

Ethics Corner: Invitation Dos and Don'ts for Congressional and Executive Branch Invitees

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You are probably familiar with the basics of what kind of events your organization can invite government officials to under congressional and Executive branch gift rules. For example: Members and staff of Congress may attend receptions where refreshments are limited to passed hors d'oeuvres and drinks; a policy-related event to be attended by more than 25 non-congressional folks from throughout an industry will likely qualify under congressional rules as a "widely attended event"; and non-political appointee Executive branch officials may attend similarly structured policy events as "widely attended gatherings"—or WAGs—if they get the required pre-approval from their agency ethics office. But just like the events themselves, your organization's invitations to these events are subject to a number of government ethics "dos" and "don'ts." What kind of information may your organization put into—and what should it leave out of—invitations to events where government officials will be participating? What language, if any, may an invitation include about "ethics approval" of your event? And who may—and who may not—extend event invitations to government officials on behalf of your organization? There is no substitute for counsel's review of a draft invitation before it goes out, but here are some of the invitation basics.

If a Member of the U.S. House of Representative or U.S. Senate is going to participate in your organization's event—and if you want the invitation to reflect that participation—there is a basic rule to keep in mind: it must be clear from the language and design of the invitation that it is *your* organization's event and *not* the event of the Senator or Member. This means, for example, that the name of your organization should appear more prominently (including in a larger font size) in

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the invitation than the name of the Member.

Following Senate ethics guidance, the invitation may state that a named Senator is extending the invitation "on behalf of" your organization; however, under House ethics guidance, the preferred language is that your organization is extending the invitation to the event "in cooperation with" or "in conjunction with" the named Member. Official titles—e.g., Senator, Congressman, Chairman, Majority Leader, Minority Leader—may be used as part of the Member's name in an invitation. However, beyond the use of such titles, your organization's invitation to its event should not include any language or symbols suggesting official congressional endorsement of the event.

A question that often comes up when organizations are drafting invitations to receptions or other events is whether the invitation may include disclaimer language stating, for example, that the event has been "organized to conform with" House or Senate gift rules or with Executive branch gift regulations on widely attended gatherings. Obviously, such language can be very useful in addressing right up front a key question likely to be in the mind of a government official who receives such an invitation: Am I allowed to attend under applicable ethics rules? In theory, use of such limited disclaimer language should not be a problem, provided that official ethics approval of the event is not implied if it has not been obtained. In practice, however, the House and Senate ethics committees do not generally favor such disclaimers (although when they have been consulted in connection with a particular event, some disclaimer language can usually be agreed upon with ethics committee staff). And, on the Executive branch side, any such disclaimer would be of very limited use, given that an official must always obtain agency ethics office approval in connection with attending any event.

Another question that arises under government ethics rules and regulations in connection with event invitations is who may actually send, forward, or provide the invitation on behalf of the organization? This matters under both Executive branch and congressional gift rules. For example, while an Executive branch political appointee—subject to the lobbyist gift ban under the Ethics Pledge—may accept an invitation to a widely attended gathering from a 501(c)(3) organization or a media organization even if the organization employs lobbyists, the official may not accept such an invitation from any employee of a 501(c)(3) or media organization who is himself or herself a registered lobbyist. Under congressional ethics rules, whether or not the individual providing the invitation to a widely attended event, or to a charity event, is a registered lobbyist is irrelevant. However, the individual extending the invitation must be formally affiliated with the organization that is actually sponsoring—i.e., organizing—the event, as, for example, an officer, employee, director, or board member. Under House and Senate gift rules, "mere" contributors to an event may not extend an event invitation. As stated in the House Ethics Manual: "[A]ll communications with Members or staff regarding the event should be made by the event sponsor, because a communication from an event contributor may be deemed an impermissible invitation from the contributor."

One area of restriction on invitations under federal ethics rules not discussed in this summary concerns the use of a government official's name in a context that could be viewed as a solicitation for funds, as, for example, on an invitation to a charity fundraiser. Charitable solicitations are subject to specific restrictions and guidance under House, Senate, and Executive branch ethics standards and the potential use of an official's name in this

context should always be reviewed carefully. Wiley Rein's Election Law & Government Ethics Practice Group can assist in this review and in answering any of your organization's ethics-related questions about events and invitations.