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Skadden

Compliance Update on Gift and Revolving Door Rules

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- Any time you communicate or interact with a public official, or spend money and a public official participates in the event or occasion, it is likely you are engaging in regulated activity.
 - If related to election or campaign, campaign finance and pay-to-play considerations.
 - If providing a personal benefit, gift considerations.
 - If in connection with influencing an official decision, lobbying considerations.

Federal Executive Branch Gift Rules



- Gifts to executive branch officials and employees are generally limited to \$20 per occasion and \$50 per calendar year.
- Commonly used exceptions include:
 - There is no reception exception
 - Widely attended gathering (but requires pre-clearance from agency)
 - Meals and entertainment from non-prohibited source
 - Personal relationship (factors: personal payment and relationship history)
 - Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal
 - Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation
 - Gifts the receipt of which is specifically authorized by statute (e.g., Foreign Gifts and Decorations Act)
 - Gifts to the President and Vice President

Trump Executive Order Federal Executive Branch Gift Rules



- Trump Executive Order prohibits most gifts to executive branch officials and employees from lobbyists, lobbying firms, and lobbyist employers.
- May not utilize \$20/\$50 or widely attended exceptions, among others.
- Limited exceptions remain, including:
 - Personal relationship (factors: personal payment and relationship history)
 - Modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal, but not including receptions with alcohol like in the legislative branch
 - Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation
 - Gifts the receipt of which is specifically authorized by statute (e.g., Foreign Gifts and Decorations Act)
 - Gifts to the President and Vice President
- Press and charity exceptions

Site Visits: Executive Branch



- Under Trump Executive Order:
 - Just soft drinks, coffee, and donuts, no widely attended exception
 - No \$20 de minimis
- If not a political appointee:
 - Just soft drinks, coffee, and donuts unless widely attended
 - Small reception if food and beverage is \$20 or less

Federal Congressional Gift Rules



- Lobbyist/Lobbying Firm/Lobbyist Employer Gift Ban – the gift limit from lobbyists, lobbying firms, and lobbyist employers is \$0.
- Non-Lobbyists/Non-Lobbying Firms/Non-Lobbyist Employers – For those entities that are not lobbyists and do not employ a lobbyist, gifts are limited to \$49.99 per occasion and \$99.99 per year.

Federal Congressional Gift Rules



- However, many gift exemptions are available, even to lobbyists/lobbying firms/lobbyist employers, including, but not limited to:
 - Reception exemption
 - Nominal food in certain settings
 - Widely attended gathering
 - Outside activities
 - Friendship (cannot be expensed and subject to increased scrutiny)
 - Site visits: food and local travel outside D.C. (House rules vs. Senate rules)
 - Attendance at events sponsored by charity (House rules vs. Senate rules)
 - Home district products
 - Nominal items (baseball caps, t-shirts, and greeting cards)
 - Training
 - Informational materials
 - Items paid for at market value or promptly returned
 - Commemorative items (allows certain gifts during site visit)
 - Personal hospitality exemption is not permitted for lobbyists
 - Political contributions



- Non-political non-constituent visit where Senator or staff pays his or her own travel
 - Reception exemption unless widely attended, in which case meal and local transportation may be provided

Site Visits: Senate – The 5/50 Rule



- Non-political constituent visit where Senator or staff pays his or her own travel
 - Visit must take place at least 35 miles outside of D.C.
 - Member may speak about issues of the day to all employees. No advocacy of any kind or fundraising.
 - » Can we hand the Senator a PAC check?
 - On-site meal may be served and corporation may provide local transportation
 - » A lobbyist may not participate in the meal
 - » The cost of the meal may not exceed \$50
 - » Five or more non-lobbyist company employees must participate
 - » Lobbyist allowed to accompany local transportation
 - Recommend not having non-political events within 60 days of an election if the Member is up for reelection
 - Commemorative gift permitted
 - Reception permitted



- Non-political visit where Member of Congress or staff pays his or her own travel
 - Visit must take place at least 35 miles outside of D.C.
 - Member may speak about issues of the day to all employees. No advocacy of any kind or fundraising.
 - On-site meal may be served and corporation may provide local transportation
 - » Lobbyist may participate in meal and accompany local transportation
 - Recommend not having non-political events within 60 days of an election if the Member is up for reelection
 - Commemorative gift permitted
 - Reception permitted

Political Site Visits: House, Senate, and President



- With eligible class only (as defined under Federal Election Campaign Act)
 - Candidate and corporate executives may advocate election and solicit contributions
 - Opponent does not need to be invited or request to appear granted
 - Food may be served
- With all employees
 - Candidate may advocate his or her election and solicit donations but the candidate may not accept donations before, during, or after the presentation. The candidate may just leave campaign literature.
 - Corporate executives may introduce but not advocate election and no solicitation of contributions
 - Opponent upon request must be given same opportunity
 - Light refreshments may be served
 - Press is permitted

Determining Whether a Government Official Subject to Conflict of Interest Restrictions



- Formal officials
- Informal advisers
- Federal Advisory Committee Act appointees
- SGEs



- Severance and benefits
 - Accelerating payment of earned benefits
 - Accelerating vesting of benefits
- Conflict of interest considerations
 - Recusal requirement
 - » Divestiture
 - » Blind trust



