TAX LEGISLATION AND HIGHER EDUCATION: THE ACTIVIST APPROACH OF THE 104TH CONGRESS

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I. Introduction

Proposals to use tax policy to make education affordable to the middle-class are playing an important role in this year's tax policy debate. Significant new tax incentives are likely to be included in budget reconciliation legislation before negotiations between the new Republican Congress and the Democratic Clinton Administration are brought to an end later this year. President Clinton has cited the importance of education in several recent speeches, and one way to underline his beliefs in this area may be to stress his proposal for a tax deduction for tuition payments. Clinton's proposal has been countered by a Senate Finance Committee provision to allow a tax credit for student loan interest.

Of course, the Clinton proposal on tuition expense deductions and the Senate Finance student loan tax credit are not the only items on the congressional tax agenda with implications for higher education. There are proposals to extend expiring provisions, such as the Internal Revenue Code Section 127 exclusion for employer-provided education assistance. There is a provision in the Contract with America tax package and a similar Senate Finance provision to allow penalty-free withdrawals from an IRA-like savings plan for educational purposes. And there are revenue raising and compliance items, such as proposals to establish intermediate sanctions for violations of tax rules applicable to exempt organizations.

Discussed below are proposals for tax policy changes with implications for higher education. They are divided into three main categories: (1) Conference tax items – i.e., provisions that may be included in the Budget Reconciliation bill; (2) other tax items; and (3) structural tax reform proposals.

The proposals included in the Budget Reconciliation bill could be sent to the President for his signature by mid to late November. Budget Reconciliation will be a composite of various spending and revenue measures, including three tax bills: the Contract with America package passed by the House on April 5, 1995; a second House tax bill which the Ways and Means Committee approved on September 19, 1995; and a bill that the Senate Finance Committee approved on October 19, 1995.

II. Conference Items

A. Tax Incentives for Education

1. Tax Credit for Interest on Student Loans (Senate)
The Senate Finance Committee included a tax credit of up to $1,000 for student loan interest in its budget reconciliation bill. The provision allows a nonrefundable tax credit equal to 20 percent of such interest.

The Committee's report on the bill includes the following rationale for its action:

The Committee believes that allowing a credit for interest paid on a student loan will encourage individuals to pursue post secondary education. America's productivity and ability to compete in global markets will be enhanced if America's workforce is better educated. The Committee recognizes the increasing cost of post-secondary education and the increasing need of Americans to finance those costs.

By allowing a credit rather than a deduction, the provision will benefit individuals regardless of whether they itemize deductions.

The Senate's student loan interest tax credit may be utilized by parents (who take out loans on their children's behalf), as well as students themselves. If the taxpayer borrows money on behalf of two or more students, the maximum credit is $1,000; otherwise, it is limited to $500. Loans to fund higher education, certain vocational education, and residencies and internships qualify for the credit. The Senate provision is modeled on a bill introduced earlier this year by Senator Charles Grassley (R-IA) and Senator Carol Moseley-Braun (D-IL). The House Ways and Means Committee did not consider or pass any similar provision.

**Comparison with Clinton Administration Tuition Tax Deduction**

This Administration proposal would allow a taxpayer to deduct qualified educational expenses paid for the education or training of the taxpayer, the taxpayer's spouse, or the taxpayer's dependent. Moreover, the deduction would be allowed "above the line" as part of the calculation of adjusted gross income (AGI). Thus, even taxpayers who do not itemize and whose expenses do not exceed the two-percent AGI floor on itemized deduction could benefit.

As proposed in legislation (S 242) introduced by Senate Minority Leader Thomas Daschle (D-SD), the deduction would be phased in over five years in equal installments of $2,000. A maximum deduction of $10,000 would be available once the provision was fully phased in. The deduction would be available to single (and head of household) taxpayers whose AGI (before taking the tax deduction) does not exceed $70,000. The deduction would be phased out ratably for those single (and head of household) taxpayers with AGI between $70,000 and $90,000. Similarly, the deduction would be available to taxpayers filing a joint return with AGI under $100,000, and phased out ratably between $100,000 and $120,000.

The fate of these two proposals will depend on how the political debate over tax cuts plays out. Some Democratic lawmakers believed that President Clinton made a mistake by
proposing his own tax reduction package shortly after Republicans took over control of the House and Senate in the November elections. By endorsing tax cuts himself, Clinton muddied any Democratic criticism that tax cuts are irresponsible in a time of large federal budget deficits and entitlement program cutbacks. The Administration is trying to make the more subtle case that middle-class tax cuts are needed, while opposing tax cuts for high-income taxpayers. Administration officials did not propose a student loan interest credit because they believe that other federal programs already provide subsidies for student loans and that a tuition deduction provides incentives for all students regardless of the method of payment.

2. **Employer-Provided Education Assistance (Both Bills)**

Both House and Senate tax bills contain a provision to extend the exclusion for the value of employer-provided educational assistance under Internal Revenue Code Section 127. The exclusion expired at the end of last year, along with several other tax incentives commonly referred to as "expiring provisions."¹

The most critical difference between the two bill involves whether graduate-level education is covered. The House bill reinstates a provision (first enacted in 1988) making the tax benefit inapplicable to graduate-level courses; the Senate bill contains no such restriction.

The House provision would keep Section 127 in force until December 31, 1977. The Senate provision expires mid-year, on March 1, 1997.

3. **Penalty-Free Withdrawals from IRAs for Educational Expenses (Both Bills)**

The Administration has proposed that penalty-free IRA withdrawals be allowed to the extent that the amount withdrawn is used to pay qualified higher education expenses of the taxpayer, the taxpayer's spouse, the taxpayer's dependent, or the taxpayer's child or grandchild (even if not a dependent). The Contract with America tax bill approved by the House (HR 1215) includes a similar concept, allowing withdrawals from a new type of "American Dream Account" (ADA) savings program to meet education expenses. The Senate bill permits "special purpose" withdrawals, including for higher education expenses, from a new non-deductible "IRA-Plus" Account. IRA reforms remain a top priority for Senator William Roth (R-DE), new Chairman of the Finance Committee. Thus, this proposal has a good chance of surviving in some form in any final tax bill.

4. **Research Credit Extension (Both Bills)**

The 20 percent credit for increased qualified research expenses and basic research payments to universities and other qualified organizations expired on June 30, 1995. Under the

¹ Lawmakers repeatedly through the 1980s have enacted short-term extensions of these provisions, lacking the revenue to make them permanent parts of the Internal Revenue Code. Since 1984, the exclusion for employer-provided education assistance has been retroactively extended five times.
expired code provision, research expenses eligible for the credit include 65 percent of amounts paid by the taxpayer for contract research conducted on the taxpayer's behalf (including research done at universities).

Both the House bill and the Senate bill would preserve the research tax credit (including the university basic credit). Under the House bill, the provision would expire again on December 31, 1997; the Senate provision extends only through February 28, 1997. The House bill increases from 65 to 75 percent the proportion of amounts paid to qualified research consortium that are treated as credit-eligible research expenditures.

