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Gifts

**Gifts – Baseline Rule**

- Senate Rule 35 – Members, officers, and employees may not accept any gift unless an exception to the Gifts Rule applies.

- The term “gift” is broadly defined and includes **anything of value**.
  - Not just cash or tangible items, but also provision or reimbursement of travel expenses, free attendance at events, discounts, etc.

- Applies 24/7, not just when you are on official time.

- Applies to gifts your family members receive if the gift is given because of your Senate position, and with your knowledge and acquiescence.

**Gifts – Exceptions**

- Contains more than 20 exceptions that allow you to accept certain gifts.

- Complete list of exceptions available on Committee’s website; see also Quick Reference Guide under Publications & Resources.

- If you aren’t certain whether an exception applies, contact the Committee for guidance.

**Exceptions – Low Value Gifts**

- Gifts valued at less than $50 if the gift is not from a lobbyist or foreign agent or an entity that employs or retains a lobbyist or foreign agent.
  - $100 annual limit from each source.
  - No cash or cash equivalents.
  - No “buy-downs.”

- Items of little intrinsic value, regardless of source.
  - Baseball cap, t-shirt, or non-food items valued at $10 or less.
  - Gifts valued at $10 or less do not count toward the $100 annual limit, but be cautious about the appearance of accepting repeated gifts from a single source.

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### Exceptions – Personal Relations

- **Gifts from relatives**
  - Includes fiancés and in-laws

- **Gifts from personal friends**
  - Must get written approval from the Committee for gifts over $250
  - Must weigh several factors to ensure the gift is given because of personal friendship, not Senate position

- **Wedding waiver** – File form with Ethics to receive blanket waiver for wedding gifts

### Exceptions – Government Sources

- **Gifts from other Members, officers, and employees**
  - But no gifts to supervisor or employing Senator (5 U.S.C. § 7351)
  - Exception: Voluntary gifts given on traditional gift-giving occasions (e.g., marriage, retirement, holiday)

- **Gifts paid for by any unit of government**
  - Federal, state, or local
  - Includes federally recognized Native American Tribes and public universities

### Exceptions – Outside Activities

- **Benefits resulting from outside activities**
  - Prospective employment (e.g., flight or lodging for job interview)
  - Outside position (e.g., free tickets offered to all volunteers for a nonprofit)
  - Spouse’s activity (e.g., +1 to spouse’s company’s holiday party)

- **Opportunities and benefits offered to all members of a class unrelated to Senate employment**
  - Benefits available to all government employees
  - Rewards program at a bank, open to all customers
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**Gifts**

**Exceptions – For the Benefit of the Office**

- Home state products for display or distribution to visitors to the Senate office
  - Must be provided by home state producer, manufacturer, or distributor
  - Must be provided in a quantity intended for distribution
  - Can also accept loan of home state artwork or furniture
- Informational materials
  - Must be from the publisher, author, or producer
  - Must be delivered to the Senate office

**Gifts**

**Exceptions – Foreign Governments**

- Gifts from foreign governments are prohibited, regardless of Gifts Rule exceptions, except where Congress consents by statute (U.S. Constitution Art. I, § 9, cl. 8)
- Foreign Gifts and Decorations Act (FGDA) (5 U.S.C. § 7342) – May accept gifts of “minimal value” ($100 or less)
  - If over $100, must deposit the gift with the Secretary of the Senate and must report it to the Committee within 60 days of receipt
- Travel paid for by foreign governments:
  - FGDA – Travel expenses taking place entirely outside the US
  - MECEA – Exchange programs approved by US State Department

**Gifts**

**Exceptions – Free Attendance to Events**

- “Reception exception” – Event where only item of value is food and beverage of nominal value offered other than as part of a meal
- Widely Attended Events
  - Related to official duties, attended by 25 people from outside Congress, open to a wide group
  - Can’t be entertainment or substantially recreational
- Charity events
- Campaign events
- Constituent events
  - In home state, 5 or more constituents, no lobbyists
  - May not accept other items of value (e.g., gift bags) offered at an event unless they fall into a Gifts Rule exception
U.S. SENATE SELECT COMMITTEE ON ETHICS
CODE OF OFFICIAL CONDUCT TRAINING

