

INVITING MEMBERS OF CONGRESS TO PERFORMANCES & EVENTS:

Inviting members of Congress to see your performing arts programs in action is often the best way to inform them of the public benefits of federal support for the arts.

Recently, as part of an ethics reform movement afoot on the Hill, Congress has adopted new rules for accepting “gifts.” Since an invitation to a performance and other items you offer an elected official might be considered a gift, it is important to know what is allowable.

Keep in mind, most states also have their own rules for giving gifts to elected officials at the state level. This guide covers the rules only for your elected officials in the U.S. House and Senate and members of their staffs.

How the rules apply in practice depends on the facts in a particular situation. This summary provides a general overview of the rules. You may wish to consult an elected official’s office, the relevant ethics committees, or legal counsel before undertaking activity that may be subject to the rules.

Learn the rules, and make the most out of opportunities for policy makers to participate in your performances and events.

GENERAL RULES

The general rule is that you as an individual or your organization may make individual gifts of up to \$49.99 in value to an elected official or their staff, up to a total of \$99.99 in value per year.

There are several exceptions to this rule, which may permit you to invite elected officials to your events, without counting against the gift limits.

Note that when an individual who is affiliated with an organization gives a gift to an elected official or their staff, the gift counts against the annual gift limit for both the individual and his or her organization.

Timing counts. When several permissible gifts worth less than \$50 are given simultaneously to the same individual by the same donor, the “gift” is considered to be the aggregate total of all the individual items.

Note that the gift must not come at the request of the Member of Congress or their staff – it must be unsolicited. Also, the invitation to an event or performance must, in most cases, come directly from your nonprofit performing arts organization, rather than a sponsor or other source.

If a gift has a value of less than \$10, it does not count against the annual limit.

Each House and Senate office may have their own gift policies. When offering an item to an elected official or staff, be prepared that they may decline the offer, even if the House and Senate rules allow them to accept it.

Are You a Registered Lobbyist, or Does Your Organization Retain a Registered Lobbyist?

If so?

You or your organization, generally, may not make any gift to a Member of Congress or their staff, regardless of whether its value is under \$50. However, the exceptions that apply to the gift rule also

apply to the prohibition on gifts from organizations that retain registered lobbyists, as noted in the following scenarios.

INVITATIONS TO A PERFORMANCE

There are important exceptions that allow elected officials and their staff to attend performances:

If the performance is supported by a **federal grant**, elected officials and their staff may be permitted to attend ticketed performances to see how the federal grant is being used and to learn more about the public benefit of the grant.

If the elected official and/or their staff are attending a performance that is a **widely attended event** **and** the event is related to their **official duties**, it is permissible to attend the event without charge and without the performance counting as a gift, if their attendance is related to the official's or employee's official duties.

What is "widely attended?"

- The event must be open to individuals from throughout a profession or industry, or attendees must represent a range of people interested in the subject matter;
- At least 25 people, other than elected officials and their staff, must be expected to attend; and
- The invitation must be provided by the performing arts organization hosting the event.

What are considered "official duties?"

- The event may not be merely for entertainment or pleasure.
- In the case of staff, consider the role they play in their office. If, for instance, they are responsible for policies related to the arts, the nonprofit sector, and/or education, they may well qualify to attend.
- The House offers the following hypothetical example of an acceptable invitation in which an elected official is attending with "official duties:"

A new concert hall opens in the district of a member of Congress, and the orchestra that performs there invites the members of Congress to the opening concert. At the performance, the member of Congress is seated in a place of honor, and recognized for helping to make the new concert hall a reality.

This exception applies even for organizations that retain a registered lobbyist.

If the Performance Does Not Meet these Exceptions...

The House rules very clearly state that a regular performance by a 501(c)(3) organization does not, in itself, qualify as exempt from the gift rules. So, if your organization offers free attendance at a performance, and the event is not widely attended, or the elected official and staff are not performing official duties, you may still offer a ticket – however, you must consider whether the value of the ticket exceeds the \$49.99 gift limit, and whether your offer, when combined with other offers made within a year, will exceed the total annual limitation of \$99.99.

INVITATIONS TO A RECEPTION OR DINNER THAT IS ALSO A FUNDRAISER

House Rules:

The invitation to a charity fundraising event is **not** considered a gift if:

- The primary purpose of the event is to raise funds for an organization that is qualified to receive tax deductible contributions, and
- The performing arts organization itself (not another source, such as a corporate sponsor) extends the invitation.

If the event qualifies, the Member and their staff may also be able to accept reimbursement for travel and lodging, provided that all of the event's proceeds are for the benefit of the 501(c)(3) and the charitable organization itself both makes the offer of free attendance and pays for the reimbursement.

Senate Rules:

The Senate rules for attending fundraisers are similar to the House rules. However, the Senate ethics guidance does not specify what types of charities fall within the exception, or include the House requirement, noted above, that the "primary purpose" of a charitable fundraiser be to raise funds for an organization that is qualified to receive tax deductible contributions.