5. Corporate Sponsorship Income (Senate)

The Senate bill contains a provision designed to clarify the uncertainty regarding how corporate sponsorship payments are treated for UBIT purposes. Among other things, the provision would allow universities and other nonprofit organizations to bifurcate payments received from a corporate sponsor into a taxable portion (product advertising) and a non-taxable portion (sponsor acknowledgment). Such a bifurcation approach would negate the "tainting" approach of current IRS regulations under which even a small element of taxable advertising may taint an entire transaction. The outlook for the provision in Conference is extremely good, in part due to its negligible revenue score from the Joint Tax Committee.

B. Revenue Raisers and Compliance Provisions

1. Intermediate Sanctions (House)

While tax-exempt organizations play an increasingly important role in our national economy, their public support has been undermined by media reports of abuses of tax-exempt status. One possible congressional response to these concerns is the adoption of "intermediate sanctions," aimed at enhancing the IRS's ability to address abuses by "insiders" who derive inappropriate benefits from exempt organizations. Under current law, the only formal enforcement mechanism open to the tax agency in "private inurement" cases is to remove the tax exemption of the organization engaged in an abusive practice. (Informally, the IRS may threaten revocation and extract substantial monetary penalties from the organization by means of a so-called "closing agreement"). The idea behind intermediate sanctions proposals is to create less draconian penalties that IRS could impose.

The House bill contains an intermediate sanctions proposal similar to the proposal endorsed by the Treasury Department last year. It would impose a two-tiered penalty excise tax on "excess benefits" provided to an "insider" by an organization exempt from tax under Section 501(c)(3) or (4). An "excess benefit" is defined as any transaction in which the organization receives less than fair market value or fair consideration for what it provides to a "disqualified person" (i.e., an insider). Insiders subject to the two-tier excise tax include current, and in some cases, former officers, directors, and trustees and their families, along with any other person in a position to exercise substantial influence over the organization's affairs. Such non-fair market value transactions include the payment of unreasonable compensation for services.
In addition, the House bill, unlike the Treasury proposal, would tax certain transactions in which the economic benefit provided to an insider is determined in whole or in part by the revenues of the organization (a “revenue stream” transaction). Any penalty on a revenue stream transaction could be imposed only to the extent provided in subsequently promulgated Treasury Department regulations.

Under the House bill, insiders provided an excess benefit would be subject to a first-tier excise tax equal to 25 percent of the excess benefit. In addition, the insider would be required to repay to the organization the excess benefit that he or she received. If the insider failed to repay the excess benefit, a second-tier excise tax equal to 200 percent of the excess benefit would be assessed. The first-tier tax would be waived upon a showing of reasonable cause and the repayment of the excess benefit.

Another excise tax would apply to directors and officers and other organization managers who knowingly approved the payment of an excess benefit to an insider, under the Treasury Department approach. The excise tax would be equal to 10 percent of the excess benefit.

The House bill also contains a provision that would prevent an organization from terminating its exempt status without distributing all of its net assets to another existing tax-exempt organization. The recipient charity must be one which has been in existence or a continuous five-year period. Some commentators are concerned that this provision would prevent tax-exempt organizations from transferring assets to wholly owned taxable or even tax-exempt subsidiaries.

In addition, the House intermediate sanctions proposal contains extensive reporting and public disclosure requirements aimed at enhancing oversight and public accountability of non-profit organizations. Under these proposals, it will be easier for interested individuals and the media to obtain copies of an organization’s Form 990, including information regarding compensation paid to officers.

In the 103rd Congress, both the House Ways and Means Committee and the Senate Finance Committee approved versions of an intermediate sanctions proposal. However, the Senate Finance Committee version was limited to healthcare organizations. The Senate rejected a 1994 House offer to insert a broad-based intermediate sanctions provision in the GATT enabling legislation. Thus, prospects of the current House provision remain uncertain.

2. Off-Shore Captive Insurance Companies (House)

The House bill also includes a revenue-raising proposal that would impose an unrelated business income tax (UBIT) on certain distributions and certain "deemed distributions" from a foreign captive insurance company to its tax-exempt U.S. shareholders. It could affect a number of university offshore insurance arrangements. The proposal does not have the support of the Treasury Department. Moreover, although it was included in two prior tax bills approved
by the House, it has never been approved by the Senate. Thus, its prospects in Conference remain uncertain.

3. Required Notices to Charitable Beneficiaries of Remainder Trusts

The Senate bill includes a provision to require the executor of an estate to provide charitable remaindermen with various information within 60 days of his or her qualification. For example, the name and address of each charitable beneficiary would need to be provided, as would notification of the filing of a federal estate tax return. Notification of the existence of such a remainder interest would allow the charitable organization to better preserve the trust assets.

III. Other Tax Items

A. Action Agenda for Next Year

1. State Tuition Savings Programs

Rep. Philip English (R-PA) introduced legislation (HR 1328) in the 104th Congress to enable parents or guardians to save for their children's education through a state college tuition-savings program without tax liability on the increase in value of advance-purchase tuition credits. Some states have established programs allowing parents to purchase tuition credits in advance, with prices set annually based on current tuition prices, expected tuition inflation, and the expected earnings of the state funds. Under current law, any increase in the value of the credits is subject to federal income taxation; thus, the purchaser may incur tax liability regardless of whether the credits are used or refunded.

Even though English is a member of the House Ways and Means Committee, it was not possible for him to attach this provision to the Committee's second tax bill. Thus its fate is highly uncertain.

2. Rules Governing Qualified Section 501 (c)(3) Bonds

Lawmakers are considering a proposal to modify the tax-exempt bond provisions of the Internal Revenue Code, with the general effect of conforming the treatment of bonds issued on behalf of Section 501(c)(3) organizations to bonds issued to finance State or local government projects. For example, one proposal would eliminate the $150 million per-organization limit on non-hospital Section 501(c)(3) bonds. The outlook for this proposal is unclear due to its relatively high cost. However, it is anticipated that key members of the tax writing committees will introduce bills to eliminate the $150 million cap.

3. Extending the Charitable Deduction to Non-Itemizers

Another provision of current law that undercuts the incentive for charitable giving is the rule adopted in 1986 denying the charitable deduction to taxpayers who claim the standard deduction. Non-itemizers are currently allowed deductions for moving expenses,
alimony, and other items. They should also be permitted to claim their charitable deductions. The ideology of the new Congress is consistent with this proposal. Services provided by charitable organizations reduce the need for government spending. Another selling point of the proposal is that its benefits are targeted to middle-class taxpayers.

4. Removing the Charitable Deduction from the Scope of the 3 Percent Limitation on Itemized Deductions

Under current law, taxpayers must reduce their itemized deductions (except medical expenses, casualty and theft losses, and investment interest) by 3 percent of their AGI over $114,700 (or over $57,350 for married taxpayers filing separately). The result is to water down the tax law incentive for charitable contributions by those taxpayers who itemize. Moreover, the demand for revenue may create pressures on lawmakers to raise the floor and increase the percentage deduction disallowance. The result would be to further diminish the incentive. Thus, lawmakers should be encouraged to remove the charitable deduction from the scope of the 3 percent floor.

