

## APPENDIX I

# U.S. House of Representatives

COMMITTEE ON ETHICS  
Washington, DC 20515

January 25, 2011

## MEMORANDUM FOR ALL MEMBERS, COMMITTEES, AND EMPLOYEES

FROM: Committee on Ethics

Jo Bonner, Chairman

Zoe Lofgren, Ranking Member



SUBJECT: New Employee Mandatory Ethics Training within 60 Days

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The Committee on Ethics (formerly the Committee on Standards of Official Conduct) is required to provide annual ethics training to each officer and employee of the House. All new employees must complete an initial training session *within 60 days of commencing House employment*. The Committee encourages all new employees who have not yet completed their new employee ethics training requirement to complete the required training soon.

### Who is a "new" employee?

Any former House employee who returns to House employment after a gap of more than 90 consecutive calendar days is considered to be a "new" employee. Interns paid by the House for more than 60 days also must comply with this requirement (unpaid interns are not required to take the training).

New employees who *work in the Capitol Hill offices* must attend a *live* ethics training briefing. New employees who are *district staff* may watch the *online* training for new district staff. New employees will *not* receive credit for attending or watching any training sessions other than training sessions specifically designated for "New Employees" or "New District Staff."

### When can I attend a live training session?

The next New Employee Training sessions are scheduled for *January 26 and February 1, 2011, at 10:00 a.m.* in the CVC Auditorium. Dates and times for additional sessions will be posted and updated on the Committee's Web site, <http://ethics.house.gov>.

### You must preregister online

*Online preregistration is required for all ethics training.* All employees must preregister online by entering their active directory (AD) username and password into the appropriate system for either the *live* or *online* ethics training. The AD username and password are the same username and password that employees use to access their desktop computers. The online registration process will allow employees to receive an electronic confirmation that they have completed their annual ethics training requirement, for their own records.

*For live ethics training:* Employees must preregister at <http://registerme.house.gov/> and they must sign-in on the attendance form prior to the start of the training. Even if employees preregister, they must sign-in and attend the full hour to fulfill their ethics training requirement. Any late arrivals who miss the sign-in period will not receive credit. After their attendance, employees will receive email confirmation that they have completed their required annual ethics training.

The calendar of upcoming live training sessions for 2011 is available on the Ethics Committee's Web site, <http://ethics.house.gov>.

*For online ethics training:* Employees must preregister at HouseConnect: <http://houseconnect.house.gov>. Employees must complete the entire online training program to receive credit. After completing an online training program, the system will automatically log the employee as "complete." This information is automatically transmitted to the Committee. Thus, once the system labels an employee as "complete" the employee has satisfied the annual training requirement. Employees will be able to check HouseConnect at any time to verify completion of their annual ethics training requirement.

### **Where can I go with questions?**

If you have any questions regarding training requirements, please call the Committee at 5-7103 or stop by the Committee office in 1015 Longworth.

# U.S. House of Representatives

COMMITTEE ON ETHICS  
Washington, DC 20515

February 5, 2011

## MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

**FROM:** House Committee on Ethics  
Jo Bonner, Chairman JB  
Linda T. Sánchez, Ranking Member LTS

**SUBJECT:** The 2011 Outside Earned Income Limit and Salaries Triggering the Financial Disclosure Requirement and Post-Employment Restrictions Applicable to House Officers and Employees

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A House employee's salary level may trigger certain public disclosure requirements and employment restrictions, including the:

1. Requirement to file financial disclosure (FD) statements;
2. Restrictions on outside employment; and
3. Post-employment restrictions.

This memorandum provides the triggering salary figures for calendar year (CY) 2011 for each of the categories noted above.

### FINANCIAL DISCLOSURE

House officers and employees whose "rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule" for at least 60 days at any time during a calendar year are required to file FD statements, provided that the officer or employee "performs the duties of his [or her] position or office for a period in excess of sixty days in that calendar year."<sup>1</sup> The GS-15, step 1, basic pay rate for CY 2011 is \$99,628. The applicable 120% calculation for that rate for CY 2011 is **\$119,553.60**.<sup>2</sup>

As a result, House officers and employees whose basic rate of pay is equal to or greater than the senior staff rate (\$119,553.60 for CY 2011) for at least **60 days**<sup>3</sup> during **2011** must file

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<sup>1</sup> Ethics in Government Act (EIGA) §§ 109(13) and 101(d), 5 U.S.C. app. 4 §§ 109(13) and 101(d) (hereinafter all citations to the EIGA will be to the appropriate federal code citation). In addition, all House Members are required to file FD statements. 5 U.S.C. app. 4 §§ 101(e) and (f). Congressional candidates are required to file FD statements in most circumstances. 5 U.S.C. app. 4 § 101(c). This memorandum addresses requirements and restrictions applicable to House officers and employees.

