

# CRS Report for Congress

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## **Congressional Gifts and Travel: Legislative Proposals for the 109<sup>th</sup> Congress**

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Mildred Amer  
Specialist in American National Government  
Government and Finance

# Congressional Gifts and Travel: Legislative Proposals for the 109<sup>th</sup> Congress

## Summary

It has been a decade since the House and Senate examined their rules on the acceptance of gifts and travel expenses. Press accounts of alleged excesses in privately funded congressional travel and gifts, particularly from lobbyists, have provided an impetus for proposed changes in the 109<sup>th</sup> Congress.

Legislative proposals introduced thus far and related to congressional gifts and travel all focus on some aspect of lobbyists and lobbying and include changes to (1) requirements for the disclosure reports required by the Lobbying Disclosure Act; (2) permissible gifts given to Members of Congress under the current congressional gift rules; and (3) the various types of officially-connected travel Members, officers, and employees of Congress are allowed under current rules.

The bills addressing some or all of these issues in the 109<sup>th</sup> Congress are H.R. 2412, introduced by Representative Martin Meehan; H.R. 3177, introduced by Representative George Miller; S. 1398, introduced by Senator Russ Feingold; S. 2128, introduced by Senator John McCain; and H.R. 4575, introduced by Representative Christopher Shays.

This report provides an analysis of the proposals for change introduced or discussed in the 109<sup>th</sup> Congress and will be updated as events warrant. For additional information, please refer to CRS Report RL33065, *Lobbying Disclosure: Background and Legislative Proposals, 109<sup>th</sup> Congress*, by Eric Peterson, and CRS Report RL33234, *Lobbying Disclosure and Ethics Proposals Related to Lobbying Introduced in the 109<sup>th</sup> Congress, A Comparative Analysis*, by Eric Peterson.

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# Congressional Gifts and Travel, Legislative Proposals for the 109<sup>th</sup> Congress

## Introduction

Members, officers, and employees of the House and Senate have strict limits imposed on the receipt of gifts, including the receipt or acceptance of payment of reimbursement for travel expenses from outside, private third party sources.<sup>1</sup> They are prohibited from soliciting or accepting gifts from any private source unless permitted by an exception specified in the congressional rules of conduct.

In general, Members and staff may not accept gifts (including travel and personal hospitality), reimbursements, or payments of their expenses (other than from relatives or personal friends). The House and Senate Rules do however, permit *de minimis* gifts valued under \$50 from private sources, with a maximum of \$100 per calendar year from any one source. Gifts under \$10 need not be counted.

Some travel expenses provided by outside, third parties may also be accepted under limited circumstances if the travel is “officially connected.”<sup>2</sup> Travel by staff must be authorized in writing in advance by the supervising Member.

## Lobbyists and Foreign Agents

Lobbyists and foreign agents fall into a special category of prohibited sources of certain gifts and reimbursements, unless it can be shown that certain gifts were given on the basis of a long-standing personal friendship with a Member, officer, or employee of Congress. The additional prohibitions extend to payments to a legal

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<sup>1</sup> U.S.C. § 7353, House Rule XXV, Clause 5 and Senate Rule XXXV. See CRS Report RL33047, *Restrictions on the Acceptance of “Officially Connected” Travel Expenses from Private Sources Under House and Senate Ethics Rules*, by Jack Maskell. See also U.S. Congress, Senate Select Committee on Ethics, *An Overview of the Senate Code of Conduct and Related Laws, 109<sup>th</sup> Congress, First Session*, committee print, 109<sup>th</sup> Cong., 1<sup>st</sup> sess. (Washington: GPO, 2005), pp. 2-4; the Senate Select Committee on Ethics website at [<http://ethics.senate.gov>], under “Recent Updates & Notices” as well as under “Ethics Manual”; and U.S. Congress, House Committee on Standards of Official Conduct, *Rules of the House of Representatives on Gifts and Travel*, 106<sup>th</sup> Cong., 2<sup>nd</sup> sess., Apr. 2000, as well as the website of the House Committee on Standards of Official Conduct, available at [[http://www.house.gov/ethics/Gifts\\_and\\_Travel\\_Chapter.htm](http://www.house.gov/ethics/Gifts_and_Travel_Chapter.htm)] and [<http://www.house.gov/ethics/Highlights2005a.htm>].