Many lawmakers were reluctant to give this proposal serious consideration in light of the revenue constraints facing tax writers this year. However, advocates for the idea can note that it is consistent with the ideology of the new Congress, which generally prefers that the public good be furthered by private charities rather than by government entities. If government spending is being limited, it may make sense to strengthen incentives for private giving. However, because the proposal benefits only taxpayers with incomes over $114,700, it also fell victim to attempts to target tax cuts to the middle class.

5. Deducting Charitable Gifts Made by April 15 on the Prior-Year Tax Return.

Current law allows taxpayers to take deductions for individual retirement account (IRA) contributions made by April 15th on the tax return filed for the prior year. The process of completing the tax return stirs in many taxpayers a desire to find new deductions, and, thus, this provision has proven an effective incentive for making IRA contributions. It would likely provide effective in encouraging charitable contributions as well.

6. Rolling Over Pensions Into Charitable Life Income Gifts

Some policymakers believe that the tax law should allow individuals to roll over IRAs, Keoghs, and other retirement plans into charitable life income gifts (charitable remainder unitrusts, charitable remainder annuity trusts, pooled income funds, and gift annuities) without incurring tax. No income tax charitable deduction would be allowed at the time of rollover, under this proposal. The person receiving income from a life income gift would pay tax on that income, and the same rules would apply as apply to payments received by people making life income gifts under current law. As is the case with life income gifts under current law, the funds would go to charity and qualify for the estate tax charitable deduction at death. A variation of
this proposal is to repeal the excise tax on excess accumulations of gifts made to charities from IRAs or pensions.

7. Donations of S Corporation Stock

Current law discourages owners of some small businesses from donating stock in their corporations to charity because of the risk of loss of Subchapter S status. A proposal to allow S Corporation stock to be donated outright to charity or transferred for life income gifts (through unitrusts, annuity trusts, pooled income funds, or gift annuities) would be a logical addition to a broad Subchapter S reform effort being considered in the Senate Finance Committee. Congressional aides have said that they are also looking at a proposal to allow gifts of Subchapter S corporation stock to private foundations.

B. Miscellaneous Revenue Proposals

1. Education Savings Bond

Interest income earned on a qualified U.S. Series EE savings bond issued after December 31, 1989, is excluded from gross income if the proceeds of the bond do not exceed qualified higher education expenses paid by the taxpayer for the year, under current law. Lawmakers have proposed that the definition of "qualified higher education expenses" be expanded to include tuition and required fees paid by a taxpayer for the enrollment or attendance of any individual (not only dependents) at an eligible educational institution. These proposals would also generally repeal the AGI phase-out limitation and provisions requiring that the bonds be issued to a person who is at least 24 years old.

2. Expansion of Qualified Scholarships to Cover Room, Board, and Travel

Amounts received under a qualified scholarship by an individual who is a candidate for a degree at an educational organization is not considered gross income under Internal Revenue Code Section 117 to the extent that they are used for "qualified tuition and related expenses." Included within the scope of this phrase are expenses for tuition and fees required for enrollment at an educational organization, and the costs of fees, books, supplies, and equipment required for courses of instruction. Policymakers have been asked to consider an expansion of the scope of fees qualifying under Section 117 to include payments for room, board, and travel.

3. Allocation and Apportionment of Deductions for Charitable Contributions

A multinational corporation's charitable deductions are allocated between U.S. source income and foreign source income for purposes of calculating U.S. tax liability and foreign tax credits, under current law. However, there is an ongoing controversy over how to make such allocations. Under one proposal that has been considered in Congress, taxpayers
could allocate 40 percent of their charitable contribution deductions to gross income from U.S. sources. The remaining 60 percent of charitable contributions deductions would be apportioned ratably between U.S. source gross income and foreign source gross income, under this proposal.

IV. **Fundamental Tax Restructuring**

Key members of Congress have expressed strong support for a fundamental restructuring of the federal income tax. Some even favor replacing it with a flat tax or broad-based consumption tax. The goals of such reform include simplifying the tax law, reducing compliance burdens, eliminating the bias against savings and investment, and enhancing the international competitiveness of U.S. companies. Proponents have also promised to remove the IRS from individual taxpayers' personal lives, or to eliminate the tax collection agency altogether.

Colleges and universities, which currently benefit from a number of federal tax exemptions and incentives, may have much at stake in the debate over structural tax reform. At obvious risk are the benefits of income tax exemption, the charitable contribution deduction, and tax-exempt bond financing.

Former Housing and Urban Development Secretary Jack Kemp has been asked by Speaker Newt Gingrich (R-GA) and Majority Leader Bob Dole (R-KS) to head a National Task Force on Tax Reform to develop a Republican position on the issue. Such a position could become the basis for language in the party's legislative platform for the 1996 presidential election. Thus, there could be considerable debate over fundamental restructuring of the tax system as part of the 1996 campaigns, and significant pressure to follow through with legislation in the event that candidates advocating bold changes receive an election mandate. Given that this debate is only now beginning, it is impossible to say whether changes that could be considered would be good for education or not. However, the issue bears watching, as the potential for bold departures in tax policy is probably greater than it has been at any time in recent memory.

A. **The Flat Tax**

Replacing the current U.S. income tax system with a flat tax would be fairer, simpler, and less costly for American taxpayers, according to several members of Congress. The flat tax could spur unprecedented economic growth by eliminating high marginal tax rates and boosting investment, productivity, wage growth, and the standard of living. The flat tax proposal sponsored by Senator Shelby (R-AL) and House Majority Leader Armey (R-TX) has a flat rate of 17 percent, a generous family allowance, but allows no other deductions.

Under Armey's new flat tax bill (HR 2060), individuals would be subject to a single income tax rate of 17 percent (after a five-year transition period). Investment income would be free of tax, thus removing any tax incentive to purchase tax-exempt 501(c)(3) bonds. The proposal would substantially increase the standard deduction and dependent exemptions. However, all itemized deductions would be eliminated. According to Congressman Armey, a family of four with total compensation of $36,800 would pay no taxes; the same family with $50,000 would pay a tax equal to 4 percent of their total income, and at $200,000, the family
would be taxed at 17 percent of their total income. Under the proposal, the family allowance would be $26,200 for married individuals filing jointly, $13,100 for single taxpayers, and $17,200 for single heads of households.

Proponents of the flat tax staunchly defend the elimination of all deductions, including those for charitable contributions and home mortgage interest. Proponents of the flat tax assert that homeowners' after-tax income will rise and that homeowners will be able to rewrite their mortgages at a lower interest rate. Concerns that the proposal would damage charitable organizations are unfounded, according to Alvin Rabushka of the Hoover Institute: "As [tax] rates go down, charitable giving tends to go up. Only half of all charitable giving is itemized today. The proposal would not change tax exempt status for charitable organizations."

Indeed, HR 2060 contains a blanket exemption from the business activity tax for "any activity of a governmental entity or any other entity exempt from tax". The exemption appears to be more generous than current law because it does not refer to the UBIT restrictions under Sections 511-514.