PRIVATELY SPONSORED TRAVEL

- Travel outside the duty station paid for by a private entity ("privately sponsored travel") is governed by regulations passed pursuant to the Honest Leadership and Open Government Act (2007)
- Must receive prior written approval to accept privately sponsored travel
- Must submit requests for approval at least 30 days before the start date of the trip
- Must file post-travel disclosure within 30 days of the last day of the trip

CRIMINAL BRIBERY AND ILLEGAL GRATUITY

- 18 U.S.C. § 201 –
  - Bribery – "... directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value ... in return for ... being influenced in the performance of any official act"
  - Gratuity – "... directly or indirectly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally for or because of any official act performed or to be performed"
- Refuse any gift that is offered in connection with an official action, no matter how small the gift or action, even if a Gifts Rule exception would otherwise apply!!!

SOLICITATION OF GIFTS

- As a general rule, you may not solicit anything of value (5 U.S.C. § 7353)
- You may solicit for a charitable organization (501(c)(3)) if the solicitation is made in your personal capacity
  - Must be done on your own time
  - May not use any official resources
  - May not imply any Senate endorsement or involvement
  - May not target lobbyists or foreign agents

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Outside Positions

• Senate Rule 37.2 – Must refrain from any outside activity that could create a conflict or even the appearance of a conflict with your official duties
  • May not engage in an outside activity that is inconsistent or in conflict with the conscientious performance of your official duties

• Senate Rule 37.3 – Must get your supervising Senator's approval to engage in any outside activity
  • Must report the outside activity to your supervising Senator at the start of the activity and each year thereafter on May 15th

Outside Positions – Outside Earned Income

• Outside earned income limit of $31,815 (CY 2023) only for staff whose Senate rate of pay is $141,022 (CY 2023) or more
  • Limit applies to “earned income” – compensation for personal services actually rendered – not investment income
  • Limit is for all outside sources combined, not per job
  • Senate “rate of pay” may be different than gross pay
    Example: A staffer who works half-time (50%) and earns an annual gross salary of $75,000 has a rate of pay of $150,000 ($75,000 x 2)

• No limit on outside income for other staff, but ensure all outside activities are done on personal time and without Senate resources

Outside Positions – Professional Services

• Senate Rule 37.5 – Restriction on “professional services” positions
  • Professional services are those that involve a duty to an outside entity or client, such as:
    • Law
    • Medicine
    • Engineering
    • Architecture
    • Real estate
    • Insurance
    • Consulting
    • Other positions involving a fiduciary duty

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### OUTSIDE POSITIONS – HONORARIA

- Senate Rule 36; 5 U.S.C. app. § 501 – May not accept payment for a speech, appearance, or article
  - Does not apply to editing, as opposed to writing
  - Does not apply to advance/royalties for a book, or a chapter to be published as part of a book
  - Does not apply to writings or performances where the artistic, musical, or athletic talent of the individual is the reason for the payment, rather than the person’s status as a Member or employee of the Senate
  - Does not apply to qualified individuals conducting worship services or religious ceremonials

- Donations in lieu of honoraria:
  - Must go to a § 501(c)(3) charity
  - Capped at $2,000
  - Can’t be a charity from which you or an immediate family member draws any financial benefit
  - Can’t take a personal tax deduction
  - Public reporting requirements

- Senate Rule 37.5(b) – If Senate rate of pay is at or above the threshold ($141,022 for CY 2023), must receive prior written approval for teaching positions

- For employees paid below the threshold, Committee approval is not required, but, as with all outside activities:
  - Must get supervising Senator’s permission
  - Must ensure no violation of honoraria ban
  - May not use Senate resources

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**OUTSIDE POSITIONS – GOVERNMENT-RELATED POSITIONS**

- Other positions with federal government generally prohibited (dual compensation statute)

- Outside positions with state or local government, including elected positions, generally permitted, but subject to all conflicts rules (seek guidance from the Committee)

- Criminal statutes prohibit representing others in matters before the U.S. government where the U.S. government is a party or has interest
  - 18 U.S.C. § 205 – May not act as an agent or attorney
  - 18 U.S.C. § 203 – May not demand, seek, receive, accept, or agree to receive or accept any compensation for any representational services rendered by you or by another

**CONFLICTS FROM SPOUSE/FAMILY MEMBER EMPLOYMENT**

- For Members, Senate Rule 37.11 prohibits lobbying contact by a spouse or family member who is a registered lobbyist or is employed or retained by an entity that has lobbyists

- For staff, no rules apply to spouse’s or other family member’s employment—you are the one who works for the Senate, not them!