- Special restrictions for Trump appointees
 - Matters involving former clients or employers
 - » 2-year ban on working on particular matters involving a former employer or client from the past 2 years
 - » Only matters involving specific parties?
 - Matters lobbied in the past
 - » 2-year ban on working on particular matters lobbied in the past 2 years as a registered lobbyist
 - » 2-year ban on working on the same issue area as such a matter
 - *Unlike the Obama pledge, there is no restriction on a covered appointee seeking or accepting employment with an agency he or she lobbied in the past.*

Leaving Federal Executive Branch: Post-Employment Restrictions



- All former executive branch officials and employees are subject to restrictions on lobbying related to matters with which they were personally involved, or that were under their official responsibility
 - Lifetime ban for matters you worked on substantially and personally while in office
 - 2-year cooling-off period for matters under your supervision while in office
- In addition, after leaving a covered position, certain "senior" and "very senior" executive branch officials are subject to various cooling-off periods of up to 2 years, during which lobbying activities are restricted
 - 1-year cooling-off period for senior officials appearing before their former agency
 - 2-year cooling-off period for very senior officials appearing before their former agency or any Schedule I-V executive branch official

Leaving Federal Executive Branch: Post-Employment Restrictions



- Special Restrictions for Trump Appointees
 - 5-year ban on engaging in lobbying activity with respect to former agency (*under the Obama Pledge, former senior employees were only subject to a 2-year prohibition on communicating with their former agency*)
 - Ban on engaging in lobbying activity with respect to the entire executive branch for the remainder of the Trump administration
 - Both Trump bans apply even if LDA registration not triggered
 - Both Trump bans use the LDA definition of "lobbying activity" – prohibit lobbying contacts and preparing and strategizing for such contacts (i.e., communications and "behind the scenes")
 - *The Obama Pledge restrictions covered only communications and acting as a registered lobbyist*
 - Permanent ban on engaging in activity on behalf of a foreign government or political party that triggers registration under the Foreign Agents Registration Act (FARA) (*the Obama Pledge did not contain any FARA restriction*)
- Obama appointees remain subject to the Obama Ethics Pledge post-employment restrictions

Congressional Employment Negotiation Rules



- Under HLOGA, both the Senate and House require disclosure of employment negotiations that occur prior to election of the successor to the Senator or Member.
 - Senate – A Senator (but not Staff) is prohibited from negotiating for, or entering an arrangement concerning, prospective employment for a job involving lobbying activities (as defined by the LDA) until after his or her successor has been elected.

Congressional Employment Negotiation Rules



- Senate – Senators and Senior Staff who negotiate for, or enter an arrangement concerning, future private employment must file a disclosure statement with the Secretary of the Senate (including the name of the private entity(ies) involved) within three business days.
 - Such Senators and Staff must recuse themselves from (i) any communication with the prospective employer on issues of legislative interest to that employer, and (ii) any legislative matter in which there is an actual or apparent conflict of interest with regard to the private entity(ies).
- House – Members and Senior Staff who negotiate for, or agree to, such future employment or compensation must file a disclosure statement with the Ethics Committee (including the name of the private entity(ies) involved) within three business days.
 - Such Members and Staff must recuse themselves from any matter in which there is an actual or apparent conflict of interest with regard to the private entity(ies).

Congressional Revolving Door Rules



- After leaving a covered position, Members of Congress, Congressional officers, and senior Congressional staff are subject to a "Cooling-Off" period, during which their direct lobbying activities are restricted.
 - Covered senior staff are defined by salary and include senior staff of the House, House Committees, Senate, Senate Committees, Joint Committees, Leadership, and other legislative branch offices (e.g., the GAO and the Library of Congress).
 - Doug Hampton received one year of probation after pleading guilty to a misdemeanor violation for lobbying a former colleague within a year of leaving the Senate.
- Both chambers have lobbying contact restrictions regarding spouses of Members and staff if the spouse is a lobbyist.

Congressional Revolving Door Rules



	House	Senate
Timeframe	House Members, officers, and senior staff are all subject to a one-year period.	Senators are subject to a two-year period. All Senate officers and senior staff are subject to a one-year period. All Senate staff are subject to a separate one-year period.
Coverage	<i>Members:</i> ban on lobbying any Members, officers, or staff of the House, Senate, or legislative offices. <i>Officers:</i> ban on lobbying any Members, officers, or staff of the House. <i>Senior staff:</i> ban on lobbying specific House, committee, and legislative office Members/staff.	<i>All Senators:</i> two-year ban on lobbying any Members, officers, or staff of the Senate, House, or legislative offices. <i>Officers and senior staff:</i> one-year ban on lobbying any Senators, officers, or staff of the Senate. <i>All Senate staff :</i> one-year ban on lobbying specific Senate or committee staff. <i>Senior staff (legislative office):</i> one-year ban on lobbying former legislative office.

State and Local Revolving Door Rules



- Restrictions on negotiating employments and recusal requirements while in office
- Severance and benefits
 - Accelerating payment of earned benefits
 - Accelerating vesting of benefits
- Conflict of interest considerations – dual-hatted employees
- Post-employment restrictions
- Personal financial disclosure

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