B. National Sales Tax

Senator Lugar has proposed to replace the current income tax system with a national sales tax. Lugar believes that his proposed 17 percent national sales tax would bring in as much revenue as the current system. Lugar also would eliminate estate and gift taxes and taxes on capital gains. Home purchases would not be subject to the new tax. State governments would collect the taxes and the IRS would be abolished under the Lugar plan. Manufacturers would not have to account for corporate income taxes, so any possible increase in the price of consumer goods caused by the new sales tax arguably would be offset. The new tax system also would encourage U.S. exports, because such products would not be subject to the national sales tax, and also would not have to factor in the effect of corporate income taxes.

The Lugar proposal to replace both the corporate and individual income tax with a national sales tax on goods and services would make the charitable contribution deduction and the exclusion for tax-exempt bond interest irrelevant. Individuals would pay tax only on those goods and services subject to the tax. It is not clear whether all educational services would be exempt from such a tax.

C. USA Tax Act of 1995 (S. 722)

On April 25, 1995, Senators Domenici and Nunn introduced their USA Tax Act of 1995, a plan to overhaul the current income tax system. Under the bill, all businesses, whether or not incorporated, would be taxed at a flat 11 percent rate on their "gross profits," with a deduction for business capital investment. Compensation paid to employees would not be deductible. Individuals would be subject to a progressive tax with three graduated rates of 19 percent, 27 percent, and 40 percent, designed to bring in approximately the same amount of revenue as under the current system.
The plan allows a 100 percent deduction for personal savings, including purchases of stocks or bonds. However, the "deduction" amounts to a deferral of tax, because when stocks or bonds are sold or savings withdrawn, such income would then be subject to taxation. Capital gains would be taxed only if the profits were spent, not if they were invested. In addition to the so-called "unlimited savings allowance" in the plan, the bill also would allow individual deductions for: tuition paid for higher education (limited to $2,000 per year per person); interest paid on home mortgages; charitable contributions; and alimony payments.

In general, educational organizations, such as schools and universities, would continue to be exempt from tax. However, the bill contains the following provision which denies tax exemption to a certain class of educational entities. Under section 253, an organization would not be eligible for exemption as an educational organization if a substantial amount of its activities and funds are devoted to: "1) conducting seminars and other similar programs; 2) conducting research to educate Congress or the general public about public policy issues; 3) producing books and pamphlets; or 4) a combination of the foregoing."

[V. Regulatory Proposals]

A. Spousal Travel

IRS has issued proposed rules implementing changes to the law made under the Omnibus Budget Reconciliation Act of 1993, relating to reimbursements and other expense allowance arrangements for the payment of club dues, meals, and spousal travel expenses. The rules provide that denial of a deduction to the employer for the employer's payment of an employee's membership in a club, or for the employer's payment of travel expenses of a spouse, dependent, or other individual accompanying an employee on business travel, does not preclude those items from qualifying as working condition fringe benefits.

Spousal travel will be excludable from the employee's income as a working condition fringe if it can be shown that the spouse's presence on the employee's business trip has a bona fide business purpose, and if the employee substantiates amount, time and place, and business purpose of the travel. The IRS has indicated that, for college and university employers, the treatment of spousal travel generally will remain unchanged.

B. Original Issue Discount

IRS has proposed regulations on so-called retirement CDs. These investment vehicles would operate like tax-exempt annuities, but be sold by financial institutions. The rules state that annuities issued by noninsurance companies would not get favorable tax treatment unless the annuity payments begin within one year from the date the donor contributes to the annuity. The effects of the IRS position are uncertain at this time, but it is possible that it would adversely impact charitable giving using annuity products provided by universities.
C. Private Activity Restrictions on Tax-Exempt Bonds

IRS recently issued proposed regulations replacing the old industrial development bond regulations. To qualify as tax-exempt, governmental and Section 501(c)(3) bonds must meet the "private use test" and the "private security or payment test." The tests are different for the two types of bonds, but concern the use of bond-financed facilities in a private trade or business.

Use of a facility by a private trade or business under a management contract may cause bonds to lose their tax-exempt status if the management contract does not meet criteria established by the IRS, under the proposed regulations. The rules liberalize the criteria for management contracts laid out in Rev. Proc. 93-17 regarding permissible payment structures and length of contracts. They also address issues such as allocation and accounting rules, measurement of private business use, remedial actions, and refinancing.]
MEMORANDUM

To: All Members, Officers, and Employees of the House of Representatives

From: Committee on Standards of Official Conduct
      Nancy L. Johnson, Chairman
      Jim McDermott, Ranking Democratic Member

Subject: New Gift Rule

Date: December 7, 1995

On November 16, 1995, the House adopted a new rule, Rule 52, banning most gifts. The new restrictions go into effect on January 1, 1996, and govern every Member, officer, and employee of the House. Members should insure that all of their staff, in Washington and in every district office, are aware of this rule change.

Rule 52 will prohibit Members, officers, and employees from accepting any gift, except as provided in the rule. There is no more “gift limit,” below which a gift may be accepted. Unless a gift falls into one of the specific exceptions stated in the rule, it may not be accepted. If a Member or employee receives an impermissible item that is perishable, it may be donated to charity or discarded. All other unacceptable items must be returned or purchased at fair market value.

There are general exceptions for gifts from relatives; personal friends; and other Members, officers, and employees of the House or the Senate. In addition, a number of items are exempt, notably: personal hospitality; campaign contributions; contributions to legal expense funds; informational materials sent to congressional offices; anything paid for by the Federal Government or a State or local government; opportunities available to the public at large or other groups unrelated to congressional employment; free attendance provided by the sponsor of a widely attended event; food or refreshments of nominal value offered other than as part of a meal; and other items of nominal value, such as caps or T-shirts. This memorandum discusses some of the exceptions in detail and lists all of them. The full text of the new rule is attached.

No Meals, No Tickets. Among the biggest changes in the rule is the elimination of the local meal exception. A Member or employee will no longer be able to accept an invitation to lunch or dinner at someone else’s expense, unless that person is a relative, a personal friend,
or a sponsor of an event that falls within one of the exceptions listed below. Similarly, tickets to sports, musical, or dramatic events may only be accepted from relatives and friends, under the new rule. This rule applies to all tickets for events taking place on or after January 1, 1996, no matter when the tickets are offered.


Definition. "Gift" is defined to mean: "any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value . . . [including] gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred."

Family and Friends. Gifts from relatives, as defined in the Ethics in Government Act,¹ are exempt from the gift ban. A new exception has been created for gifts provided on the basis of personal friendship, unless the Member, officer, or employee has reason to believe that a particular gift was given because of his or her official position. In determining whether the gift was provided because of friendship rather than because of official position, the rule explains that one should consider factors such as: the history of the relationship (including any previous exchange of gifts); whether the giver personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and whether the giver gave similar gifts to other Members, officers, or employees. It is up to the recipient to make this determination for gifts worth up to $250; gifts exceeding $250 require this Committee's approval.

Example 2. Joe College was Roy Representative's college roommate. Every year since they were freshmen, Joe has sent Roy a sweater on his birthday. Two years ago, Joe became a lobbyist for the Widget Association. He has continued to send sweaters on Roy's birthday. To the best of Roy's knowledge, Joe pays for the sweaters personally and does not deduct their cost as a business expense. On his birthday in 1996, Roy may accept the sweater.

