

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is a darker shade of blue. The hourglass is centered on the page.

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House Ethics Rules Changes in the 108th Congress

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Abstract. On January 7, 2003, the House adopted H.Res. 5, its rules for the 108th Congress. Included were several changes to the chambers conflict of interest and gift rules, as well as the enforcement of those rules. The changes affected the acceptance of perishable food, reimbursement of travel and lodging expenses incurred in attending charity events, and earning money for practicing medicine. In addition, H.Res. 5 codified the operating procedures of the Committee on Standards of Official Conduct.

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Summary

On January 7, 2003, the House adopted H.Res. 5, its rules for the 108th Congress. Included were several changes to the chamber's conflict of interest and gift rules, as well as the enforcement of those rules. The changes affected the acceptance of perishable food, reimbursement of travel and lodging expenses incurred in attending charity events, and earning money for practicing medicine. In addition, H.Res. 5 codified the operating procedures of the Committee on Standards of Official Conduct. This report will be updated if any other changes occur in the House ethics rules.

Following a well-established practice, the House, when it convened on January 7, 2003, adopted its rules for the 108th Congress.¹ H.Res. 5 provided for the rules of the previous Congress to be the rules of the new Congress, with amendments. This report briefly discusses the substantive changes and interpretation of the conflict of interest and gift rules of the House, which the Committee on Standards of Official Conduct (commonly known as the Ethics Committee) has been mandated to enforce and interpret.

Exemption for Physicians and Dentists. Since the 96th Congress, the House has limited the outside earned income of Members and designated staff. Pursuant to the Ethics Reform Act of 1989 (P.L. 101-194), the House amended its outside earned income rule to prohibit Members and designated staff from practicing a profession that involves a fiduciary relationship, including the practice of medicine and limited outside earned

¹ The resolution agreed to by the House, H.Res. 5, also changed the rules affecting floor proceedings and the committee system in the House. These changes, including the creation of the Select Committee on Homeland Security and the authority granted to committees to postpone votes, are described in CRS Report RS21388, *House Rules Changes Affecting Floor Proceedings in the 108th Congress*, by Elizabeth Rybicki; and CRS Report RS21382, *Committee System Rules Changes in the House, 108th Congress*, by Judy Schneider. The resolution also made other technical, conforming, and grammatical changes to the House Rules.

income for Members, officers, and designated staff. H.Res. 5, 108th Congress, amended Rule XXV, clause 2, to permit Members and senior staff who are medical practitioners to receive from a medical practice annual income up to the amount of the outside earned income limitation, currently \$23,715 per year.²

On December 8, 2003, however, the chairman and ranking member of the House Ethics Committee wrote to the House leadership expressing concern that the amendment in the rules package regarding the practice of medicine “are inconsistent with statutory law on the same subject, and hence do not achieve their intended purpose.”³ The two ethics committee members stated that, absent amendments to the Ethics Reform Act of 1989, which restricts for money the practicing a profession that involves a fiduciary relationship, “House members and senior staff continue to be prohibited from receiving compensation for practicing medicine, or for being employed by or affiliated with a firm, partnership, or other entity that is a medical practice.”⁴

Acceptance of Perishable Food. H.Res. 5 amended Rule XXV, clause 5(a)(1)(B), to allow the value of perishable food sent as a gift to a House office to be deemed a gift to the individuals who receive it and not to the employing Member. This change allows staff to receive meals while working late and to divide the value of meals within an office in order to comply with the gift limit of less than \$50 per gift and \$100 annually from one source. On April 11, 2003, the House Ethics Committee issued guidelines requiring staff to learn the identity of the donor and the dollar value of the perishable food provided and reminding staff not to accept gifts of perishable food from any one source on a repetitive basis even if valued under \$10 and not counted against the annual \$100 limitation.⁵ Further, the committee reminded staff that all gifts of food must be refused if the donor has a direct interest in legislation or other official business on which the staff might working on at the time of the intended gift.

