

Inaugurals and Events for New and Departing Members under the Lobbying and Gift Laws

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With the pending inauguration of a new President, the pending swearing-in of the Members of the 111th Congress and the departure of some Members of the 110th Congress come questions under the congressional gift rules about providing tickets to Members or staff to inaugural events and about sponsoring parties in honor of Members or staff coming to or leaving the Congress. Here are some key points.

Do congressional gift rules apply to new Members and staff before they take office? For new Members and staff who are coming to the House or Senate from non-congressional lives and careers, the "letter of the law" answer is, "no," the gift rules do not apply to Members until they are sworn in and do not apply to staff until they become congressional employees.

But the requirement—in the Code of Ethics for Government Service (applicable to both houses of Congress)—that Members and staff not only uphold ethics rules but also "never be a party to their evasion," generally counsels considerable caution where any Member-elect or prospective staffer may be viewed as accepting (and any donor as providing) a gift given at a time and in a manner suggesting that it was motivated by the intent to avoid the restrictions of the rules. And if the circumstances of such a pre-congressional service gift to a Member-elect or prospective staffer were egregious enough, either the House Committee on Standards of Official Conduct or the Senate Ethics Committee could, in theory, undertake action against the Member or staffer once they entered congressional service on the grounds that acceptance of the gift amounted to improper conduct reflecting on the institution.

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One last point: a gift (or anything of value) given to a Member-elect (or a person selected to be an employee of Congress) to influence, or for or because of, an official act to be performed once in office, may be categorized as an illegal bribe or gratuity and the gift-giver could be prosecuted.

Presidential Inaugural Events. Attendance at a Presidential inaugural event may be accepted by a Member or staffer of Congress under either the widely attended event exception or reception exception to the congressional gift rules if the criteria for that exception is met. As a general matter, the widely attended event exception, in both the House and the Senate, requires that attendance at the event is expected to include at least 25 persons from outside of Congress, that attendance is open to members throughout a given industry or profession or to a range of people interested in an issue, that the invitation comes only from the sponsor of the event, and that the Member or staffer determines that his or her attendance is appropriately connected with his or her official duties or position. Free attendance at a widely attended event may include a sit-down meal. At a "reception" under the rules, however, the food must consist only of food and beverages offered other than as part of a meal—but invitations to a reception may come from individuals or entities other than the event sponsor.

Many Presidential inaugural events are galas or balls that include music and dancing. Could such an event meet the widely attended event criteria? Published guidance of the Senate Ethics Committee appears to answer this question, as a general matter, in the affirmative. Without including any qualification as to entertainment occurring in connection with an event, the Senate Ethics Committee has stated in the *Senate Ethics Manual*: "a Member or staffer could accept an offer of free attendance from the Presidential Inaugural Committee for an event sponsored by the committee, or from a private group for an event sponsored by the group, if the event is widely attended and the Member or staffer determines that attendance is connected with his or her official duties or position." (*Senate Ethics Manual*, 2003 edition, at pages 42-43.) Review of specific proposed events for conformity with Senate guidance would appear to be prudent, nonetheless. And, because the *House Ethics Manual* does not include any similar blanket statement regarding Presidential inaugural events, review of specific proposed events for conformity with House standards would appear to be appropriate.

Depending on the nature of the inaugural event, other exceptions to the congressional gift rules may apply through which a Member or staffer could accept free attendance. For example, assuming all the criteria for a particular gift rule exception are met (including the requirement as to permissible source), a Member or staffer could accept a ticket to an inaugural event under the charity event exception or under the exceptions for a political fundraising or other campaign organization event. But **remember**, if no gift rule exception applies, congressional Members and staff may not accept free tickets to or attendance at an inaugural event from a registered lobbyist, an agent of a foreign principal or a private entity that retains or employs a registered lobbyist or an agent of a foreign principal.

Individuals or entities subject to Lobbying Disclosure Act (LDA) reporting requirements should also remember that they must report on their LDA Form LD-203 the following information: the date, the name of the honoree,

the payee(s) and the amount of funds equal to or exceeding \$200 paid to a Presidential inaugural committee.

Honorific and Swearing-in Events. As a general matter, consistent with both House and Senate gift rules, individuals and entities outside the Congress may hold events in honor of a Member or employee leaving Congress without the cost of such an event counting as a gift to the Member or employee. Certain conditions must be satisfied, however: Any invitations must clearly indicate the Member or staffer is the honoree at the event; the Member or staffer should not be identified as a host of the event; the actual hosts of the event should be clearly identified. Also, as stated in the 2008 *House Ethics Manual*, "the event must genuinely be the event of the outside sponsor, and it is the sponsor who must determine the nature of the event and the guest list." As long as it is done consistent with this requirement of actual control by the outside sponsor, however, the Member or staffer being honored may be able to suggest names for inclusion on a guest list.

If such an honorific event meets these requirements *as well* as the requirements under the gift rules for a widely attended event or for a reception, the Member or staffer being honored could attend the event without raising gift rule concerns. Therefore, under such circumstances, it appears that lobbyists, foreign agents and the private entities that employ or retain them could sponsor such events without providing an impermissible gift. However, if these requirements are not met, costs of the event could be deemed to be a gift to the Member or staffer, a gift ranging in value from the entire cost of the event to the cost of the refreshments consumed by the Member or staffer, depending on the circumstances.

As a general matter, the same gift rule conditions and cautions discussed above in connection with honorific events for Members leaving Congress may be applied to events held in honor of a Member upon his or her being sworn in to the House or Senate. It is important to emphasize here, however, the requirement that such an honorific event—whether it occurs at the beginning, during or at the end of a Member's congressional career must genuinely be an event of the outside sponsor or sponsor(s). In this regard, consultation with counsel and with the relevant congressional ethics committee is always prudent. (Members and Members-elect should keep in mind that, as a general matter, they may pay for their swearing-in receptions with principal campaign committee funds.)

Finally, for any event held "in honor of," or otherwise honoring or recognizing a Member or staffer of Congress (or of a covered executive branch official), keep the **LDA reporting requirements** in mind. A reporting individual or entity that sponsors such an event, or otherwise meets the conditions for "paying the cost of an event," as discussed in the joint House/Senate LDA guidance, must report the date, the name of any honoree (s), the payee(s) and the amount of funds paid for the event on their Form LD-203.