Example 3. On January 1, 1996, Joe College takes a job with the American Sweater Association. To demonstrate the fine quality of American sweaters, Joe sends a free sweater to every Member of Congress, including Roy. None of the Members, including Roy, may keep the sweaters.

¹ The Ethics in Government Act defines relative as a "father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, . . . the grandfather or grandmother of [one's] spouse . . . ., and shall be deemed to include [one's] fiancé or fiancée." 5 U.S.C. app. 6, § 109(16).
Example 4. Ever since she was elected to Congress 10 years ago, Carla Congresswoman has been going out to lunch periodically with Edna Executive. They discuss legislative issues of interest to Edna’s company and Edna always picks up the tab, using her corporate credit card. Aside from these lunches, the two never socialize. As of January 1, Carla will have to pay her share of the meal if she wishes to have lunch with Edna. Although they have known each other for years, theirs is not a “personal friendship.”

While gifts from relatives are exempt from the gift ban, gifts to relatives or close associates of a Member or employee may be prohibited under the new rule. The rule states that prohibited gifts include anything given to a family member or other person based on a relationship with the Member, officer, or employee if the latter knows and acquiesces and has reason to believe the gift was given because of his or her official position. If food is given to a Member, officer, or employee and that person’s spouse or dependent, only the Member, officer, or employee’s food counts.

Example 5. Every January, Larry Lobbyist sends a leather-bound pocket appointment calendar to Moe Member at his office. Knowing that he may not do this in 1996, he sends one to Mrs. Member at home, instead. The calendar would be deemed an impermissible gift to Moe.

Food. As stated above, the local meal exception has been eliminated. Thus, one-on-one or small group lunches where someone other than the Member or employee pays will, for the most part, be banned (unless the host is a relative or a personal friend).

Meals are still permissible (although they must be disclosed) in connection with travel to a meeting, speaking engagement, fact-finding trip or similar event in connection with official duties. Similarly, food and drink may be accepted in connection with outside business or other unofficial activities; job interviews; campaign events; in connection with the receipt of honorary degrees and awards for public service; when provided as an integral part of training; when authorized under the Foreign Gifts and Decorations Act; the Mutual Educational and Cultural Exchange Act (that is, in connection with foreign government-sponsored travel) or any other statute; and when provided by a unit of Federal, State, or local government. In addition, Members and staff may still accept food and refreshments of nominal value offered other than as part of a meal (e.g., coffee and donuts, hors d’oeuvres at a reception). Finally, a Member or staff person may accept an offer of free attendance at a widely attended event, which may include food, as described below.

Example 6. Lucy Lobbyist wants to meet with Carl Congressman to discuss a bill that is scheduled to come to the floor the next day. Susie Scheduler says that Carl is busy all day. Lucy says, “Well, he has to eat. Let me take him to lunch or dinner and we can discuss the bill then.” Carl may meet with Lucy, but he has to pay for his own meal.
Example 7. Connie Constituent comes to Washington and drops by to see Myrna Member. Connie says, "I really admire the positions you've taken and I would be honored if you would let me take you to lunch." Myrna must pay for her own meal.

Example 8. Godfrey Governor invites the state's congressional delegation to an official dinner at the Governor's Mansion. Since the dinner is provided by the State government, the delegation may attend.

Example 9. Russell Representative is on a Codel to Ruritania. The Ruritanian Foreign Ministry hosts a dinner party for the delegation. Since meals in a foreign country provided by that country's government are authorized under the Foreign Gifts and Decorations Act, the Members may attend.

Example 10. While in Ruritania, a local company seeking opportunities to do business with Russell's state invites Russell to a dinner with the company's top two officials. Russell must pay for his own dinner.

Example 11. A home-state company hosts a cocktail reception for a congressional delegation. Since the food and drink provided there to any individual is of nominal value and not part of a meal, the delegation may attend.

Example 12. A Committee is working late into the night marking up a bill. Atticus Attorney offers to send over Chinese food for the staff, who he knows will not have time to go out for dinner. The staff must decline.

Example 13. The day after the markup, Charles Chairman offers to take the whole staff out to lunch. Since this is a gift from a Member, the staff may accept.

Widely attended events. A Member, officer, or employee may accept an offer of free attendance from the sponsor of a widely attended event where:

- the Member or employee is speaking or performing a ceremonial function; or
- attendance is appropriate to the performance of the official duties or representative function of the Member or employee.

The term "widely attended event" derives from executive branch standards of conduct. The legislative history of this provision quotes with approval the executive branch regulation which states: "A gathering is widely attended if, for example, it is open to members from throughout a given industry or profession or if those in attendance represent a range of persons interested in a given matter." If this standard is met, the attendee may accept a waiver of all or part of a conference fee, local transportation, food, refreshments, entertainment, and instructional materials furnished to all attendees as an integral part of the event, as well as an
unsolicited offer of free attendance for an accompanying individual. The Member or employee may not accept entertainment collateral to the event (e.g., theater tickets) or food or refreshments that are not provided in a group setting with all or substantially all other attendees.

Example 14. The Chamber of Commerce in Carol Congresswoman’s district invites her to the monthly breakfast meeting of its members. Carol may attend and eat breakfast.

Example 15. A rotary club in Maxwell Member’s district holds periodic luncheon meetings of its membership and invites him to one. Maxwell may attend and eat lunch.

Example 16. A veterans’ group in Rhonda Representative’s district invites her to a Veterans’ Day dinner at the local VFW hall. Rhonda may attend and eat dinner.

Example 17. The Widget Manufacturers of America is holding its annual conference in Washington, D.C. The group invites Caleb Congressman to be the keynote speaker at dinner the first night. Caleb may give the speech and eat the dinner.

Example 18. Owen Owner, the owner of a sports team, invites Maury Member to view an upcoming game from his skybox. Even though the game is widely attended, sitting in the skybox is not related to any official, representative, or ceremonial function of Maury’s. If Maury wishes to attend the game, he must buy his own ticket.

Example 19. A new Concert Hall is opening in Central City in Chloe Congresswoman’s district. The Central City Symphony invites a number of local officials, including Chloe, to attend the inaugural concert, sit in a place of honor, and be recognized for their help in making the new Hall a reality. Chloe may attend.

Example 20. Calvin Congressman has announced that this will be his final term in office. In honor of his long and distinguished career in public service, Big Corporation wishes to host a dinner for him. Big plans to invite hundreds of people from the private and public sector, including many Members and employees of Congress. The Members and staff may attend.

Charity events. A Member or employee may accept a sponsor’s unsolicited offer of free attendance at a charity event, including an entrance fee waiver, local transportation, food, refreshments, and entertainment. The Member or employee may also, if invited to do so, bring a spouse or child. However, gifts of travel or lodging in connection with charity events are barred.
Example 21. The National Association of Do-Gooders is having its annual dinner to raise funds for its charitable activities. Tickets are $500 apiece, but the charity has offered complimentary tickets to Ron Representative and his wife. The Representatives may attend.