² House Rule XXV, clause 1(a)(1), limits the outside earned income of a Member or senior staff to 15% of the annual rate of basic pay for Level II of the Executive Schedule under 5 U.S.C. 5313, as of Jan. 1 of that calendar year. In 2004, the rate of pay for Level II of the Executive Schedule is \$158,100. The current pay rates for the Executive Schedule are available at the Office of Personnel Management website, [<http://www.opm.gov/oca/04tables/index.asp>]. Also, see Joel Hefley, chairman, and Alan B. Mollohan, ranking minority member, Committee on Standards of Official Conduct, “The 2004 Outside Earned Income Limit, and the Salary Levels at Which the Outside Earned and Employment Limits, the Financial Disclosure Requirement, and the Post-Employment Restrictions Apply in 2004,” Mar. 17, 2004, available at [http://www.house.gov/ethics/m_salary04.htm].

³ Joel Hefley, chairman, and Alan B. Mollohan, ranking minority member, House Committee on Standards of Official Conduct, “Letter on Medical Practice by House Members and Senior Staff,” Dec. 8, 2003, available at [http://www.house.gov/ethics/m_letter_on_medical_practice.htm].

⁴ Ibid. Note that the committee takes the position that Members and staff do not violate the outside earned income provisions when they receive in a calendar year fees or other payments for medical services that do not exceed actual and necessary expenses incurred during the year in connection with the medical practice.

⁵ U.S. Congress, House Committee on Standards of Official Conduct, *Recent Gift Rule Amendments*, Memorandum for All Members, Officers, and Employees, Apr. 11, 2003 [http://www.house.gov/ethics/m_gift_rule_amendments.htm].

Acceptance of Charity-Related Traveling Expenses. Prior to the adoption of H.Res. 5, the House gift rule did not permit Members and House staff to accept travel and lodging expenses for attending charitable events. Members and staff, however, were allowed to accept a sponsor's unsolicited offer of free attendance, including entry fee waiver, local transportation, food, and entertainment. On January 7, 2003, House Rule XXV, clause 5(a)(4)(C), was amended to permit Members and staff to be reimbursed for travel and lodging expenses by a charitable organization in a case where the net proceeds go to a qualified charity and the invitation and reimbursements are from the charitable organization.

On April 11, 2003, the House Ethics Committee issued a memorandum detailing its guidance on this provision.⁶ The committee defined a "charity event" for the purposes of this rule as one with the primary purpose of raising funds for charity. Further, it stated that (1) invitations and expenses to the event may only be accepted from the beneficiary charity and not from that charity if the expenses were from donations earmarked, either formally or informally, for the payment of expenses of congressional participants; (2)

Members or staff can accept only expenses that are reasonably necessary, such as a maximum of two nights lodging and meals only taken at the event in a group setting with all or substantially all of the other attendees, (3) when permissible, Members and staffs may accept may also accept an invitation to be accompanied by either a spouse or a dependent, but not both or any other individual, and (4) under no circumstances should a Member, officer, or employee solicit expenses for free attendance at a charity event.

House Standards of Official Conduct Rules of Procedure. Responsibility for enforcing the House rules of conduct is the duty of the House Ethics Committee. H.Res. 168, adopted in the 105th Congress, amended the internal operating procedures of the committee in 1997.⁷ The resolution was the product of a 10-member Ethics Reform Task Force established earlier in 1997 to review the ethics process in the House. Although the resolution formally lapsed at the end of the 105th Congress, in the 106th and 107th Congresses, the House adopted orders continuing the resolution in force. With the adoption of H.Res. 5, the provisions of H.Res. 168 were codified in the House Rules.

⁶ Ibid.

⁷ "Implementing the Recommendations of the Bipartisan House Ethics Task Force," *Congressional Record*, daily edition, vol. 143 (Sept. 18, 1997), pp. H7544-H7573.