

Ethics Corner: The Ethics of Campaign Solicitations and Contributions

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The House and Senate gift rules define what gifts, or "items having monetary value," members and employees of Congress may *accept*. But may members or employees of Congress *solicit* gifts? Generally, no. This solicitation ban—codified at 5 U.S.C. § 7353—means that lobbyists and their employing organizations, in their efforts to comply with the Lobbying Disclosure Act's gift prohibition and certification requirements, should be alert to circumstances where a gift or fact-finding travel—even if otherwise acceptable under the gift rules—is being solicited by a covered legislative branch official.

Nonetheless, both congressional ethics committees have authorized exceptions to the solicitation ban for the solicitation of *charitable contributions* and *campaign contributions*. Although there are a number of restrictions on how and from whom congressional members and staff may solicit contributions to charity—including a prohibition on solicitations that target lobbyists—the focus here is on summarizing the restrictions on members and staff of Congress when they solicit campaign contributions, whether from a lobbyist, a PAC or any other permissible source under federal election law.

No campaign contribution should be solicited, offered, accepted or made in exchange for, or otherwise for or because of, any official act. These actions could raise bribery or illegal gratuities issues for both parties to the transaction. Beyond these criminal law concerns, however, congressional ethics standards require that members and staff of Congress "avoid even the appearance that solicitations of campaign contributions are connected in any way with an action taken or to be taken in their official capacity" and avoid campaign solicitations which may create the appearance that, because of a

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contribution, the contributor will receive or is entitled to special treatment or access. (*House Ethics Manual*, pages 146-48; *Senate Ethics Manual*, Chapter 8, on Senate Rule 43.)

Federal appropriations law, and rules of both the House and Senate, generally prohibit the use of official resources—including staff time, supplies, equipment and official space—for campaign purposes, including for soliciting contributions. By rule in the Senate, only three specifically named "political fund designees" employed by each Senator's office may engage in any activities, including solicitations, related to campaign funds. And federal criminal law, at 18 U.S. Code § 607, makes it a potential felony offense for anyone, including members and staff of Congress, to solicit a political donation in any room, area or building of the House or Senate.

Except for situations raising bribery or gratuity concerns—which clearly must be avoided—potential campaign donors may not have direct legal exposure under these restrictions on solicitations by congressional members and staff. But potential donors who know and are alert to these solicitation restrictions will have the knowledge to avoid involvement in circumstances where the recipient of a contribution may have to return it or defend it—in the press, before a congressional ethics committee or even in court.