Example 22. MegaCorporation buys a table at the Do-Gooders’ annual charity dinner. Ron Representative may not accept the invitation of MegaCorporation’s CEO to sit at its table.

Example 23. The Do-Gooders, as another fundraising activity, host a celebrity golf tournament in Palm Springs. The charity asks Ron Representative to be one of the celebrity participants. If Ron wishes to attend, he must pay his own transportation and lodging. He may accept a waiver of the entrance fee and meals that are provided to all participants. He may not accept the bag of golf paraphernalia that the other celebrities receive.

Travel. The new rule continues to allow Members and staff to travel at the expense of private sources to meetings, speaking engagements, fact-finding trips and similar events in connection with their official duties. The funding of this kind of activity is deemed a reimbursement to the House and not a gift to the individual traveler. Such travel will remain subject to the existing time limits of four days for travel within the contiguous 48 states, and seven days (excluding travel days) for trips elsewhere. As is currently the case, the Committee is authorized to approve longer periods of time upon request in advance of the travel. In connection with such events, a Member or staffer may accept necessary transportation, lodging, food and refreshments, conference fees and materials. Travel expenses for a spouse or child may also be accepted. Travel expenses may not be accepted from registered lobbyists or agents of foreign principals.

Staff travel requires prior written authorization by the supervising Member. All travel expenses accepted in connection with official duties must be itemized and disclosed within 30 days, signed by the Member who is either traveling or approving staff travel (see discussion of Disclosure, below). The exception for travel related to official duties does not cover recreational activities. Stayovers at traveler expense will still be permitted.

Transportation, lodging, food, refreshments, and other benefits may also be accepted in connection with: campaign events; job interviews; and outside business, employment, or other unofficial activities (recreational activities, for example) of a Member, employee, or spouse. In addition, one may accept travel (and associated food, refreshments, and entertainment) to receive an honorary degree. Finally, foreign-government sponsored travel, as authorized under the Foreign Gifts and Decorations Act or Mutual Educational and Cultural Exchange Act, continues to be permissible, as described in the House Ethics Manual, 102d Cong., 2d Sess. 44-47 (1992). The travel discussed in this paragraph is not subject to the four- and seven-day time limits or the requirement to itemize and disclose expenses within 30 days. Any Member or any employee who is required to file an annual Financial Disclosure Statement will have to disclose the receipt
of more than $250 worth of travel expenses in a single year from any private source (other than a relative) on that form.

Example 24. Stella Staffer volunteers at her church on her own time. Because she helps to organize the church’s annual retreat, the church has offered to pay her expenses at the week-long event. Stella may accept.

Example 25. Alex Aide’s wife, Wanda, is a salesperson. Wanda’s employer offers a weekend for two in Mexico to the salesperson of the year. In 1996, Wanda wins the award. Alex may accompany Wanda.

Example 26. Elton Employee is invited to make a work-related morning presentation at a conference. The sponsor offers to pay his airfare, meals, and lodging, all of which Elton may accept, as long as he discloses these expenses within 30 days of his return. The sponsor also offers to pay his greens fees at a nearby golf course if he wishes to golf in the afternoon when the conference has recessed. Elton may not accept the greens fees.

Disclosure. Rule 52 contains three new disclosure requirements, for travel authorizations, travel expenses, and payments in lieu of honoraria by lobbyists.

Any employee who travels at private expense must secure advance authorization from his or her supervising Member or officer, specifying: the name of the employee; the name of the funding source; and the time, place, and purpose of the travel. As part of this authorization, the Member must sign a statement that the travel is in connection with official duties and would not create the appearance that the traveler is using public office for private gain. The authorization must be filed with the Clerk within 30 days of return.

In addition, all privately funded travel expenses, for Members and staff, must be itemized and disclosed within 30 days of return. This disclosure must be signed by the Member who is personally traveling or authorizing staff travel and must include:

- good faith estimates of total expenditures for (1) transportation, (2) lodging, (3) meals, and (4) other expenses;
- a determination that all such expenses are “necessary” (that is, reasonable, within the relevant day limits, and not recreational); and
- (for Member travel) a determination that the travel is in connection with official duties and would not create the appearance that the Member is using public office for private gain.

Moreover, within 30 days of designating a charity to receive a payment in lieu of an honorarium from a lobbyist, a Member, officer or employee must report to the Clerk: (1) the name and address of the lobbyist; (2) the date and amount of the contribution; and (3) the name and address of the charitable organization designated.
The Clerk shall make all these reports available to the public as soon as possible after filing. The Committee is developing forms for these disclosures.

Political events. Rule 52 does not limit Member or staff participation in political events. Political contributions, for any Federal, state, or local campaign, are specifically exempt from the ban, as is attendance at a fundraising event sponsored by any political organization. Political organizations may also provide food, refreshments, lodging, transportation, and other benefits in connection with fundraising or campaign events sponsored by those organizations. In addition, free attendance at a widely attended convention or other event may be provided by its sponsor.

Items of nominal value. Rule 52 permits a Member or employee to accept “an item of nominal value such as a greeting card, baseball cap, or a T-shirt.” Other nominal value items might include mugs, pens, and flowers. There is no precise dollar figure for “nominal value.” Members should use their common sense. A Member could accept an inexpensive pen imprinted with the corporate logo of a constituent company, or an occasional bouquet of flowers. The Member should decline a Mont Blanc pen with his or her initials engraved on it, or flowers for the office every week from the same lobbyist.

Lobbyists are subject to additional restrictions, i.e., they may not provide travel or personal hospitality to Members or staff, contribute to Members’ or staffers’ legal expense funds, support conferences or retreats for Members or staff, contribute to entities maintained or controlled by Members or staff, or donate to charities at Members’ or staffers’ recommendation (other than in lieu of honoraria). The ban on accepting personal hospitality from lobbyists, however, does not apply where the lobbyist is a bona fide personal friend, as defined above.

Example 27. Joe College, Roy Representative’s college roommate, is a lobbyist for the sweater industry. Joe and Roy and their wives have socialized together since college. Joe invites Roy and his wife to spend a week in August with the Colleges at their beach house on Hilton Head. Assuming that Joe does not seek reimbursement or a tax deduction for the expense of entertaining Roy, Roy may accept.

Example 28. Joe, the sweater lobbyist, offers to take his friend, Roy Representative, on a three-day tour of Southern sweater plants. Roy may not accept. If the Swank Sweater Company invites Roy on a tour, he may accept.

Exceptions. In summary, all gifts are banned with the following exceptions:

1. Anything for which the Member, officer, or employee pays market value or which is promptly returned (perishable items may be donated to charity or destroyed).

2. Political contributions.
3. Gifts from relatives.

4. Anything provided by an individual on the basis of a personal friendship, unless the Member, officer, or employee has reason to believe that, under the circumstances, the gift was provided because of the official position. In deciding, the Member, officer, or employee shall consider the history of relationship (including any previous exchange of gifts), whether the giver personally paid for the gift or sought a tax deduction or business reimbursement for the gift, and whether the giver gave similar gifts to other Member, officer, or employees.

