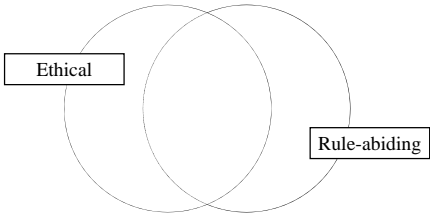
	
<p>Government Ethics Rules How Organizations Can Comply</p>	
<p>October 16, 2012</p>	<p>www.mcguires.com</p>

	<p>Logic Game</p>
<p>A. Ethical behavior</p> <p>B. Rule-abiding behavior</p> <p>If A then B? Not all A is B. Not all B is A.</p> <p style="text-align: right;"><small>McGuireWoods LLP 1</small></p>	

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Lesson from Logic Game

Lesson: The Rules are Not Intuitive

- To abide by the rules, it is not enough to be ethical
- You cannot rely on your usual "moral sense"

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Real Life Example – the rules are not intuitive

To: Davidson, C. Simon
Subject: Roll Call - Ethics question

Mr. Davidson:

I am a Chief of Staff for a House Member of Congress. My son, who is a second grader has been invited to a birthday party for a classmate. The child who's birthday it is father is a registered lobbyist. The party is at Ultrazone (a laser tag place) and they will have pizza, cake and ice cream. The laser tag costs about \$30 per child. Given that the new gift rules apply to family members - can my child attend?

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Lesson: The rules are not intuitive:

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Know the rules

- the rules require deliberate attention

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Develop an ethics radar

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Three Areas to Consider

- 1) Congressional Gift Rules
- 2) Executive Branch Gift Rules
- 3) State Gift Rules

Focus today: Congressional Gift Rules

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The Four Obligations of The Honest Leadership and Open Government Act:

- 1) *Certify* you have *read* the gift rules
- 2) *Certify* you are *familiar with* the gift rules
- 3) *Certify* you have *complied* with the gift rules
- 4) *Comply with* the gift rules

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Certify that you have **read** and are **familiar with** the gift rules:
Registrant "has read and is familiar with those provisions of the Standing Rules of the Senate and the Rules of the House of Representatives relating to the provision of gifts and travel."
2 U.S.C. § 1604(d)(1)(G)(i)

Certify that you have **complied** with the gift rules:
Registrant "has not provided, requested, or directed a gift, including travel, to a Member of Congress or an officer or employee of either House of Congress with knowledge that receipt of the gift would violate rule XXXV of the Standing Rules of Senate or rule XXV of the Rules of the House of Representatives."
2 U.S.C. § 1604(d)(1)(G)(ii)

Independent obligation to comply with the gift rules:
Registrants "may not make a gift or provide travel to a covered legislative branch official if the person has knowledge that the gift or travel may not be accepted by that covered legislative branch official under the Rules of the House of Representatives or the Standing Rules of the Senate (as the case may be)."
2 USCS § 1613

Maximum Penalties:

Civil: \$200,000 for knowing violations

Criminal: 5 years in jail for knowing and corrupt violations

2 U.S.C. § 1606

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So, what is the gift rule?

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The Gift Rule

A Member, officer, or employee may not knowingly accept a gift from a registered lobbyist or a private entity that retains or employs a registered lobbyist unless it meets an exception.

Senate Rule XXXV, Clause 1. (a)(2)(B); House Rule XXV, Clause 5 (a)(1)(A)(ii)

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The Gift Rule (restated)

No gifts.

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- Unlike the bribery statute, gift rule violations can occur even when the donor expects nothing in return.

Ask four questions:

- 1) Is it a *Gift*?
- 2) Is it from a *Prohibited Source*?
- 3) Is it to a *Prohibited Recipient*?
- 4) Does it meet an *Exception*?

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First Question: Is it a **Gift**?

Any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value . . . whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

Senate Rule Rule XXXV, Clause 1. (b)(1); House Rule XXV, Clause 5(a)(2)(A)

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First Question: Is it a Gift?