<sup>2</sup> This amount is referred to as the "senior staff rate."

<sup>3</sup> The House payroll department operates on a 30-day payroll cycle, meaning that each monthly pay period, regardless of its actual length, is counted as 30 days. Thus, a change to an employee's base rate of pay in any two months during the calendar year (even non-consecutive months) may trigger the requirement to file a Financial Disclosure Statement.

an FD statement on or before May 15, 2012.<sup>4</sup> In addition, any new employee paid at the senior staff rate must file a "new employee" FD statement within 30 days of assuming employment with the House.<sup>5</sup>

Please note that the requirement to file an FD statement covering calendar year 2010 applies to officers and employees whose basic rate of pay for at least 60 days in 2010 was also **\$119,553.60** or more. Annual FD statements for CY 2010 are due on Monday, May 16, 2011, for those individuals who continue to be officers or employees of the House on that date.<sup>6</sup>

In addition, House officers and employees paid at or above the senior staff rate for 60 days or more in a calendar year who terminate their House employment during that calendar year are required to file an FD statement within 30 days of their termination.<sup>7</sup>

### THE OUTSIDE EARNED INCOME LIMIT AND OUTSIDE EMPLOYMENT RESTRICTIONS

House officers and employees whose rate of basic pay is equal to or greater than the senior staff rate for **more than 90 days** are subject to limits on the amount of outside earned income<sup>8</sup> attributable to each calendar year.<sup>9</sup> As noted above, the senior staff rate for CY 2011 is **\$119,553.60**.

The limit on outside earned income attributable to a calendar year is 15% of the rate of basic pay for Executive Schedule Level II in effect on January 1 of the year. The rate of basic pay for Executive Level II on that date was \$179,700. Accordingly, the outside earned income limit for House officers and employees paid at or above the senior staff rate for CY 2011 is **\$26,955**.<sup>10</sup>

House officers and employees<sup>11</sup> paid at or above the senior staff rate for more than 90 days are also subject to a number of specific limitations on the types of outside employment.<sup>12</sup>

<sup>4</sup> 5 U.S.C. app. 4 §§ 101(c) and 109(f).

<sup>5</sup> See 5 U.S.C. app. 4 § 101(a). The only exception to this filing requirement is for new employees who assume employment with the House within 30 days of leaving a position with the federal government in which they filed a publicly-available financial disclosure statement. Individuals who are exempt from filing under these circumstances must notify the Clerk of the House in writing of that fact.

<sup>6</sup> Because May 15 falls on a Sunday in 2011, the due date for FD statements is the next business day, May 16, 2011.

<sup>7</sup> See 5 U.S.C. app. 4 § 101(e). The only exception is for filers who, within 30 days of their termination from the House, accept a position with the federal government that requires the filing of a publicly-available financial disclosure statement. Departing employees who are exempt from filing under these circumstances must notify the Clerk of the House in writing of that fact.

<sup>8</sup> The term "outside earned income" means any "wages, salaries, fees, and other amounts received or to be received as compensation for personal services actually rendered" by a House Member, officer, or employee. House Rule 25, cl. 4(d)(1). It does not include the individual's salary from the House, nor does it include income for services rendered before the individual was employed by the House. *Id.* at cls. 4(d)(1)(A), (B).

<sup>9</sup> 5 U.S.C. app. 4 § 501(a)(1); House Rule 25, cls. 1(a)(1) and 4(a)(1).

<sup>10</sup> The outside earned income limit amount applies to Members as well. This amount is proportionally reduced when an individual becomes a Member, officer, or senior employee during the calendar year. For example, an individual who is hired into a senior staff position on July 1 has an outside earned income limit for that calendar year that is one-half of the full amount, or \$13,478. See 5 U.S.C. app. 4 § 501(a)(2); House Rule 25, cl. 1(b).