<sup>2</sup> CRS Report RL33047, *Restrictions on the Acceptance of “Officially Connected” Travel Expenses from Private Sources Under House and Senate Ethics Rules*, by Jack Maskell.

defense fund; personal hospitality of an individual; payments for a conference, or similar event connected to a Member, officer, or employee of Congress; any payments made to an entity maintained or controlled by a Member of Congress; and charitable contributions made on the recommendation of a Member, officer, or employee (other than one in lieu of an honorarium). The expenses of “officially connected travel” also may not be paid for by a registered lobbyist or a foreign agent. The prohibition also applies even if these prohibited sources will be reimbursed by a nonlobbyist client.

Under the House and Senate gift rules, a lobbyist is defined as one registered under the Lobbying Disclosure Act of 1995, and a foreign agent is defined as an agent of a foreign principal registered under the Foreign Agents Registration Act. According to interpretations of the rules by the Senate Select Committee on Ethics and the House Committee on Standards of Official Conduct, those required to file as lobbyists under the 1995 act include individual lobbyists as well as organizations that employ in-house lobbyists, and lobbying firms with one or more employees who are lobbyists for outside clients.<sup>3</sup>

An organization that employs lobbyists solely to represent its interests or its members’ interests is not itself considered a lobbyist for purposes of the gift rules and can sponsor or reimburse for officially related travel. A lobbying firm that provides services for others, however, is covered by the gift and travel restrictions. Thus, while lobbyists and lobbying firms are covered by the congressional gift and travel rules, the clients or employers of the lobbyists or lobbying firms are not considered lobbyists unless they actually do lobbying.

## Current Issues

In spite of the restrictions on and disclosure requirements for congressional gift and travel reimbursements for officially connected travel, critics point to the absence of a total ban on these items from private sources and allegations of abuse of current rules.<sup>4</sup> An October 2005 Associated Press-Ipsos poll found “only one-third of Americans give Congress good ratings for its ethics and honesty.”<sup>5</sup> A January 2006 *Washington Post-ABC News* poll showed that 58% of those polled thought a recent corruption case involving a well-known lobbyist was evidence of widespread corruption in Washington, and 90% thought it should be illegal for registered

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<sup>3</sup> U.S. Congress, Senate Select Committee on Ethics, *Senate Ethics Manual, 108<sup>th</sup> Congress, 1<sup>st</sup> Session*, S.Pub. 108-1 (Washington: GPO, 2003), p. 43, and the Senate Select Committee website at [<http://ethics.senate.gov/>] and refer to the *Ethics Manual* at that site. See also [[http://www.house.gov/ethics/Gifts\\_and\\_Travel\\_Chapter.htm#\\_Toc476623599](http://www.house.gov/ethics/Gifts_and_Travel_Chapter.htm#_Toc476623599)], and U.S. Congress, House Committee on Standards of Official Conduct, *Gifts and Travel*, 106<sup>th</sup> Cong., 2<sup>nd</sup> sess., Apr. 2000, pp. 55-56, 76.

<sup>4</sup> John Bresnahan, “Travel Scandal Fallout Ensnarers Both Parties,” *Roll Call*, May 5, 2005, p. 1.; “Time to Tighten Lobbying Laws,” *Lexington (Kentucky) Herald Leader*, May 10, 2005, p. A9; and “Sensible Lobbying Reform,” *Washington Post*, May 9, 2005, p. A22.

