

**AN OVERVIEW OF THE
SENATE CODE OF CONDUCT
AND RELATED LAWS**

January 2013

**SELECT COMMITTEE ON ETHICS
UNITED STATES SENATE**

**One Hundred Thirteenth Congress
First Session**

This overview presents **only a summary** of the Code of Official Conduct (Senate Rules 34-43). For more complete information or advice about a specific situation, please consult the Senate Ethics Manual or contact the Committee at (202) 224-2981.

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FINANCIAL DISCLOSURE

MEMBERS, OFFICERS, POLITICAL FUND DESIGNEES, AND EMPLOYEES PAID AT THE RATE OF 120% OF GS-15 (\$119,554 FOR CY 2013)

Annual Public Financial Disclosure Reports covering the previous calendar year are due by May 15th of each year.

New Employee Reports are due within 30 days of assuming a filing position.

Termination Reports are due within 30 days of leaving a filing position, unless accepting another filing position. This includes termination of political fund designee status.

Extensions may be granted for up to 90 days.

Includes: payments in lieu of honoraria, assets and income (earned and unearned), transactions, liabilities, gifts, travel reimbursements, outside positions, and agreements.

Information regarding spouse and dependent children generally must be disclosed.

Periodic Disclosure of Financial Transactions reports are due no later than 30 days after receiving notification of a transaction, but in no case later than 45 days after the purchase, sale, or exchange of stocks, bonds, commodity futures, or other securities in excess of \$1,000. There are no extensions.

\$200 late filing fee; civil or criminal penalties for knowing and willful failure to disclose.

Detailees, fellows, and interns who are compensated by an outside source are treated as if they are receiving Senate compensation and may be subject to the financial disclosure requirements.

Senate Rule 34 and Title I of Ethics in Government Act

GIFTS

The Senate Gifts Rule applies to all Members, officers, and employees.

Gifts to spouses are not subject to the limits, *unless* there is reason to believe they are given because of the official position of the Member or employee and the Member or employee is aware of the gift.

A “gift” means *anything* of monetary value: *e.g.*, meals, entertainment, services, loans, discounts, travel, lodging, and tickets.

General Rule: Other than from a federal lobbyist or a foreign agent, or an entity that employs or retains such individuals, Members and staff may accept any gift other than cash or cash equivalent valued under \$50.

- Subject to the annual limit of less than \$100 per source (excluding gifts of less than \$10).

Members and staff *may not* accept any gift from a federal lobbyist or a foreign agent, or an entity that employs or retains such individuals, *unless* an exception to the Gifts Rule applies. Exceptions to the Gifts Rule include:

- Gifts from relatives.
- Gifts from other Members or employees (not from subordinates, unless on special occasions).
- Gifts from personal friends (gifts valued at more than \$250 require written Ethics Committee approval).
- Anything paid for by federal, state, or local government (including federally-recognized Native American Tribes and public universities).
- Benefits connected with outside employment or activities not offered or enhanced because of Senate position.
- Free attendance at: receptions, widely attended events in connection with official duties, charity events, political fundraisers, and constituent events in the home state.

See Rule 35 for additional exceptions.

Waivers are available in “unusual” cases (*e.g.*, weddings), but gifts may need to be disclosed.

Prohibitions on lobbyists:

- **May not** provide a gift unless permitted by a Gifts Rule exception.
- **May not** reimburse for officially-connected travel.
- **May not** provide gifts of personal hospitality (unless the lobbyist qualifies as a personal friend).
- **May not** contribute to legal expense trust funds.
- **May not** make charitable contributions to entities maintained or controlled by Member (*e.g.*, family trust or charity).
- **May not** make charitable contributions on basis of designation by Member (except in lieu of honoraria).
- **May not** underwrite or contribute to office conference, retreat, or similar event.

Gifts **may not** be solicited (5 U.S.C. § 7353).

Gifts from foreign governments or officials (5 U.S.C. § 7342):

- Souvenirs and courtesy gifts may be accepted if valued at \$100 or less.
- Gifts valued at more than \$100 may only be accepted on behalf of the U.S. government and turned over to the Secretary of the Senate within 60 days.
- Gifts and approved in-country travel expenses valued at more than \$100 must be reported in writing to the Ethics Committee.

