

United States Senate

SELECT COMMITTEE ON ETHICS

Senate Select Committee on Ethics' Regulations and Guidelines for Privately-Sponsored Travel

Introduction

The Honest Leadership and Open Government Act, which was signed into law on September 14, 2007, made significant changes to the Senate Rules governing privately-sponsored travel for Senators and staff members, and gave the Ethics Committee the authority to issue regulations and guidelines to implement these changes. The new law did not affect travel sponsored by federal, state, and local governments or by foreign governments under the Foreign Gifts and Decorations Act or the Mutual Educational and Cultural Exchange Act.

The Committee hereby issues the guidelines and regulations for the new rules on privately-sponsored travel, which supersede any prior Committee guidance, including the Senate Ethics Manual. Please see the glossary for more detailed explanations of the terms and concepts discussed below.

Travel Review Process and Required Public Filings

Because of these new requirements, sponsors of privately-funded travel should begin the invitation process as early as possible. Senate Members, Officers, and employees **must** submit a completed travel package to the Ethics Committee **no later than 30 days prior to the departure dates of a proposed privately-sponsored trip**. These materials must include:

- *A copy of the invitation from the sponsor.*
- *A copy of the signed and completed "Private Sponsor Travel Certification Form" with any attachments.*
- *For Senate employees, a copy of the "Employee Advance Travel Authorization and Disclosure Form" with Part I completed and signed by the employee and the supervising Member or Officer.*

After receiving the complete travel package, the Ethics Committee will review it as quickly as possible, contact the travel sponsor and/or Senate invitee with any additional questions if necessary, and issue a letter to the Senate invitee after the review is complete.

Within 30 Days of returning from the privately-funded travel, the following original documents must be filed with the Office of Public Records in Hart 232:

- Members and Officers must complete, sign and file the *Senators and Officers:*

Disclosure of Travel Expenses form and the completed *Private Sponsor Travel Certification Form* with any attachments.

- Senate Employees must complete and file the signed *Employee Advance Travel Authorization and Disclosure Form* (Parts 1 and 2) and must file the completed *Private Sponsor Travel Certification Form* with any attachments.
- Senate offices should retain copies of all relevant travel forms and documents for their records.

For additional detail regarding the travel review process, please see the Committee's *Privately-Sponsored Travel Checklist* which is available on the Ethics Committee Web site (www.ethics.senate.gov) or can be picked up at the Ethics Committee office in Hart 220.

Privately-Sponsored Travel Must Be Connected To the Senate Invitee's Official Duties

Senate invitees must demonstrate that any proposed privately-sponsored travel relates to their official duties and will not create the appearance that they are using their public office for private gain.

On a case-by-case basis, Members and Senate officers may be required to explain in writing to the Committee how attendance on a given trip relates to their official and representational duties.

Employees must have their supervising Members or Officers certify in advance (on the *Employee Advance Travel Authorization and Disclosure Form*) that the travel relates to the invitees' official duties. The Committee will give this determination great weight and will consider a number of factors in determining whether to approve the travel request, including:

- The Senate invitee's official responsibilities and whether there is an adequate connection between a trip and the official duties of the invitee;
- Whether the trip relates to matters within the legislative or policy interests of the Senate;
- Whether the trip's length and itinerary is consistent with its official purpose;
- The stated mission of the organization(s) sponsoring the trip and whether there is a direct and immediate relationship between a source of funding and an event;
- The organization's prior history of sponsoring congressional trips, if any;
- Other educational activities performed by the organization besides sponsoring congressional trips, if any;
- Whether any trips previously sponsored by the organization led to an investigation by the Ethics Committee;
- Any other factors the Committee deems relevant.