<sup>11</sup> Members are also subject to these restrictions.

Detailed information regarding these limitations may be found on pages 213 to 238 of the *2008 House Ethics Manual*, which is available on the Committee's Web site ([ethics.house.gov](http://ethics.house.gov)). The Committee's Office of Advice and Education (extension 5-7103) is available to explain these limitations further.

**POST-EMPLOYMENT RESTRICTIONS**

House Members and officers, as well as certain other House employees, are subject to post-employment restrictions on lobbying.<sup>13</sup> A former employee of a Member, committee, or leadership office is subject to the restrictions if, for at least **60 days** during the one-year period preceding termination of House employment, the employee was paid at a rate equal to or greater than 75% of the basic rate of pay for Members at the time of termination.<sup>14</sup> The basic rate of pay for Members in 2011 is \$174,000. Therefore, the post-employment threshold for employees who depart from a job in a Member, committee, or leadership office during 2011 is **\$130,500**. The triggering salary for employees of other House or legislative branch offices (such as the CBO, GAO, GPO, Capitol Police, Library of Congress, Clerk, Parliamentarian, Office of Legal Counsel, and Chief Administrative Officer) is Executive Schedule Level IV, which for 2011 is \$155,500.

Information on the post-employment restrictions applicable to Members, officers, and very senior staff is available in two Committee advisory memoranda, one for Members and one for officers and staff. Copies of both memoranda are available on the Committee's Web site ([ethics.house.gov](http://ethics.house.gov)).

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**CALENDAR YEAR 2011**

**OUTSIDE EARNED INCOME AND**

**OUTSIDE EMPLOYMENT THRESHOLD**

(for more than 90 days).....\$119,553.60

**OUTSIDE EARNED INCOME LIMIT**.....\$26,955.00

**FINANCIAL DISCLOSURE THRESHOLD**

(for 60 days or more) .....\$119,553.60

**POST-EMPLOYMENT THRESHOLD**

For employees of Member, committee, or leadership offices .....\$130,500.00

For employees of "other legislative offices" .....\$155,500.00

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<sup>12</sup> See 5 U.S.C. app. 4 § 502(a); House Rule 25, cls. 1-4.

<sup>13</sup> 18 U.S.C. § 207.

<sup>14</sup> This amount is referred to as the "very senior staff rate."

JO BONNER, ALABAMA  
CHAIRMAN

MICHAEL T. McCAUL, TEXAS  
K. MICHAEL CONAWAY, TEXAS  
CHARLES W. DENT, PENNSYLVANIA  
GREGG HARPER, MISSISSIPPI

KELLE A. STRICKLAND,  
COUNSEL TO THE CHAIRMAN

ONE HUNDRED TWELFTH CONGRESS

## U.S. House of Representatives

COMMITTEE ON ETHICS

Washington, DC 20515-6328

LINDA T. SÁNCHEZ, CALIFORNIA  
RANKING MEMBER

MAZIE K. HIRONO, HAWAII  
JOHN A. YARMUTH, KENTUCKY  
DONNA F. EDWARDS, MARYLAND  
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DANIEL J. TAYLOR,  
COUNSEL TO THE RANKING MEMBER

1015 LONGWORTH HOUSE OFFICE BUILDING  
(202) 225-7103

**TO:** Members, Officers, and Employees of the U.S. House of Representatives and Related Offices

**FROM:** Committee on Ethics  
Jo Bonner, Chairman   
Linda T. Sánchez, Ranking Member 

**SUBJECT:** Calendar Year 2010 Financial Disclosure Statements

**DATE:** April 6, 2011

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### Who Must File

The Ethics in Government Act requires Members, officers, and certain employees of the U.S. House of Representatives and related offices to file annual Financial Disclosure Statements (FD) with the Clerk of the House. House officers and employees whose “rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule” for at least 60 days at any time during a calendar year are required to file FD statements, provided that the officer or employee “performs the duties of his [or her] position or office for a period in excess of sixty days in that calendar year.”<sup>1</sup> The GS-15, step 1, basic pay rate for CY 2010 was \$99,628. The applicable 120% calculation for that rate for CY 2010 is **\$119,553.60**.<sup>2</sup>

As a result, House officers and employees whose basic rate of pay was equal to or greater than the senior staff rate (\$119,553.60 for CY 2010) for at least **60 days**<sup>3</sup> during **2010** must file an annual Financial Disclosure statement. If you are required to file this form, you will receive a packet of filing materials from the Clerk. If you believe you were sent a packet in error, please contact the Committee at (202) 225-7103.