- But your spouse’s and family members’ employment may limit what you can or should work on in the Senate (e.g., Senate Rule 37.1, no using official position for personal gain)
  - When in doubt, notify your office and/or contact the Committee for guidance

**INSIDER TRADING AND FINANCIAL CONFLICTS**

- The primary check on financial conflicts is public reporting (next section – Financial Disclosure)

- Other rules and laws may apply to specific holdings or actions:
  - Senate Rule 37.7 – Committee staff must divest of any substantial holdings which may be directly affected by the actions of the employing committee
  - Insider trading law – the purchase or sale of a security on the basis of material nonpublic information in breach of a duty of trust or confidence (never trade on information acquired in the course of official duties)
  - STOCK Act – Members and staff whose Senate rate of pay is above the threshold ($141,022 for CY 2023) generally can’t participate in IPOs
  - At all times, protect against conflicts or the appearance of conflicts

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Under the rules, three phases:

- Job search
- “Negotiations”
- Post-employment

Conflicts of Interest

FUTURE EMPLOYMENT

- Widest discretion, and fewest limitations, during the initial job search
- No use of Senate resources, including time and office space
- No tie between official action and promise of future employment
- At all times, avoid conflicts of interest and the appearance of conflicts of interest

FUTURE EMPLOYMENT – NEGOTIATIONS

- Restrictions intensify when you enter a “negotiation” or “employment arrangement”
  - A “negotiation” is the discussion of terms and conditions of employment after an offer has been made and the Member, officer, or employee is considering accepting
  - An “employment arrangement” begins when an offer has been made and accepted
- Once you reach either of these, must notify supervising Senator and recuse as needed from official work that involves the prospective employer
  - For staff paid at rate at or above $130,500, nonpublic form to Ethics
  - If Member, public disclosures and additional restrictions

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The following individuals must file Financial Disclosure Reports:

- Members and officers
- Candidates
- Employees paid at a rate of $141,022 (CY 2023) or more
- Fellows, detailers, and interns paid above the threshold, regardless of whether they already file with their home agency
- Political Fund Designees, regardless of salary

The Committee does not always receive timely information about salary adjustments. It is your responsibility to know if you must file.

FINANCIAL DISCLOSURE – WHAT YOU MUST FILE

- **New Filer Report:** Due within 30 days of assuming the filing position (can be new hire date or date of pay raise)
- **Annual Reports:** Due annually, no later than May 15th
- **Termination Report:** Due within 30 days of leaving the filing position, including when leaving Senate employment
- **Periodic Transaction Reports:** Due no later than 45 days after qualifying transactions of more than $1,000

FINANCIAL DISCLOSURE – LATE REPORTS AND PENALTIES

- May request an extension of up to 90 days for any report other than a PTR, but extension request must be received before the deadline
- Reports filed more than 30 days late are subject to a mandatory $200 penalty
- Can request a waiver through eFD (Committee will generally grant 1 waiver per filer)
- Penalty and waiver information is nonpublic

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Unofficial Office Accounts

Key Principles:

- Senate work = Senate pays
- Can’t accept supplementation from outside sources

Unofficial Office Accounts - Baseline Prohibition

- Senate Rule 38 – Private donations of cash, goods, or services may not be used to support official activities
  - Includes most co-sponsored events with outside groups
- Generally, official expenses may only be paid using:
  - Appropriated funds
  - Senator’s personal funds
  - Senator’s excess principal campaign funds
- Excess principal campaign funds may not be used for Committee expenses, employee salaries, office space/furniture, office equipment and associated IT services (other than dual-purpose cell phones), or franked mail

Unofficial Office Accounts - Exceptions

- The following are not prohibited:
  - “Free exchange of ideas and information” (Interpretative Ruling 443)
  - Members may seek and accept advice on legislative issues from outside organizations
  - Outside organizations may provide ideas, information, memoranda, research, legislative language, etc.
  - Senate office may not “exercise direction and control” over an outside organization to do Senate work
  - Privately-sponsored travel
  - Co-sponsored constituent service events
  - Internship/fellowship programs “primarily for the educational benefit” of the intern or fellow

