

*Guidance
on National
Party
Convention
Events Issued
by House
Committee
on Standards
of Official
Conduct and
Senate Select
Committee on
Ethics*

On December 11, 2007, the House Committee on Standards of Official Conduct issued an advisory memorandum construing the provision of the Honest Leadership and Open Government Act of 2007 (HLOGA), that limits House Members' and Senators' ability to "participate" in an event during the actual days of a national Presidential nominating convention that is "directly paid for by" a registered lobbyist or an entity that employs or retains such a registered lobbyist, that honors the House Member, except in the House Member's capacity as a candidate for President or Vice President.

Then, on February 4, 2008, the Senate Select Committee on Ethics issued its own guidance on a very similar HLOGA provision applying to Senators' participation in such events, except to the extent the Senator is honored as his or her party's Presidential or Vice Presidential nominee (as opposed to being a candidate, which is the House formulation).

The House and Senate guidance documents differ in several respects, complicating planning for those who would want to sponsor such an event under these new rules.

The House Ethics Committee's guidance states that, under HLOGA, a "specific Member" may not be honored at such an event in his or her own right; however, the House guidance permits the honoring of a congressional "delegation or caucus, without naming any specific Member of the delegation or caucus, or providing any special benefit or opportunity to a particular Member..." There is no numerical limit on the size of the delegation or caucus participating in the event.

By contrast, the Senate does not permit a "group composed solely of Members of Congress" to be thus honored, and instead only permits "Republican [or Democratic] officials" or "delegates" from a particular state(s) to be honored.

While the House guidance appears more forgiving, it is stricter than the Senate guidance in at least one other respect. First, the Senate permits a Senator to be a "featured speaker" at such an event, even if it is honoring a more diffuse group. In contrast, the House has opined that a Member would receive an impermissible "special benefit or opportunity that would not be available to some or all of the other participants, such as if the sponsor were to offer the Member an exclusive speaking role or a very prominent ceremonial role." While a "featured speaker" (the Senate's term) may differ from "an exclusive speaking role" (the House's term), the detail that the House provides in terms of "special benefits or opportunities" should be considered when planning an event.

The House and Senate also differ with respect to the limits on non-lobbying entities' ability to sponsor such events in conjunction with a lobbying entity. For instance, the House reads HLOGA's requirement that a lobbyist may not "directly" pay for an event very literally, and states that "[t]he fact that a private organization received some of its funding for an event taking place during a national convention from a lobbyist or private entity that employs or retains a lobbyist, by itself, would not disqualify a Member from participating in the organization's event."

In contrast, the Senate explains that HLOGA’s term “directly paid for” should include the situation where a “lobbyist or entity donates money to a non-lobbyist entity (*e.g.*, the host committee, a non-profit, etc.) and earmarks the funds to be spent in connection with an event honoring the Member.” Again, a direct earmark may include a different universe of situations than those where an organizing entity merely received some of its event funds from a lobbying entity, but this point of difference remains.

Finally, while the Senate’s guidance was relatively terse, the House guidance took the opportunity to explain that HLOGA did not create a “new exception” to the gift rule for events at a convention that met the standards set forth above, but rather that the event would still have to meet the gift rule exceptions for events (such as the “widely attended event” exception, a charity event, a permissible fundraising event, or an otherwise allowable “reception”) to be able to include House members and provide them with food, drink, and other items of value.

In conclusion, events will have to be planned carefully, and practically, to navigate between the differences of the House and Senate guidance.

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FOR MORE INFORMATION

For additional information, please contact:

David E. Frulla, Partner
dfrulla@kelleydrye.com
202.342.8648

Robert R. Cohen, Special Counsel
rcohen@kelleydrye.com
202.342.8890