NEVER ACCEPT ANYTHING OF VALUE THAT IS OFFERED IN CONNECTION WITH AN OFFICIAL ACTION TAKEN OR ASKED TO BE TAKEN (18 U.S.C. § 201, **CRIMINAL STATUTE).**

Senate Rule 35 and Related Statutes

ATTENDANCE AT EVENTS

Several exceptions to the Gifts Rule permit Members and staff to accept free attendance at certain types of events.

Receptions: Offering only “food or refreshments of a nominal value that are not part of a meal” (*e.g.*, continental breakfast, hors d’oeuvres, and drinks).

Widely Attended Events: Must (1) be invited by the event sponsor (not an entity that donated money or bought a table); (2) have at least 25 non-Hill attendees; (3) be open to the public or a wide range of individuals; and (4) be connected to one’s official Senate duties.

- May also accept free attendance for one accompanying individual.
- May accept a meal that is offered to all attendees as part of the event.
- May accept local transportation to the event, if offered by the event sponsor.
- **May not** accept a gift bag, unless it is valued below the Gifts Rule limits or qualifies for an exception to the Rule.

Charity Events: The primary purpose is to raise money for a § 501(c)(3) organization.

- Must be invited by the event sponsor (not an entity that donated money or bought a table).
- May also accept free attendance for immediate family.
- May accept transportation to the event, if offered by the event sponsor.
 - No transportation to sporting or recreational events.

Constituent Events:

- Event must take place in the home state.
- Must have at least 5 constituents present at the event.
- No federal lobbyists or foreign agent may be in attendance at the event.
- Participation is in connection with official duties.
- Value of the meal served (if any) must be under \$50.

Senate Rule 35

TRAVEL REIMBURSEMENTS

In order to accept privately-sponsored travel, each traveler must receive written approval *in advance* from the Senate Ethics Committee.

A complete travel package must be submitted at least **30 days** prior to the trip and must include the following:

- A copy of the invitation from the sponsor.
- A signed and completed “*Private Sponsor Travel Certification Form*” with any attachments (e.g., Senate invitee list and agenda).
- The “*Employee Pre-Travel Authorization*” form signed by the employee and supervising Senator/officer.

Retain **all pre-travel** documents for post-travel disclosure filing.

Incomplete travel packets or complete travel packets submitted less than 30 days before travel departure date **will not** be considered or approved.

DURATIONAL LIMITS AND LOBBYIST/FOREIGN AGENT ACCOMPANIMENT RESTRICTIONS

Private entities that do not employ or retain federal lobbyists or foreign agents and § 501(c)(3) organizations (regardless of whether they employ or retain federal lobbyists or foreign agents):

- 3 days domestic travel/7 days foreign travel; exclusive of travel time.
- Lobbyist accompaniment is prohibited on any parts of the travel to and from the event, as well as at the event itself or location being visited.

Other private entities that employ or retain federal lobbyists or foreign agents:

- 1 day/1 night.
- Federal lobbyist accompaniment is prohibited on any parts of the travel to and from the event, rather than the event itself or location being visited.

A spouse or child (***not both***) may accompany a Member, officer, or employee traveling and have necessary expenses paid by the travel sponsor.

Within **30 days** of returning from the trip, each traveler must file either the “*Employee Post-Travel Disclosure of Travel Expenses*” or “*Senators and Officers Post-Travel Disclosure of Travel Expenses*” along with ***all pre-travel*** documents in the Office of Public Records (OPR) in 232 Hart.

NOTE: Members, officers, and employees ***may not*** participate in trips planned, organized, or arranged by a federal lobbyist or foreign agent other than in a *de minimis* way.¹

Committee approval is not required for travel funded by:

- U.S. government (*e.g.*, Senate funds).
- Public universities.
- Foreign government (*e.g.*, Mutual Education and Cultural Exchange Act (MECEA) trips).
- Political campaigns.

