰ Senate Ruler 35.2(b)(3).

²¹ Honest Leadership and Open Government Act of 2007 (S.1), §544(b) GUIDELINES.

proposal and judging the reasonableness of an expense or expenditure, the Ethics Committee will also consider the following factors:

- the stated mission of the organization sponsoring the trip;
- the organization's prior history of sponsoring congressional trips, if any;
- other educational activities performed by the organization besides sponsoring congressional trips, if any;
- whether any trips previously sponsored by the organization led to an investigation by the Select Committee on Ethics;
- Whether the length of the trip and the itinerary is consistent with the official purpose of the trip:

Members and staff must demonstrate that the purpose of the trip relates to their official and representational duties and that the purpose of the trip relates to matters within the legislative or policy interests of the Senate. There must be sufficient officially-related activities for Senate invitees during each day of the trip. As a general matter, the Committee advises that each day contain a minimum of 6 hours of officially-related activities for Senate invitees for each travel day. Therefore, for many trips it may be necessary for the private sponsor to develop an agenda specifically for Senate participants that reflects a sufficient amount of officially-related activities on each day of the trip;

- Whether there is an adequate connection between a trip and the official duties the Senate invitee:

Members, Senate officers and employees requesting approval for travel paid for by a private source must demonstrate that the travel is connected to their individual official duties, and would not create the appearance that the individual is using public office for private gain. Members and Senate officers may, on a case-by-case basis, be required to explain in writing to the Committee how attendance on a given trip relates to their official and representational duties. As a general matter, for employee travel, the supervising Member or Senate officer must certify in advance that the travel relates to the employee's official duties. The Committee will give this determination great weight and, as a general matter, this determination may be dispositive of the matter. The Committee will consider a number of factors in determining whether to approve a Member's, Senate officer's, or employee's travel request, including, but not limited to:

- The Member, Senate officer or employee’s official responsibilities;
 - Whether the trip relates to matters within the legislative or policy interests of the Senate;
 - The amount of officially-connected activities scheduled to take place during the trip; and
 - Any other factor the Committee deems relevant.
- The reasonableness of an amount spent by a sponsor of the trip, whether for an individual expenditure on a trip or for the trip in its entirety;
 - Whether there is a direct and immediate relationship between a source of funding and an event:

There must be a direct and immediate relationship between the private sponsor or sponsors of the event or trip and the event or trip itself. Expenses may only be accepted from the sponsor or sponsors of an event or trip. A sponsoring entity must have a significant role in organizing and conducting a trip, as well as a specific organizational interest in the purpose of the trip or location being visited. Expenses may not be accepted from a source that has merely donated monetary or in-kind support to the trip, but does not have a significant role in organizing or conducting the trip;

- The maximum *per diem* rates for lodging and meals for official Federal Government travel published annually by the General Services Administration, the Department of State, and the Department of Defense: GSA rates, for example, are published on the internet [*e.g.*, www.gsa.gov]. The Ethics Committee will consider these rates for general comparative purposes; thus, where feasible and available, trip expenses for lodging and meals should generally be comparable with these government *per diem* rates. The Ethics Committee recognizes, however, that the circumstances of a particular trip may legitimately require lodging and meal expenses that exceed these rates. Such circumstances may include, for example, whether the trip includes attendance at an event organized without regard to congressional participation.
- Whether the travel to a location or event is arranged or organized without regard to Congressional participation, or whether it is specifically organized for Congressional staff:

If an *event is organized without regard to congressional participation* (for example, annual meetings, conferences, seminars, and symposiums of trade associations, professional societies, business associations, and other membership

organizations), the Committee may, but is not required to, allow greater flexibility when authorizing lodging and food expenses in order for Members and staff to participate in or appear at events that are organized principally for the benefit of non-congressional attendees. The Committee may, but is not required to, allow Members, Senate officers and employees to accept lodging and food that is commensurate with what is customarily provided to or purchased by the non-congressional attendees in similar circumstances. The quality or location of the accommodations or meals may not be enhanced because of the official position of the Member, Senate officer, or employee. The Committee will also consider any other factor deemed relevant by the Committee;

If the event is organized specifically for congressional participation, the Committee will take into consideration the cost of the facility, the location of the facility, the facility's proximity to any sites' being visited, the quality of the conference facility, any security concerns, the size of the facility in relation to the number of attendees, any special needs of or accommodations required by any invitees, the federal government *per diem* rates for meals, and any other factor deemed relevant by the Committee;

- any other factors deemed relevant by the Select Committee on Ethics.

Sponsor²²

A sponsor of a trip is any person, organization, or other entity contributing funds or in-kind support for the trip. A sponsor must have a significant role in organizing and conducting a trip and must have a specific organizational interest in the purpose of the trip. If the Member, Senate officer or employee is participating in an event or fact-finding trip in connection with the duties of the Member or employee, he or she may accept necessary travel expenses only from a sponsor of the event or fact-finding trip.

Privately-funded travel may NEVER be accepted from, paid for, or reimbursed by lobbyists or foreign agents (regardless of whether, for example, the lobbyist's client reimburses the lobbyist or foreign agent at a later date for those costs or expenses of privately-funded travel).

²² Honest Leadership and Open Government Act of 2007 (S.1), §544(b) GUIDELINES.