5. Contributions to legal expense funds (except from lobbyists and foreign agents).

6. Any gift from another Member, officer, or employee of the House or Senate.

7. Food, refreshments, lodging and other benefits (a) resulting from outside business, employment, or other activities of the Member, officer, or employee or spouse; (b) customarily provided by a prospective employer; or (c) provided by a political organization in connection with a fundraising or campaign event.

8. Pensions and other benefits from a former employer.

9. Informational materials (e.g., books, periodicals, audiotapes, and videotapes) sent to the office.

10. Awards or prizes given to competitors in contests or events open to the public, including random drawings.

11. Honorary degrees and other non-monetary awards in recognition of public service (including associated food, refreshments, entertainment, and, in the case of degrees, travel).

12. Training (including food and refreshments provided to all attendees), if in the interest of the House.

13. Inheritances.

14. Any item the receipt of which is authorized by any statute, including the Foreign Gifts and Decorations Act and the Mutual Educational and Cultural Exchange Act.

15. Anything paid for by Federal, state, or local government, or secured by the Government under a Government contract.

16. Personal hospitality, unless from a registered lobbyist or agent of a foreign principal.

17. Free attendance from the sponsor of a widely attended event if the Member, officer, or employee is participating, performing a ceremonial function, or attendance is appropriate to
the performance of the official duties or representative function of the Member, officer, or employee. The Member, officer, or employee may also accept an unsolicited offer of free attendance for an accompanying individual.

18. Opportunities and benefits (including bank loans) which are available to the public, all federal employees, or some other group.

19. Plaques, trophies, and other commemorative items.

20. Anything for which, in an unusual case, a waiver is granted by this Committee.

21. Food or refreshments of a nominal value offered other than as a part of a meal.

22. Home-state products that are intended primarily for promotional purposes, such as display or free distribution, and that are of minimal value to any individual recipient.

23. An item of nominal value, such as a cap or T-shirt.

Enforcement. The Committee on Standards of Official Conduct is solely authorized to interpret, enforce, and issue guidance on the rule. If you have any questions, please call the Committee's Office of Advice and Education at 225-3787.
Rule LII (52)
GIFT RULE

1. (a) No Member, officer, or employee of the House of Representatives shall knowingly accept a gift except as provided in this rule.

(b) (i) For the purpose of this rule, the term 'gift' means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

(2) (A) A gift to a family member of a Member, officer, or employee, or a gift to any other individual based on that individual's relationship with the Member, officer, or employee, shall be considered a gift to the Member, officer, or employee if it is given with the knowledge and acquiescence of the Member, officer, or employee and the Member, officer, or employee has reason to believe the gift was given because of the official position of the Member, officer, or employee.

(B) If food or refreshment is provided at the same time and place to both a Member, officer, or employee and the spouse or dependent thereof, only the food or refreshment provided to the Member, officer, or employee shall be treated as a gift for purposes of this rule.

(c) The restrictions in paragraph (a) shall not apply to the following:

(1) Anything for which the Member, officer, or employee pays the market value, or does not use and promptly returns to the donor.

(2) A contribution, as defined in section 301(8) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) that is lawfully made under that Act, a lawful contribution for election to a State or local government office, or attendance at a fundraising event sponsored by a political organization described in section 527(e) of the Internal Revenue Code of 1986.

(3) A gift from a relative as described in section 109(16) of title I of the Ethics in Government Act of 1978 (Public Law 95-521).

(4) (A) Anything provided by an individual on the basis of a personal friendship unless the Member, officer, or employee has reason to believe that, under the circumstances, the gift was provided because of the official position of the Member, officer, or employee and not because of the personal friendship.

(B) In determining whether a gift is provided on the basis of personal friendship, the Member, officer, or employee shall consider the circumstances under which the gift was offered, such as:

(i) The history of the relationship between the individual giving the gift and the recipient of the gift, including any previous exchange of gifts between such individuals.

(ii) Whether to the actual knowledge of the Member, officer, or employee the individual who gave the gift personally paid for the gift or bought a tax deduction or business reimbursement for the gift.

(iii) Whether to the actual knowledge of the Member, officer, or employee the individual who gave the gift also at the same time gave the same or similar gifts to other Members, officers, or employees.

(5) Except as provided in clause 2(c), a contribution or other payment to a legal expense fund established for the benefit of a Member, officer, or employee that is otherwise lawfully made in accordance with the restrictions and disclosure requirements of the Committee on Standards of Official Conduct.

(6) Any gift from another Member, officer, or employee of the Senate or the House of Representatives.

(7) Food, refreshments, lodging, transportation, and other benefits—

(A) resulting from outside business or employment activities (or other outside activities that are not connected to the duties of the Member, officer, or employee as an officerholder) of the Member, officer, or employee, or the spouse of the Member, officer, or employee, if such benefits have not been offered or enhanced because of the official position of the Member, officer, or employee and are customarily provided to others in similar circumstances;

(B) customarily provided by a prospective employer in connection with bona fide employment discussions; or

(C) provided by a political organization described in section 527(e) of the Internal Revenue Code of 1986 in connection with a fundraising or campaign event sponsored by such an organization.

(8) Pension and other benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer.

(9) Informational materials that are sent to the office of the Member, officer, or employee in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication.

(10) Awards or prizes which are given to competitors in contests or events open to the public, including random drawings.

(11) Honorary degrees (and associated travel, food, refreshments, and entertainment) and other bona fide, nonmonetary awards presented in recognition of public service (and associated food, refreshments, and entertainment provided in the presentation of such degrees and awards).

(12) Training (including food and refreshments furnished to all attendees as an integral part of the training) provided to a Member, officer, or employee, if such training is in the interest of the House of Representatives.

(13) Bequests, inheritances, and other transfers at death.

(14) Any item, the receipt of which is authorized by the Foreign Gifts and Decorations Act, the Mutual Educational and Cultural Exchange Act, or any other statute.
(15) Anything which is paid for by the Federal Government, by a State or local government, or secured by the Government under a Government contract.

(16) A gift of personal hospitality (as defined in section 109(14) of the Ethics in Government Act) of an individual other than a registered lobbyist or agent of a foreign principal.

(17) Free attendance at a widely attended event permitted pursuant to paragraph (d).

(18) Opportunities and benefits which are—
(A) available to the public or to a class consisting of all Federal employees, whether or not restricted on the basis of geographic considerations;
(B) offered to members of a group or class in which membership is unrelated to congressional employment;
(C) offered to members of an organization such as an employees' association or congressional credit union, in which membership is related to congressional employment and similar opportunities are available to large segments of the public through organizations of similar size;
(D) offered to any group or class that is not defined in a manner that specifically discriminates among Government employees based on the branch of Government or type of responsibility, or on a basis that favors those of higher rank or rate of pay;

(E) in the form of loans from banks and other financial institutions on terms generally available to the public; or
(F) in the form of reduced membership or other fees for participation in organization activities offered to all Government employees by professional organizations if the only restrictions on membership relate to professional qualifications.

(19) A plaque, trophy, or other item that is substantially commeratorive in nature and which is intended for presentation.