Who May Be a Sponsor of Privately-Funded Travel

Senate invitees may accept necessary travel expenses only from the sponsors of the event or fact-finding trip. A sponsor is any person or entity that contributes funds or in-kind support for the trip. A sponsor must have a significant role in organizing or conducting the travel and must have a specific organizational interest in the purpose of the trip. The following are permissible sponsors:

- *Non-profit organizations that are designated as 501(c)(3) tax-exempt organizations, regardless of whether they retain or employ lobbyists or foreign agents, may sponsor 3-day domestic trips or 7-day foreign trips.*
- *Private entities that neither employ nor retain lobbyists or foreign agents may sponsor 3-day domestic trips or 7-day foreign trips.*
- *Private entities that retain or employ lobbyists or foreign agents are only allowed to sponsor 1-day trips.*

It is important to note that privately-funded travel may NEVER be accepted from, paid for, or reimbursed by lobbyists or foreign agents, even if they are reimbursed later. For the purposes of this prohibition, a lobbyist is someone required to register under the Lobbying Disclosure Act. An organization employing lobbyists (outside or in-house) to represent only the organization's interests would not be considered a lobbyist. For example, Widget Corporation which employs in-house lobbyists to represent only the Widget Company's interest would not be a "lobbyist." But a lobbying firm that provides lobbying services for that firm's clients would be considered a lobbyist. An agent of a foreign principal is someone required to be registered under the Foreign Agents Registration Act.

A sponsor may not accept any funds or in-kind support from a lobbyist or foreign agent that is earmarked directly or indirectly for a trip. Earmarking would include any direction, agreement, or suggestion--formal or informal--to use donated funds, goods, services or other in-kind contributions.

Lobbyist Involvement in Planning and Organizing Privately-Funded Travel

Senate invitees may not participate in trips planned, organized, arranged, or requested by a lobbyist or foreign agent in more than a de minimis way, which means negligible or inconsequential. It would be considered inconsequential for one or more lobbyists to serve on the board of an organization that is sponsoring travel, as long as the lobbyists are not involved in the trip. It is also permissible for a lobbyist to respond to a trip sponsor's request to identify Senate invitees with interest in a particular issue relevant to a planned trip.

However, a lobbyist is not allowed to solicit or initiate communications with a trip sponsor, have control over which Senate employees are invited on a trip, extend or forward an

invitation to a participant, determine the trip itinerary, or be mentioned in the invitation.

Example: A trip sponsor that is a 501(c)(3) non-profit organization asks a lobbyist to recommend staffers who might be most interested in joining a trip to the U.S.-Mexican border. If a lobbyist knows a staffer who has a particular interest in the DEA's activities at the border, then providing that information (in light of the trip sponsor's request), in and of itself, would not exceed a de minimis level of participation, and would be permitted. However, it would not be permissible for the lobbyist to initiate contact with the trip sponsor to suggest that a particular Senate employee be invited or forward an invitation to that staffer.

Time Limits for Privately-Funded Travel

- **Private entities that employ or retain one or more lobbyists or foreign agents MAY sponsor one-day trips with one-overnight stay.**

When calculating one-day attendance, travel time and the overnight stay are not included. For these one-day trips, neither lobbyists nor foreign agents may accompany a Senate invitee on any segment of the trip, which means any parts of the travel to and from the event (not at the event itself or the location being visited).

- **Private entities that employ or retain one or more lobbyists or foreign agents may be allowed to sponsor one-day trips with two-night stays when practically required.**

The Senate invitee must request prior written approval from the Committee for two-overnight stays and must explain satisfactorily why the two night stay is practically required. The Committee will examine these requests on a case-by-case basis and consider the following factors when deciding whether a two-night stay may be practically required:

- Whether the trip destination is outside the contiguous United States, for example, travel to Hawaii or Alaska;
- Whether the travel is across country, for example travel from Washington, DC to San Diego, CA;
- The availability of transportation to or from the location of the one-day event;
- Whether a Senate invitee is participating in a full day's worth of officially-connected activities (without any substantial gaps in the schedule) such that a second night's stay is necessary to accomplish the purpose of the trip; or
- Any other exceptional circumstances described by the Senate invitee in detailed writing prior to the travel which leads the Committee to find that a two-day stay is practically necessary to achieve the purpose of the trip.