<sup>5</sup> Will Lister, *Associated Press*, Oct. 29, 2005.

lobbyists to give Members of Congress gifts, trips, or other things of value.<sup>6</sup> A Pew poll taken about the same time showed, however, that “most people around the country aren’t paying close attention” to the corruption scandal involving the lobbyist.<sup>7</sup>

Even if the actions taken by Members and congressional staff are legal under laws and internal rules, the “appearance” factor places them in the position of abiding by the rules in place, but possibly engaging in behavior that gives the appearance of being in “that gray area” between what is “as clean as a hound’s tooth and that which is obviously improper and illegal.”<sup>8</sup>

Examples of action permitted under congressional rules but open to criticism because of the “appearance factor” include (1) accepting any gifts from lobbyists, even if these gifts are within the permissible limits established by Congress; (2) accepting “officially connected” travel reimbursements from “lobbyists” who do not fall within the definition of lobbyists for purposes of the House and Senate gift rules; (3) traveling on corporate aircraft or other forms of transportation with registered lobbyists or foreign agents, because there are no restrictions on the traveling companions of Members and staff; and (4) the absence of guidelines or limits for “reasonable” expenses for travel and lodging, and “necessary expenses” in connection with officially connected travel (such as for a speech or fact-finding trip) that is allowed under House and Senate Rules.<sup>9</sup>

For corporate aircraft travel, Members and staff must make some form of reimbursement. The costs of such trips, if not for officially connected travel, is often covered by a Member’s campaign committee if the trip is for a campaign event. The payments, however, often do not cover the actual costs. Defenders of the practice point to the busy schedules of Members and their need to quickly reach destinations that often are not served by commercial airlines.<sup>10</sup>

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<sup>6</sup> Richard Morin and Claudia Deane, “In Abramoff Case, Most See Evidence of Wider Problem,” *Washington Post*, Jan. 10, 2006, p. A7.

<sup>7</sup> Will Lester, “Corruption Scandal That Rocked Washington Draws Little Scrutiny Elsewhere,” *Associated Press*, Jan. 11, 2006.

<sup>8</sup> Ralph Eisenberg, “Conflict of Interest Situations and Remedies,” *Rutgers Law Review*, vol. 13: 666 (1959).

<sup>9</sup> “See the World,” *Roll Call*, Apr. 27, 2005, p. 4; Jim Drinkard, “Travel by Congress Often Paid Privately,” *USA Today*, Apr. 25, 2005, p. 1, and “Trips Leave Ethics Behind,” *USA Today*, May 2, 2005, p. A10.

<sup>10</sup> R. Jeffrey Smith and Derek Willis, “Hill Leaders Often Take Corporate Jets,” *Washington Post*, May 6, 2005, p. A1.

## Current Legislative Proposals<sup>11</sup>

In the current Congress, there have been discussions, as well as legislative proposals to change the congressional gift and travel rules, with particular emphasis on gifts from lobbyists.

In May 2005, Representative Martin Meehan introduced H.R. 2412, which he drafted with Representatives Rahm Emanuel and Chris Van Hollen.<sup>12</sup> The Special Interest Lobbying and Ethics Accountability Act of 2005 would

- increase the information and frequency of lobbying disclosures and require electronic filings;
- extend the revolving door ban on Members, officers, and employees of Congress from one to two years;
- require Members of Congress to publicly disclose employment negotiations;
- require certification that congressional travel meets certain conditions and require increased disclosure of travel by Members;
- mandate the House Committee on Standards of Official Conduct to revise as necessary guidelines for permissible “reasonable” and “necessary” travel expenses; and
- establish an Ethics Task Force to strengthen ethics oversight and enforcement in the House of Representatives.

In June 2005, Representative George Miller introduced the Lobby Gift Ban Act of 2005 (H.R. 3177) to prohibit, with some exceptions, gifts from lobbyists to Members, officers, and employees of Congress or members of their families.<sup>13</sup>

In July 2005, Senator Russ Feingold introduced the Lobbying and Ethics Reform Act of 2005.<sup>14</sup> S. 1398, similar to H.R. 2412, would

- enhance disclosures as well as require electronic filings by lobbyists;
- require public disclosures by Members of employment negotiations;

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<sup>11</sup> See also CRS Report RL33065, *Lobbying Disclosure: Background and Legislative Proposals, 109<sup>th</sup> Congress*, by Eric Petersen.