INVITATIONS TO A RECEPTION OR DINNER THAT IS NOT A FUNDRAISER

An elected official or staff member may also accept free attendance at a reception or dinner that is not a charity fundraiser and would otherwise be prohibited by the gift rule's \$50 limit in one of several situations.

Receptions: A Member or staffer may accept food or refreshments of "nominal value" that are not part of a meal, regardless of the source of the invitation or the number of attendees. This is generally construed to mean appetizers, beverages, etc.

Dinners: A Member or staffer may accept free attendance at a dinner if it meets the criteria of a "widely attended event," as described above.

- The event must be open to individuals from throughout a profession or industry, or attendees must represent a range of people interested in the subject matter;
- At least 25 people, other than elected officials and their staff, must be expected to attend; and
- The invitation must be provided by the performing arts organization hosting the event.

However, note that elected officials and staff members may not accept food or refreshments with a small group of people, such as VIPs, that does not include most of the other attendees of an event. So, for instance, elected officials and their staff may not attend special non-fundraiser receptions or dinners attached to a performance, unless most other attendees of the performance are also invited to attend.

TOURS OF A FACILITY

Under certain circumstances, it may be permissible for an elected official or staff member to be invited to receive a tour of an arts organization's facilities to become more educated on the art form being presented.

The first question to ask is, “Does your tour have a monetary value?”

If your organization regularly provides tours to the public, free of charge, a tour may not be subject to Congressional gift rules.

However, if your organization typically charges for tours, and/or they are provided only to donors contributing at a certain level, the tour likely has a monetary value, and is subject to the gift rules. (Meaning the tour must not have a value of \$50 or more and, when combined with gifts made on other occasions, must not bump your organization past the annual \$99.99 total gift limitation.)

Exceptions:

Note that if your performing arts organization charges for a tour, but it is a **“widely attended”** event – open to a range of people and attended by 25 or more people (who are not elected officials) – the tour may not be subject to the gift rules.

House: Even if the tour is not “widely attended” by 25 people or more, the House provides an exception if an event is **regularly scheduled**, open to a range of people, and the member of Congress or staff is attending as part of their official duties. In addition, an event may qualify for an exception as an **“educational event”** if it is 1) educational, and 2) sponsored by a non-profit or non-advocacy organization. So, it is possible that a tour that is scheduled to take place on a regular basis need not be attended by 25 people in order to be attended by a member of the House or their staff.

Senate: Even if the tour is not “widely attended” by 25 people or more, the Senate provides an exception to the gift rule for **“constituent events.”** Under this exception, Senators and their staff may accept free attendance at certain events in their home state if they are 1) sponsored primarily by constituents, 2) attended by at least five constituents, 3) there are no registered lobbyists in attendance, 4) the event does not serve a meal that costs \$50 or more, and 5) the event otherwise complies with the requirements of widely attended events and the Senator or staff participates in the event by presenting information about his or her official duties.

FREE USE OF SPACE

Occasionally, an elected official already holding office will use a performing arts organization’s space to host an event in his or her official capacity. It is permissible to offer the use of space free of charge if:

- Your organization has a **pre-existing policy** in place allowing such use of space, and
- Your organization **offers free use of space to other groups** who request to use it.

Note: This only applies to elected officials already holding office. Separate rules apply to individuals seeking elected office.

BOOKS, DVDS, AND CDS

“Informational materials,” such as books, DVDs, and CDs may be distributed to elected officials without counting against the gift limits, as long as they meet the following criteria:

- The items must be sent to the elected official’s or staff member’s office location, or distributed at an event. They may not be sent to an individual’s home address.

- Under the Senate rules, the material must be provided by the publisher, author, performer, or producer.

This exception applies even for organizations that retain a registered lobbyist.

OTHER PERMISSIBLE GIFTS

- **Artwork.** Elected officials may accept a loan of artwork from his or her home state, for the purpose of displaying it in his or her office.
- **Commemorative gifts.** An elected official or employee may accept a plaque, trophy, or other item that is commemorative in nature and which is intended for presentation.
- **Items of little intrinsic value.** In addition to the gift rule exceptions for items valued at less than \$10, there is an exception for gifts of little intrinsic value. This includes certain specific items with a “reasonable value” (i.e. baseball caps, T-shirts, and greeting cards), even if more than \$10.
- **Awards.** Elected officials and staff may accept nonmonetary awards presented in recognition of public service. The factors that will be considered in determining whether an award is allowable include the nature of the awarding organization, whether the award is made as part of an established program and has been made on a regular basis, whether in the past non-congressional individuals have received the award, and whether there are specific, written criteria for the selection of awardees.
- **Home state products.** An elected official may accept a gift of a product from his or her district or home state that is intended for promotional purposes, such as display or free distribution, and is of minimal value to any single recipient. This exception applies only to tangible items. Gifts intended to be given away by the Member must be made available to visitors to the Member’s office, not just other Members and staff. Gifts intended for display must be placed in the reception area of the Member’s office. The provision does not apply to tickets to a performance.