

Memorandum

Date: May 9, 2008

To: Don Evans

From: Christopher DeLacy

Re: Site visits under the House and
Senate Gift and Travel Rules

Christopher DeLacy
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You have asked for an outline of relevant House and Senate rules related to site visits. In particular, you have advised that American Chemistry Council (ACC) members intend to facilitate Congressional site visits and want to comply with all applicable rules. You have also advised that some ACC members employ or retain registered federal lobbyists, while others do not. The memo below is intended to address both situations.

The information below is meant to serve as a guide. Please consult with counsel and with the House and Senate Ethics Committees prior to organizing any site visits.

Summary

Entities may conduct Congressional site visits regardless of whether they employ or retain registered federal lobbyists. House and Senate rules are essentially the same regarding site visits – with one important exception. Under the Senate rules, a registered lobbyist may not be present if a meal or local transportation is provided in connection with the site visit. If nothing of value is provided in connection with the site visit (e.g., food or transportation), then the House and Senate gift rules do not apply.

In addition to House and Senate rules, providing anything of value to a Member or staffer of the House and Senate can raise issues associated with the federal bribery and illegal gratuities statute. The discussion below applies to Congress and not the executive branch or state or local entities. The executive branch has separate gift and travel rules which are not discussed below. Many states and some localities also have gift and travel rules.

Background

Entities that Do Not Employ or Retain Registered Lobbyists

Entities that do not employ or retain registered lobbyists may provide gifts to Members and staff of the House and Senate of up to \$49.99 and totaling \$99.99 during a calendar year. A "gift" is defined as *a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value* and can include a meal or local transportation in connection with a site visit. However, the \$49.99/\$99.99 analysis may not be relevant in the context of a congressional site visit because of the House blanket waiver and the Senate "constituent events" exception discussed below.

As a legal matter, the Lobbying Disclosure Act of 1995 (LDA) and the House and Senate gift and travel rules do not apply to entities that do not employ or retain registered lobbyists. However, as a practical matter, every entity should strive to avoid causing anyone to violate House and Senate rules. A more detailed discussion of the relationship between the LDA and the House and Senate gift and travel rules is below.

Entities that Employ or Retain Registered Lobbyists

The President signed the Honest Leadership and Open Government Act of 2007 ("HLOGA") into law on September 14, 2007. Prior to HLOGA, House and Senate Rules did not apply to individuals outside of Congress. However, it is now a violation of the LDA to provide a gift or travel to a Member or employee of the House or Senate with the knowledge that it violates the House or Senate gift or travel rules. The LDA applies to all registered lobbyists and the entities that employ them.

HLOGA also made changes to the Senate gift rules that include prohibiting gifts to Members and staff of the Senate from registered lobbyists and entities that employ or retain registered lobbyists. The House made the same change to the House gift rules in January of 2007. Previously, gifts of up to \$49.99 had been allowed. Now gifts from registered lobbyists or the entities that employ or retain them must fit into an existing exception to the gift rules.

A site visit, as discussed below, may implicate the House and Senate gift rules. However, a site visit would typically not implicate the House and Senate travel rules. In all cases, it is advisable to conduct a thorough analysis under both the gift and travel rules to determine which set of rules applies. The travel and gift rules are closely related and not necessarily mutually exclusive.

Site Visits

A typical "site visit" might include local transportation and a meal, but would not include long distance travel or lodging unless the site visit is part of a larger trip. The classic site visit would be a visit to a facility in the Member's state or district. The local transportation provided, if any, would typically be to and from a state or district office or the airport. The meal provided, if any, would typically be a boxed lunch or a meal in the cafeteria on the premises of the site.

If nothing of value is provided in connection with a site visit, then the House and Senate gift rules are not implicated. If anything of value is provided in connection with a site visit, it must comply with the gift rules. Anything of value includes transportation, food, drinks, or token items.

Unfortunately, the House and Senate gift rules are similar, but not identical. Also, the House and Senate sometimes interpret identical rules differently. If individuals from both the House and Senate will be involved, the site visit must comply with both sets of rules. House and Senate rules do not speak to the issue of registered lobbyists planning, organizing, or arranging site visits, unless part of a privately paid congressional trip (see below).