<sup>12</sup> Rep. Rahm Emanuel, remarks in the House, *Congressional Record*, daily edition, vol. 151, May 10, 2005, pp. H3087-H3088.

<sup>13</sup> Tory Newmyer, “No More \$49.99 Gifts If Miller’s Bill Passes,” *Roll Call*, June 21, 2005, pp. 1, 22.

<sup>14</sup> Sen. Russ Feingold, remarks in the Senate, *Congressional Record*, daily edition, vol. 151, July 14, 2005, pp. S8310-S8311.

- prohibit floor privileges by former Members who are lobbyists;
- mandate certification by Members, officers, and employees that official travel meets certain standards;
- require full payment and disclosure of charter flights taken by Members and staff;
- require the House Committee on Standards of Official Conduct and the Senate Select Committee on Ethics to revise as necessary guidelines for permissible “reasonable” and “necessary” travel reimbursements; and
- prohibit all gifts to Members of Congress and staff.

On December 16, 2005, Senators John McCain and Representative Christopher Shays introduced the Lobbying Transparency and Accountability Act of 2005 (S. 2128, H.R. 4575). The measures propose to increase the disclosure requirements on lobbyists, such as mandating new information on campaign contributions and gifts to Members of Congress, and adding new restrictions on privately funded travel by and gifts to Members of Congress. Specifically, the bills would

- increase the frequency of the lobbying disclosures required by the Lobbying Disclosure Act of 1995 and require electronic filings;
- require a free public Internet database on the Internet of lobbying registrations required by the 1995 Act;
- require registered lobbyists to disclose all past executive and legislative branch employment;
- mandate disclosure of grassroots activities by paid lobbyists;
- require lobbyists to disclose campaign contributions to each federal candidate or officeholder, leadership PAC, or political party committee;
- require lobbyists to disclose information on covered legislative or executive branch officials for whom they provided reimbursements for travel connected to the individuals’ duties of office;
- require lobbyists to report gifts in excess of \$20 given to covered legislative and executive branch officials;
- require more detailed information on travel taken by Members of Congress and staff as well as full payment and disclosure of charter airplane flights taken;



- mandate the House Committee on Standards of Official Conduct and the Senate Select Committee on Ethics to devise and develop, as needed, guidelines on reasonable expenses for official travel;
- require that executive and legislative branch officials value tickets received to sporting and entertainments events at the highest cost of a ticket for such an event; and
- if there is a potential conflict, require disclosure by Members of Congress of future employment negotiations.

## Other Proposals

In addition to the legislation introduced thus far in the 109<sup>th</sup> Congress, recent articles indicate congressional interest in changing the rules under which Members accept gifts and officially connected travel from outside sources. On January 8, 2006, Speaker of the House J. Dennis Hastert stated that “the House will move soon to tighten the rules governing lobbyists access to lawmakers.”<sup>15</sup> A few days later, it was reported that House Republicans working on revisions of the congressional gift and travel rules are considering a total ban on privately funded travel.<sup>16</sup> Critics of the proposal point out, however, that banning such travel would eliminate legitimate educational opportunities; and some have pointed out that such a rule would need strict enforcement to work.<sup>17</sup>

Other proposals mentioned include requiring Members of the House to secure approval in advance of privately sponsored, officially connected trips.<sup>18</sup> Currently, only House and Senate employees must receive advance, written authorization for such travel from the Member or officer under whose direct supervision they work.<sup>19</sup> In addition, Members, officers, and employees are required to give a full disclosure (including dates, itinerary, expenses, and sponsors) to the Clerk of the House or the Secretary of the Senate within 30 days after completion of the travel.<sup>20</sup>

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<sup>15</sup> Jonathan Weisman, “Hastert Moves to Tighten Rules on Lobbyists,” *Washington Post*, Jan. 9, 2006, p. A2; and Susan Ferrechio, Scandals Churn Up Strong Winds Behind Efforts to Rewrite Lobbying Rules,” *CQ Today*, Jan. 9, 2005, pp. 3, 6.