Senate Rules 35 and 38; Regulations and Guidelines for Privately Sponsored Travel

¹ The term *de minimis* means negligible or inconsequential. For example, a lobbyist signing a letter of invitation would be considered more than *de minimis*.

HONORARIA BAN

NO honoraria may be received by any Member, officer, or employee.

An “honorarium” is a fee for any speech, appearance, or article (including for a series of speeches, appearances, or articles if the series is directly related to an individual’s Senate duties or if payment is made because of an individual’s Senate position). Necessary expenses of travel are not honoraria.

Exclusions from the honoraria ban:

- Writing books (royalties and advances on royalties).
- Editing.
- Writing works of fiction, when the payment is not offered because of the author’s employment status.
- Paid engagements to perform or provide entertainment when the artistic, musical, or athletic talent of the individual is the reason for the employment, rather than the person’s Senate status.
- Qualified individuals conducting religious ceremonies.

In lieu of honoraria, up to \$2,000 per event may be paid directly by a sponsor to a charity, so long as neither the individual nor his or her family (parent, sibling, spouse, child or dependent relative) receives any financial benefit from the charity (§ 170(c) organization).

Payments in lieu of honoraria must be reported on the Public Financial Disclosure Report, and the charities named in a corresponding confidential report to the Ethics Committee.

A payment in lieu of honoraria made by a registered lobbyist or lobbying firm or by a foreign agent to a § 170(c) organization (not controlled by a Member, officer, or employee) must be reported by the Member, officer, or employee making the designation to the Secretary of the Senate within 30 days after such designation or recommendation.

Senate Rules 34 and 36

CONFLICTS OF INTERESTS

ALL SENATE MEMBERS, OFFICERS, AND EMPLOYEES

- **May not** use official position for personal gain.
- **May not** engage in any outside activities that creates a conflict of interest with official duties.
- **May not** use official position to introduce or pass legislation, when a principal purpose is to further a Member, officer, employee, or other immediate family member's financial interests, or the financial interests of a limited class to which such individuals belong.
- **May not** use material, nonpublic information derived from their official positions "as a means for making a private profit."

A committee employee whose compensation is more than \$25,000 for more than 90 days must sell any substantial holdings directly affected by actions of the committee, unless otherwise approved in writing by supervisor and Ethics Committee.

Members, officers, and employees compensated at a rate at or above 120% of GS-15 (\$119,554 for CY 2013) **may not** purchase securities that are part of an initial public offering ("IPO") in any manner other than generally available to the public.²

Without a waiver, employees compensated at a rate at or above 120% of GS-15 (\$119,554 for CY 2013) **may not** participate in contact with an agency regarding non-legislative matters affecting any non-governmental entity/person in which the employee has a significant financial interest.

Senate Rule 37; IRs 142, 147; P.L. 112-105, 112th Cong., 126 Stat. 291 (2012)

² Please be advised that the U.S. Securities and Exchange Commission has jurisdiction over initial public offerings, and the Committee's guidance is advisory only.

OUTSIDE EMPLOYMENT AND ACTIVITIES

ALL SENATE MEMBERS, OFFICERS, AND EMPLOYEES

Outside activities **may not** conflict with an individual's official duties. All outside employment and activities by employees must be approved by the supervising Senator.

AFFILIATION AND RELATED RESTRICTIONS ON MEMBERS, OFFICERS, AND EMPLOYEES COMPENSATED AT A RATE ABOVE \$25,000 AND EMPLOYED FOR MORE THAN 90 DAYS

- **May not** affiliate with outside business organizations for purpose of providing professional services (*e.g.*, consulting, medical, real estate, insurance, or legal services) to others for compensation.
- **May not** allow name to be used by an entity providing professional services.
- May provide professional services on the individual's own time, not using Senate resources, as long as the individual does not affiliate with a firm (if Member or senior staffer, compensation **may not** be received).
- Generally, **may not** serve as an officer or board member of a publicly-held or publicly-regulated business organization.
- May provide uncompensated service on a board of a charitable organization, subject to limitations.
- May solicit contributions for charitable organizations, provided that no official resources are used; no official endorsement of the Senate is implied; no direct personal benefit results to the individual; and federal lobbyists and foreign agents are not targeted (contact the Ethics Committee for guidance).³

Senate Rules 35, 36, and 37; 5 U.S.C. § 7353; IRs 227, 286, 308, 312, 342, 431, 438

³ Senators may use "United States Senator" in written solicitations. However, Senate staff **may not** refer to their Senate titles or employment in soliciting for charities.