Just as above, neither lobbyists nor foreign agents may accompany a Senate invitee on *any segment* of the trip

- **Entities that do not employ or retain lobbyists or foreign agents and all 501(c)(3) non-profit organizations may sponsor domestic trips for up to three days or foreign trips for seven days.**

The Committee has determined that the three-day and seven-day time limitations shall be three or seven 24-hour periods, respectively. For these trips, a lobbyist or foreign agent may not accompany a Senate invitee *at any point throughout the trip*, other than in a *de minimis* way. This means lobbyists may not accompany Senate invitees at any point to and from the event, at the event itself, or at the location being visited. This is a broader prohibition than the *at any segment of a trip* standard.

De Minimis Exception to Lobbyist/Foreign Agent Accompaniment Standards

Both lobbyist “accompaniment” prohibitions above include a *de minimis* exemption. *De minimis* means negligible or inconsequential. The mere coincidental presence of a lobbyist or foreign agent at an event would likely be considered *de minimis*. But in making the final determination, the Committee will consider the totality of the circumstances, including the amount of time lobbyists or foreign agents are present at the event; the amount of direct contact they have with Senate invitees; and the amount of control a trip sponsor has over their presence or contact with Senate guests.

For example, if the trip includes attendance at an event considered widely-attended under Rule 35(1)(c)(18), the trip sponsor is unlikely to know all attendees present. Thus, it is likely to be permissible for such widely-attended events to include both a Senate guest and a lobbyist. Similarly, an organization cannot possibly know all the other passengers taking the same flight or other common carrier to a given destination. Accordingly, the sponsor does not need to certify that it knows for certain that no lobbyist or foreign agent will be on such a common carrier.

Necessary Expenses

Necessary expenses are generally limited to reasonable payments for transportation, lodging, conference fees and materials, food and refreshments, and miscellaneous costs (such as fees for interpreters and visas) necessary for the official purpose of the trip.

Family Travel: Travel expenses for a Senate invitee’s spouse or child (but not both) may be permissible if the family member has received an unsolicited invitation from the event sponsor and the supervising Member determines in writing that the spouse or child’s attendance will assist in representing the Senate.

Transportation: Coach or business class transportation is acceptable. Local

transportation provided during a trip must be reasonable and customary for the location--and not related to personal or recreational activities.

First-class travel is generally not permitted except when written prior approval is granted due to exceptional circumstances. Such circumstances could include a disability or security concern, a flight longer than 14 hours, a cost that doesn't exceed business class fare, or travelers using their own frequent flier benefits to upgrade.

Lodging and Food: When possible, the Committee will look to see whether the expenses are generally comparable to the maximum per diem rates for official Federal Government travel published annually by the General Services Administration, the Department of State, and the Department of Defense. However, certain circumstances—such as, for example, when the event was planned without regard to Congressional participation—could legitimately require lodging and meal expenses that exceed the federal government per diem rates.

Prohibited Expenses: Necessary expenses do not include:

Alcoholic beverages

- Private or charter aircraft
- Recreational activities
- Personal expenses such as telephone calls
- Entertainment unless it is provided to all attendees as an integral part of the event.
- First class transportation without prior written approval by Ethics Committee.

Factors to Determine the Reasonableness of Expenses

The Ethics Committee will give weight to the determination made by a Senator or Officer that the proposed travel will not create the appearance of a Senate invitee using a public office for private gain and will assume that this determination was made after concluding that the expenses are necessary and reasonable. The Ethics Committee will also consider the following factors:

- Whether the trip's length and itinerary is consistent with its official purpose;
- The reasonableness of a sponsor's expenditures for the entire trip and any portion of it;
- Whether the expenditures are consistent with maximum per diem rates for lodging and meals for official Federal Government travel and, if they exceed those rates, whether the specific circumstances legitimately require lodging and meal expenses that exceed these rates;
- Any other factors deemed relevant by the Select Committee on Ethics.