A Senate staffer goes to a department store to purchase a ring for his wife. The official finds a ring that he likes but is concerned about the price. Sensing this, the salesperson offers the staffer an additional 20% discount off the sale price. The staffer accepts. Has the staffer received a gift?

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Second Question: Is it from a **Prohibited Source**?

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\$200,000 Question: When is a gift *from* a business?

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Second Question: Is it from a **Prohibited Source**?

A company copy clerk goes to dinner with an employee of a federal agency. The copy clerk offers to pick up the \$25 dinner tab. Is this gift "from" the company?

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Third Question: Is it to a **Prohibited Recipient**?

Direct Recipients

- Members and staff of the House and Senate
- Consultants who are under contract for the House

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Indirect Recipients

Family members and **any other individual** if:

- (1) Member or staff person has knowledge of gift; *and*
- (2) Member or staff has reason to believe the gift was given because of Congressional position

Senate XXXV, Clause 1, (b)(2)(A); House Rule XXV, Clause 5 (a)(2)(B)(i)

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Fourth Question: Does it meet an **Exception**?

General Guidelines Regarding Exceptions:

- Gift Rules are not like the tax code
- Gift Rules require compliance with spirit as well as letter of rules
- Aim for compliance, not for loopholes

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What are the risks, and how can I comply?

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Two purposes of Compliance Tools:

- 1) Minimize the risk of violations
- 2) Demonstrate compliance efforts

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To maximize compliance, assume that you will face a government investigation.

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Return to the Four HLOGA Obligations:

- 1) **Certify** you have **read** the gift rules
- 2) **Certify** you are **familiar with** the gift rules
- 3) **Certify** you have **complied** with the gift rules
- 4) **Comply with** the gift rules

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1) Certify your organization has **read** the rules:

LD-203 Certification:

"I certify that I have read and am familiar with the provisions of the Standing Rules of the Senate and the Standing rules of the House of Representatives relating to the provision of gifts and travel. I have not provided, requested or directed a gift . . . with knowledge that receipt of the gift would violate" the rules.

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1) Certify your organization has **read** the rules:

Investigator's questions:

- Before certifying, what did you do to confirm it was true?
- What did you mean that your organization read the rules?
- Who at your organization read the rules?
- How do you know?

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1) **Certify** your organization has **read** the rules:

- Identify employees who should read the rules
- Provide employees with **updated** copies of the rules and instruct them to read the rules
- Obtain certifications from the employees that they have read the rules

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1) **Certify** your organization has **read** the rules:

Identifying which employees should read the rules:

- E-mail from Senate Secretary's office: "The individual who signs obviously must read - but it is also obvious that the individuals within the organization who deal with all aspects of the Federal government need to do so also."
- House Clerk's office: at a minimum, all employees in Government Affairs department

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2) **Certify** your organization is **familiar with** the rules:

Investigator's questions:

- What did you mean that your organization is familiar with the rules?
- Who at your company is familiar with the rules?
- How do you know?
- Before certifying, what did you do to confirm it was true?

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2) Certify your organization is *familiar with* the rules

- Identify employees to be familiar with the rules
- Obtain periodic certifications from employees
- Training and Guidance

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3) Certify compliance and **4) Comply** with the rules

Examples of risks:

- Inadvertent gifts from non-lobbyist employees
- Sales and services to Congressional employees
- T&E Reimbursements

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3) Certify compliance and **4) Comply** with the rules

Risk: Inadvertent gifts

Tool: Have a Policy

- Implement a formal internal policy
- Communicate the policy to employees
- Obtain certifications of compliance with policy
- Audit compliance

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3) Certify compliance and **4) Comply** with the rules

Risk: T&E Reimbursements

Tools:

- Certifications when seeking reimbursements
- Audit reimbursements

Example:
I certify that no Congressional employee has benefited from any of the expenses for which I seek reimbursement.

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3) Certify compliance and **4) Comply** with the rules

Risk: Sales to Congressional Employees

Tools:

- Create, communicate, and follow a sales policy
- Train and educate your sales force
- Provide standard discount for government employees?
- Audit compliance

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