House

The House Ethics Committee has provided a blanket waiver that allows entities to provide local transportation and a meal in connection with a site visit. Registered lobbyists may be present during a site visit under this waiver.

For a site visit to be exempt under this House waiver:

- Any meal must be provided by the management of a site, on the premises of the site, and in a group setting with employees of the organization.
- Any transportation must be local and be provided by the management of the site.
- The site visit must be related to the official duties of the Member or staffer.

This waiver may only be used occasionally and only applies outside of Washington, D.C.

Senate

The Senate rules allow entities to provide local transportation and a meal in connection with a site visit. However, registered lobbyists may not be present under this exception.

For a site visit to be exempt under the Senate "constituent event" exception:

- It must be in the Senator's home state.
- The cost of any meal must be under \$50.
- The event must be sponsored by constituents and attended by at least 5 constituents.
- *No registered lobbyist may attend the event.*
- The site visit must be related to the official duties of the Member or staffer.

If a lobbyist will be present during the site visit, anything of value that is provided must fit into another exception to the Senate gift rules. Applicable exceptions include the "widely attended event" exception and the "reception" exception:

"Widely attended event" exception:

- The invitation must come from the event sponsor.
- More than 25 individuals from outside Congress must be expected to attend and attendance at the event must be open to individuals from throughout a given industry or profession or to a range of persons interested in an issue.
- Local transportation may be provided.
- A meal may be provided.
- The site visit must be related to the official duties of the Member or staffer.

"Reception" exception:

- Any food and refreshments must be of a nominal value (finger food).
- May not provide local transportation or a meal .

Token Items

As discussed above, entities that do not employ or retain registered lobbyists may provide Members, officers, and employees of the House and Senate with token items in connection with a congressional site visit valued at up to \$49.99 per gift and totaling \$99.99 in a calendar year.

Entities that do employ or retain registered lobbyists may provide Members, officers, and employees of the House and Senate with token items of value only if they fit into an exception to the House or Senate gift rules. Some relevant

exceptions include the home state product exception, commemorative item exception (plaques, awards), or item of little intrinsic value exception (under \$10.00).

Privately Paid Congressional Travel

As discussed above, most site visits will not involve long-distance travel. Under House and Senate rules, privately paid congressional travel can include a site visit, but would also typically include long distance travel, lodging, and meals. Entities that employ or retain registered lobbyists may pay for "one day trips." Entities that do not employ or retain registered lobbyists may pay for "officially connected travel" which can be for more than one day. Privately paid Congressional travel that conforms with the applicable House or Senate rules is considered a reimbursement to the House or Senate and not a gift. All travel expenses paid for by private sources must be "reasonable." Registered lobbyists may not pay for congressional travel, even if immediately reimbursed. All privately funded trips must be pre-approved by the House and Senate Ethics Committees.

The participation of registered lobbyists in privately paid congressional travel must be *de minimis*. Registered lobbyists may not plan, organize, or arrange privately paid congressional travel. On "one day trips," registered lobbyists may be present for the actual event (conference, site visit, dinner, etc.), but may not accompany congressional travelers on any "segment" (travel portion) of the trip. On "officially connected travel," registered lobbyists may not be present "at any point" of the trip, including the travel portions and the actual event.

Campaign Activity

Campaign or political activity should be kept separate from any official site visit and must conform with the Federal Election Campaign Act and Federal Election Commission regulations.

Conclusion

The House and Senate gift and travel rules are extremely fact specific. Accordingly, prior to organizing any site visits, please consult with counsel and with both the House and Senate Ethics Committees. As stated above, a violation of the House and Senate gift and travel rules is now a violation of the LDA. Civil penalties for violations of the LDA have increased from \$50,000 to \$200,000 and, for the first time, certain violations can be punished with up to 5 years in prison. In addition, violations of the LDA could result in a prosecution under the federal false statements statute and violations of the gift and travel rules could result in prosecution under the federal bribery statute.

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