OUTSIDE EMPLOYMENT AND ACTIVITIES

COMPENSATION RESTRICTIONS ON MEMBERS, OFFICERS, AND EMPLOYEES PAID AT A RATE OF 120% OF GS-15 OR MORE (\$119,554 FOR CY 2013)

- ***May not*** provide professional services for compensation involving a fiduciary relationship (e.g., consulting, medical, real estate, insurance, or legal services).
- May provide professional services without compensation through a governmental or non-profit entity, under certain conditions. Consult the Ethics Committee for further guidance.
- ***May not*** accept compensation for affiliating with an organization that provides professional services to others.
- ***May not*** accept compensation for service as an officer or board member of ***any*** organization.
- May provide uncompensated service on a board of a charitable organization, subject to limitations.
- ***May not*** accept compensation for teaching without prior written approval from the Ethics Committee.

Outside earned income is limited to 15% of Level II of the Executive Schedule (\$26,955 for CY 2013).

Part-time staffers, must prorate their annual salary to determine rate of pay for purposes of the outside earned income limit. (For example, a staffer who works two and one-half days per week and is paid \$60,000 has an annual rate of pay of \$120,000).

Senate Rules 36 and 37

NEGOTIATIONS FOR FUTURE EMPLOYMENT

MEMBERS

Members who want to negotiate or have an employment arrangement for jobs involving lobbying must wait until *after* their successor has been elected.

For any other future private employment, Members must file a signed public statement with the **Secretary of the Senate** within 3 days of beginning the negotiations or arrangements for private employment or compensation.

Senators who file the disclosure form must also recuse themselves whenever there is a conflict of interest or an appearance of a conflict with respect to the private entity identified on the form, and notify the **Ethics Committee** in writing of such recusals.

SENATE EMPLOYEES

Senate employees paid at a rate of at least 120% of GS-15 (\$119,554 for CY 2013) must notify the **Ethics Committee** in writing within 3 days after they start negotiating or making arrangements for future employment or compensation with a private entity.

Senate employees paid at least \$119,554 must recuse themselves from **official matters** involving prospective private employers whenever there is a conflict of interest (or an appearance of one).

Senior staff (**employees making \$130,500 or more**) must **also** recuse themselves from **legislative matters** that create a conflict of interest (or an appearance of one).

A “negotiation” is the discussion of the terms and conditions of employment after an offer has been made and the Senate Member or employee is considering accepting the offer. An “employment arrangement” begins when an offer has been made and accepted.

Senate Rule 37; P.L. 112-105, 112th Cong., 126 Stat. 291 (2012)

POST-EMPLOYMENT RESTRICTIONS

SENATE RULE

Members: *May not* lobby the entire Senate (Members and staff) for two years after leaving office.

Officers and senior staff:⁴ *May not* lobby the entire Senate (Members and staff) for one year after leaving the Senate payroll.

Leadership staff: *May not* lobby any Member or staff of the leadership of the *same party* (including the personal staff of the leadership Member employing the staffer) for one year after leaving the Senate payroll.

Other staff: *May not* lobby their former employing office or committee (Members of the committee and staff) for one year after leaving the Senate payroll.

Substantive Committee Responsibility: A staffer in a personal office who performs substantive responsibilities for a committee on which the staffer's supervising Member sits, should refrain from lobbying the committee Members and staff for one year from the date the staffer last performed services for the committee. Substantive committee responsibilities include assisting in the drafting of the committee bills or assisting at hearings or in mark-up (as opposed to committee monitoring and liaison service for the personal office). Such a staffer would also be prohibited from lobbying the employing Member and the Member's personal office.

*CRIMINAL LAW*⁵

Members: *May not* communicate with or appear before a current Member, officer, or employee of either the Senate or the House, or any other employee

⁴ For purposes of the rule, senior staff is any employee who is paid at an annual rate of **\$130,500 or more (CY 2013)** (including bonuses) for more than 60 days in a calendar year.