(20) Anything for which, in an unusual case, a waiver is granted by the Committee on Standards of Official Conduct.

(21) Food or refreshments of a nominal value offered other than as a part of a meal.

(22) Donations of products from the State that the Member represents that are intended primarily for promotional purposes, such as display or free distribution, and are of minimal value to any individual recipient.

(23) An item of nominal value such as a greeting card, baseball cap, or a T-shirt.

(d) (1) A Member, officer, or employee may accept an offer of free attendance at a widely attended convention, conference, symposium, forum, panel discussion, dinner, viewing, reception, or similar event, provided by the sponsor of the event, if—
(A) the Member, officer, or employee participates in the event as a speaker or a panel participant, by presenting information related to Congress or matters before Congress, or by performing a ceremonial function appropriate to the Member's, officer's, or employee's official position; or
(B) attendance at the event is appropriate to the performance of the official duties or representative function of the Member, officer, or employee.

(2) A Member, officer, or employee who attends an event described in subparagraph (1) may accept a sponsor's unsolicited offer of free attendance at the event for an accompanying individual.

(3) A Member, officer, or employee, or the spouse or dependent thereof, may accept a sponsor's unsolicited offer of free attendance at a charity event, except that reimbursement for transportation and lodging may not be accepted in connection with the event.

(4) For purposes of this paragraph, the term 'free attendance' may include waiver of all or part of a conference or other fee, the provision of local transportation, or the provision of food, refreshments, entertainment, and instructional materials furnished to all attendees as an integral part of the event. The term does not include entertainment collateral to the event, nor does it include food or refreshments taken other than in a group setting with all or substantially all other attendees.

(e) No Member, officer, or employee may accept a gift the value of which exceeds $250 on the basis of the personal friendship exception in paragraph (c)(4) unless the Committee on Standards of Official Conduct issues a written determination that such exception applies. No determination under this paragraph is required for gifts given on the basis of the family relationship exception.

(f) When it is not practicable to return a tangible item because it is perishable, the item may, at the discretion of the recipient, be given to an appropriate charity or destroyed.

2. (a) (1) A reimbursement (including payment in kind) to a Member, officer, or employee from a private source other than a registered lobbyist or agent of a foreign principal for necessary transportation, lodging and related expenses for travel to a meeting, speaking engagement, fact-finding trip or similar event in connection with the duties of the Member, officer, or employee as an officerholder shall be deemed to be a reimbursement to the House of Representatives and not a gift prohibited by this rule, if the Member, officer, or employee—
(A) in the case of an employee, receives advance authorization from the Member or officer under whose direct supervision the employee works, to accept reimbursement, and
(B) discloses the expenses reimbursed or to be reimbursed and the authorization to the Clerk of the House of Representatives within 30 days after the travel is completed.

(2) For purposes of paragraph (a)(1), events, the activities of which are substantially recreational in nature, shall not be considered to be in connection with the duties of a Member, officer, or employee as an officerholder.

(b) Each advance authorization to accept reimbursement shall be signed by the Member or officer under whose direct supervision the employee works and shall include—

(1) the name of the employee;
(2) the name of the person who will make the reimbursement;
(3) the time, place, and purpose of the travel; and
(4) a determination that the travel is in connection with the duties of the employee as an officeholder and would not create the appearance that the employee is using public office for private gain.

(c) Each disclosure made under paragraph (a)(1) of expenses reimbursed or to be reimbursed shall be signed by the Member or officer (in the case of travel by that Member or officer) or by the Member or officer under whose direct supervision the employee works (in the case of travel by an employee) and shall include—

(1) a good faith estimate of total transportation expenses reimbursed or to be reimbursed;
(2) a good faith estimate of total lodging expenses reimbursed or to be reimbursed;
(3) a good faith estimate of total meal expenses reimbursed or to be reimbursed;
(4) a good faith estimate of the total of other expenses reimbursed or to be reimbursed;
(5) a determination that all such expenses are necessary transportation, lodging, and related expenses as defined in paragraph (d); and

(6) in the case of a reimbursement to a Member or officer, a determination that the travel was in connection with the duties of the Member or officer as an officeholder and would not create the appearance that the Member or officer is using public office for private gain.

(d) For the purposes of this clause, the term ‘necessary transportation, lodging, and related expenses’—

(1) includes reasonable expenses that are necessary for travel for a period not exceeding 4 days within the United States or 7 days exclusive of travel time outside of the United States unless approved in advance by the Committee on Standards of Official Conduct;

(2) is limited to reasonable expenditures for transportation, lodging, conference fees and materials, and food and refreshments, including reimbursement for necessary transportation, whether or not such transportation occurs within the periods described in subparagraph (1);

(3) does not include expenditures for recreational activities, nor does it include entertainment other than that provided to all attendees as all integral part of the event, except for activities or entertainment otherwise permissible under this rule; and

(4) may include travel expenses incurred on behalf of either the spouse or a child of the Member, officer, or employee.

(e) The Clerk of the House of Representatives shall make available to the public all advance authorizations and disclosure of reimbursement filed pursuant to paragraph (a) as soon as possible after they are received.

3. A gift prohibited by clause 1(a) includes the following:

(a) Anything provided by a registered lobbyist or an agent of a foreign principal to an entity that is maintained or controlled by a Member, officer, or employee.

(b) A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1980) made by a registered lobbyist or an agent of a foreign principal on the basis of a designation, recommendation, or other specification of a Member, officer, or employee (not including a mass mailing or other solicitation directed to a broad category of persons or entities), other than a charitable contribution permitted by clause 4.

(c) A contribution or other payment by a registered lobbyist or an agent of a foreign principal to a legal expense fund established for the benefit of a Member, officer, or employee.

(d) A financial contribution or expenditure made by a registered lobbyist or an agent of a foreign principal relating to a conference, retreat, or similar event, sponsored by or affiliated with an official congressional organization, for or on behalf of members, officers, or employees.

4. A charitable contribution (as defined in section 170(c) of the Internal Revenue Code of 1986) made by a registered lobbyist or an agent of a foreign principal in lieu of an honorarium to a Member, officer, or employee shall not be considered a gift under this rule if it is reported as provided in paragraph (b).

(b) A Member, officer, or employee who designates or recommends a contribution to a charitable organization in lieu of honoraria described in paragraph (a) shall report within 30 days after such designation or recommendation to the Clerk of the House Representatives—

(1) the name and address of the registered lobbyist who is making the contribution in lieu of honoraria;
(2) the date and amount of the contribution; and

(3) the name and address of the charitable organization designated or recommended by the Member. The Clerk of the House Representatives shall make public information received pursuant to this paragraph as soon as possible after it is received.

5. For purposes of this rule—

(a) the term ‘registered lobbyist’ means a lobbyist registered under the Federal Regulation of Lobbying Act or any successor law; and

(b) the term ‘agent of a foreign principal’ means an agent of a foreign principal registered under the Foreign Agents Registration Act.

6. All the provisions of this rule shall be interpreted and enforced solely by the Committee on Standards of Official Conduct. A Committee on Standards of Official Conduct is authorized to issue guidance on any matter contained in this rule.