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OFFICIAL RESOURCES – FRANKING

- The frank is a facsimile of the Member’s signature in the corner of an envelope that takes the place of a stamp and authorizes sending official material through the domestic mail without prepayment of postage
- Use of the frank governed by statute and accompanying Regulations (39 U.S.C. §§ 3201-3220)

OFFICIAL RESOURCES – FRANKING

- Standards similar to general standards on official resources
  - Generally, the frank may only be used to mail materials that concern “the official business, activities, and duties of the Congress” (39 U.S.C. § 3210(a))
  - Loan of the frank to an outside group is prohibited (39 U.S.C. § 3215)
  - The frank may not be used for personal or campaign related mail

- No mail matter that is not independently frankable may be inserted into a franked envelope

OFFICIAL RESOURCES – FRANKING

- Numerous specific types of mail have clear yes/no answers in the Franking Regulations or Committee Interpretative Rulings
- Consult the Committee’s franking Quick Reference Guide, available on the Committee’s website

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INTERACTIONS WITH SENATE OFFICE – MIXED TRAVEL

• Mixed purpose travel is permissible, but if travel involves both campaign and official events, you must pro rate all expenses to accurately reflect the purpose of the trip
  • Contact the Rules Committee for questions about reimbursable travel expenses
  • Contact the FEC for questions about expenditures of campaign funds

• Each event on the trip must be official or campaign, one or the other – never wear both “hats” at the same time

INTERACTIONS WITH SENATE OFFICE – MORATORIA

• 60 days prior to a primary or general election in which your Senator is a candidate, the following activities are prohibited:
  • Sending mass mailings
  • Using official funds for certain travel expenses
  • Using Senate television or recording studios
  • Using official funds to maintain a mobile office
  • Sending unsolicited mass email
  • Certain use of official social media and internet

• Moratoria other than mass mailings within jurisdiction of Committee on Rules & Administration (see biannual Dear Colleague)

Constituent Service

Key Principles:

• “Petition[ing] the government for a redress of grievances” is a constitutional right, and responding to such inquiries is an appropriate exercise of the representational function of each Member of Congress, as well as an important function of congressional oversight

• Nevertheless, each case is unique on its facts, and you must consider a wide range of possible issues on a case-by-case basis

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### U.S. Senate Select Committee on Ethics

#### Code of Official Conduct Training

<table>
<thead>
<tr>
<th>Constituent Service – Rule 43</th>
</tr>
</thead>
<tbody>
<tr>
<td>Senate Rule 43.1, 43.2: &quot;a Member . . . has the right to assist petitioners before executive and independent government officials&quot;: &quot;may communicate with . . . government official or agency on any matter to— (a) request information or a status report; (b) urge prompt consideration; (c) arrange for interviews or appointments; (d) express judgments; (e) call for reconsideration of an administrative response . . . (f) perform any other service of a similar nature . . .&quot;</td>
</tr>
<tr>
<td>No rule outright prohibits intervention with a non-government entity, but note Rule 43 lists only &quot;government official or agency&quot;</td>
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<tr>
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<tbody>
<tr>
<td>Rule 43.3 – 43.6:</td>
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<tr>
<td>Impermissible to provide or deny constituent services on the basis of campaign contributions, partisan affiliation, or connection to Member’s personal interests</td>
</tr>
<tr>
<td>All factual representations in Member’s name must be accurate (vet your casework before intervening!)</td>
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</tbody>
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<tr>
<th>Constituent Service – Other Considerations</th>
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</thead>
<tbody>
<tr>
<td>Keating Report (1991): Be sensitive to other possible appearance of impropriety. Before intervening, consider:</td>
</tr>
<tr>
<td>Type of proceeding – is the agency performing a &quot;quasi-judicial, adjudicative or enforcement function&quot;? are there ex parte rules?</td>
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<tr>
<td>Best practice – contact congressional liaison in advance of intervention</td>
</tr>
<tr>
<td>Manner and degree of intervention – &quot;direct or implied suggestion of either favoritism or reprisal&quot;? &quot;does the action or pattern of action deviate from [the] Senator’s normal conduct&quot;?</td>
</tr>
<tr>
<td>Constituent you are assisting – contributor? personal friend?</td>
</tr>
<tr>
<td>Merits of the constituent’s case</td>
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