⁵ Please be advised that the post-employment lobbying restrictions are part of the criminal law (18 U.S.C. § 207), enforced by the Department of Justice, and the Committee's guidance is advisory only.

of any other legislative office of Congress with the intent to influence official action on behalf of anyone else for two years after leaving office.

Officers and senior staff:⁶ *May not* communicate with or appear before a current Member, officer, or employee of the Senate with the intent to influence official action on behalf of anyone else for one year after leaving Senate employment.

Members, officers, and senior staff: *May not* represent, aid, or advise a foreign government or foreign political party with the intent to influence a decision by a U.S. government official or employee (including Members and staff) for one year after leaving Senate employment.

Former Members and staff who were involved with trade or treaty negotiations within one year preceding termination of Senate employment, *may not* aid or advise anyone other than the U.S. government concerning those treaty negotiations, for a period of one year after leaving Senate employment.

CURRENT MEMBERS AND STAFF

- ***May not*** knowingly assist former Members and staff to violate these restrictions. This could subject the Member or staffer to disciplinary action and possible referral to the Department of Justice.
- **No exception** for informational requests. The request alone by a former Member or staff could be sufficient to prompt official action.
- **No exception** when a Senate office would have taken the action sought by the former Member or staffer anyway. A violation of the law is complete once the contact is made with the intent to influence official action.

Senate Rule 37; 18 U.S.C. § 207 (Criminal Statute); IRs 79, 380

⁶ For purposes of the criminal law, senior staff is any employee who was, in the one year prior to leaving Senate employment, paid at an annual rate of \$130,500 or more (including bonuses) for at least 60 days.

CAMPAIGN ACTIVITIES

Staff may engage in volunteer or paid campaign work only on their own time, without using Senate resources, and with the approval of their employing Senator.

Campaign work is subject to the outside earned income limit (\$26,955 for CY 2013) for staff paid at or above a rate of 120% of GS-15 (\$119,554 for CY 2013).

- Part-time staffers, must prorate their annual salary to determine rate of pay for purposes of the outside earned income limit.

Staff *may not* solicit, receive, have custody of, or distribute federal campaign contributions unless they are one of three political fund designees (“PFDs”), and then only for campaign committees controlled by a Senator or a group of Senators, or state or local committees of a national party. Such PFDs must file Form 41.1 and also file an annual public financial disclosure report.

Senate space and equipment *may not* be used for campaign activities.

Members and staff *may not* receive or solicit campaign contributions in any federal office building.

Staff *may not* contribute or make advances to their supervising Senator’s campaign.

Members, officers, and employees *may not* solicit or receive political contributions in a federal building other than unsolicited contributions that are transferred to a political committee within seven days.

NOTE: Certain moratorium periods apply to the use of Senate facilities, frank, and official expenses 60 days before primaries and elections.

Senate Rule 41.1; 31 U.S.C. § 1301(a) and 18 U.S.C. §§ 601-607 (Criminal Statutes); IRs 154 263, 349, 387

FUNDS FOR SENATE BUSINESS

Officially-related expenses may only be paid from the following sources:

- Senate funds.
- Member's personal funds.
- Privately-sponsored travel subject to the travel regulations.
- Excess funds of a Member's principal campaign committee may be used to pay officially-related expenses, with certain limitations noted below.

Private parties *may not* pay expenses of official Senate duties.

Senators may seek and accept advice on legislative issues from outside organizations. Outside organizations may provide ideas, information, memoranda, research, and legislative language to Senators. But, a Senate office *may never direct or control* the work performed by an outside organization.

Excess principal campaign committee and other non-Senate funds (other than a Member's personal funds) *may not* be used to pay official expenses for franked mail, employee salaries, office space or equipment and any associated information technology services (excluding handheld communications devices). For comprehensive information, see Interpretative Ruling 444.

Senate offices may accept interns, fellows, and volunteers, as part of an established internship or fellowship program, if the individuals are there **primarily for their educational benefit and do not work on issues of particular benefit to their sponsors/employers**. Public financial reporting may be required.