<sup>16</sup> Carl Hulse, “House G.O.P. Considers Ban on Lobby-Paid Travel,” *New York Times*, Jan. 11, 2006, p. A20; and Jeffrey H. Birnbaum, “Hill Weighs Curbs on Lobbying,” *Washington Post*, Jan. 12, 2006, p. A4.

<sup>17</sup> *National Journal’s CongressDailyPM*, [<http://nationaljournal.com/pubs/congressdaily>], visited Jan. 11, 2006, and David Skaggs, *Good Vs. Bad Travel*, *Washington Post*, Jan. 13, 2006, p. A23.

<sup>18</sup> Mike Allen, “House GOP to Consider Tougher Lobbying Rules,” *Washington Post*, May 5, 2005, p. A10; and Mike Allen, “House GOP Weighs Preapproval of Sponsored Travel,” *Washington Post*, May 11, 2005, p. A5.

<sup>19</sup> House Rule XXV, Clause 5(b)(1)(A)(i); Senate Rule XXXV, Clause 2(a)(1)(A).

<sup>20</sup> House Rule XXV, Clause 5(b)(1)(A)(ii); Senate Rule XXXV, Clause 2(a)(1)(B).

In July 2005, Speaker of the House J. Dennis Hastert asked the House Committee on Standards of Official Conduct to devise a new system to review privately funded travel by Members and staff and to create a formal “approval system” for congressional travel paid for by corporations, nonprofit, groups, and trade associations.<sup>21</sup> In response, Representative Alan Mollohan, ranking member of the House Committee on Standards of Official Conduct, asserted that “the committee already has a system in place to vet privately funded trips;”<sup>22</sup> however, he stressed the continued need for the Ethics Committee to educate Members and staff on the House rules of conduct and to encourage them to seek advice from the committee when they receive an invitation.<sup>23</sup> In December 2005, Speaker Hastert suggested new ethics training for Members of the House.<sup>24</sup>

In December 2005, Representatives David Obey, Barney Frank, Tom Allen, and David Price “unveiled” a proposed reform package for the 110<sup>th</sup> Congress.<sup>25</sup> Included were proposed rules that would prohibit lobbyists from paying for or arranging congressional travel. In addition, Members, officers, and employees of the House “would be prohibited from accepting officially connected travel or lodging reimbursements unless they obtained a declaration from the sponsor that no lobbyists were participating in the trip and that the sponsor does not employ or contract for the services of a lobbyist.”<sup>26</sup>

Finally, other reported recent actions include those of Representative Robert Ney, chairman of the House Administration Committee, who directed the Clerk of the House to develop an electronic system for travel and honoraria reports, which currently are filed only on paper.<sup>27</sup>

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<sup>21</sup> John Bresnahan, “Hastert Asks for Travel Review,” *Roll Call*, July 28, 2005, pp. 1, 22.

<sup>22</sup> John Bresnahan, “Mollohan Brushes Off Request for New Travel System,” *Roll Call*, [[http://www.rollcall.com/issues/1\\_1breakingnews/10257-1.html](http://www.rollcall.com/issues/1_1breakingnews/10257-1.html)], visited Aug. 2, 2005.

<sup>23</sup> *Ibid.*

<sup>24</sup> Carl Hulse, “House Speaker Suggests New Ethics Training for Lawmakers,” *New York Times*, December 8, 2005, p. A27.

<sup>25</sup> Jennifer Yachim, “Quartet Offers New House Rules,” *Roll Call*, Dec. 6, 2005, pp. 1, 19.

<sup>26</sup> “Proposals to Overhaul Lobbying Practices,” *CQ Today*, Jan. 9, 2006, p. 6.

<sup>27</sup> Kate Ackley, “Ney Orders House to Go Digital on Disclosure Forms,” *Roll Call*, June 30, 2005, pp. 3, 23.