Senate Rule 38; IRs 44, 428, 443, 444

USE OF FRANK AND MASS MAILING

The frank may be used only for official purposes related to legislative or representative functions, which include:

- Correspondence regarding legislation.
- Assisting or responding to a constituent.
- Congratulations for public (not personal) distinctions.

The frank *may not* be used for the benefit of an outside entity. For example, an office generally may not mail an outside entity's materials under the frank.

A mass mailing (over 500 substantially identical items within a session, not in direct response) must be:

- Prepared with Senate funds.
- Sent under the frank.
- Sent through Printing, Graphics and Direct Mail.
- Limited to two sheets of legal size paper.
- Identified as paid for by the taxpayers.
- Publicly reported quarterly.
- Subject to a 60-day moratorium before elections.
- Subject to Senate funding limitations (see Committee on Rules and Administration, *U.S. Senate Handbook*).

Senate Rule 40; S. Res. 212 (101st Congress)

EMPLOYMENT PRACTICES

By law, no one may discriminate against an employee of the legislative branch based on race, color, religion, sex, national origin, age, or disability in any personnel action. In addition, various labor and workplace laws apply to employees of the legislative branch. These include the Fair Labor Standards Act, the Family and Medical Leave Act, the Occupational Safety and Health Act, the Employee Polygraph Protection Act, the Worker Adjustment and Retraining Notification Act, the Rehabilitation Act, and laws relating to federal service labor management relations, and veterans' employment and reemployment.

The Congressional Accountability Act establishes remedies and procedures for employees in instances of violations of these laws, and creates the Office of Compliance to administer and enforce the rights created under the Congressional Accountability Act.

Employees who believe that their rights under any of these statutes may have been violated should promptly contact the Office of Compliance at <http://www.compliance.gov> or at (202) 724-9250.

Senate Rule 42; Congressional Accountability Act of 1995

INTERVENTIONS WITH GOVERNMENT AGENCIES

The decision to provide assistance to a petitioner *may not* be based upon contributions or services provided to campaigns or other organizations.

Appropriate interventions include:

- Urging prompt consideration of a case.
- Making status inquiries.
- Scheduling appointments and interviews.
- Expressing judgments.
- Requesting reconsideration of a decision based upon current laws and regulations.

EX PARTE communications may be prohibited in some judicial, quasi-judicial, adjudicative or enforcement proceedings. Offices *should not* contact executive branch agency officials involved in these proceedings. Before contacting an executive branch agency on behalf of constituents, offices should first contact the congressional liaison for that agency to see if such intervention would be permitted.

Without a waiver, employees compensated at a rate of at least 120% of GS-15 (\$119,554 for CY 2013) *may not* participate in contact with an agency regarding non-legislative matters affecting any non-governmental entity/person in which the employee has a significant financial interest.

Senate Rules 37 and 43; IR 237; Senate Report 102-223; 5 U.S.C. § 3303

INTERVENTIONS WITH GOVERNMENT AGENCIES

Other than in the performance of Senate duties:

- **Members, officers, and employees *may not*** solicit or receive compensation for representing another person or entity before a government agency in a matter in which the U.S. government has an interest.
- **Officers and employees *may not*** represent another person or entity before any other agency in a matter in which the U.S. government has an interest, or prosecute a claim against the U.S. with or without compensation.

18 U.S.C. §§ 203 and 205 (Criminal Statutes)

CY 2013 FINANCIAL THRESHOLDS

FINANCIAL DISCLOSURE	\$119,554
OUTSIDE EARNED INCOME.....	\$119,554
OUTSIDE EARNED INCOME LIMIT	\$26,955
DUAL GOVERNMENT.....	\$33,003

CRIMINAL POST-EMPLOYMENT RESTRICTIONS

- For employees of Members, officers, or committees.....\$130,500
- For employees of “other legislative offices”\$155,500
 - “Other legislative offices” include Architect of the Capitol, the United States Botanic Garden, the Government Accountability Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, the Congressional Budget Office, the United States Capitol Police, and legislative commissions.