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<sup>1</sup> Ethics in Government Act (EIGA) §§ 109(13) and 101(d), 5 U.S.C. app. 4 §§ 109(13) and 101(d) (hereinafter all citations to the EIGA will be to the appropriate federal code citation). In addition, all House Members are required to file FD statements. 5 U.S.C. app. 4 §§ 101(e) and (f). Congressional candidates are required to file FD statements in most circumstances. 5 U.S.C. app. 4 § 101(c). This memorandum addresses requirements and restrictions applicable to House officers and employees.

<sup>2</sup> This amount is referred to as the “senior staff rate.”

<sup>3</sup> The House payroll department operates on a 30-day payroll cycle, meaning that each monthly pay period, regardless of its actual length, is counted as 30 days. Thus, a change to an employee’s base rate of pay in any two months during the calendar year (even non-consecutive months) may trigger the requirement to file a Financial Disclosure Statement.

## Filing Deadline

The filing deadline for annual Financial Disclosure statements is **Monday, May 16, 2011.**<sup>4</sup> The Committee may grant extensions of the filing deadline not to exceed 90 days for filing a FD statement. Extension requests must be made using the form available on the Committee's Web site at <http://ethics.house.gov>. You may fax your request to (202) 225-3713. Members do not need to pre-register.

## Training

Committee staff will be conducting live training sessions regarding completion of the annual Financial Disclosure Statement in April for Members and staff. This training fulfills the additional one-hour training requirement for senior staff. The training dates are:

Who	Date	Time	Location
Senior Staff	Friday, April 8	10:00 a.m.	CVC Auditorium
Democratic Members	Wednesday, April 13	2:00 p.m.	1015 Longworth
Republican Members	Wednesday, April 13	4:00 p.m.	202A Cannon
Democratic Members	Thursday, April 14	1:00 p.m.	1015 Longworth
Republican Members	Thursday, April 14	3:00 p.m.	202A Cannon
Senior Staff	Wednesday, April 20	10:00 a.m.	CVC Auditorium
Senior Staff	Friday, April 29	10:00 a.m.	CVC Auditorium

Staff must pre-register to attend one of these training sessions (walk-ins will be admitted only as limited space permits). Staff can pre-register at [registerme.house.gov](http://registerme.house.gov), under "Senior Staff Training," or by following a link on the Committee's Web site at <http://ethics.house.gov>.

## Questions and Prescreening

House Members and staff having any questions concerning the reporting requirements should contact the Committee staff at (202) 225-7103. The Committee's legal staff is available to review forms in advance of filing for House Members, officers, and employees. **Employees, however, must submit their forms to the Committee for prescreening no later than Monday, May 2, 2011, to ensure that the prescreening is completed by the filing deadline.** You may fax your request to (202) 225-3713.

<sup>4</sup> 5 U.S.C. app. 4 §§ 101(c) and 109(f).

Congress of the United States  
Washington, DC 20515

Committee on Ethics and Committee on House Administration

JOINT GUIDANCE REGARDING REDISTRICTING

September 16, 2011

Dear Colleague:

While congressional redistricting is constitutionally mandated, the redistricting process is a state function with little direct effect on our official duties as Members of the 112<sup>th</sup> Congress. Nonetheless, our Committees recognize that redistricting can affect Members' official work in various ways, and we write to offer guidance on what Members may and may not do with official resources where redistricting is concerned.

*Use of Official House Resources related to Redistricting*

As with the use of official resources in general, Members may not use the Members' Representational Allowance (MRA) for political purposes in connection with congressional redistricting. Like other citizens, Members may engage in political activities designed to influence the outcome of redistricting, but they may not do so at public expense.

The Committee on House Administration recognizes, however, that constituents and others may contact Members with questions about redistricting and how it might affect them now or in the future. Members may use the MRA to keep current on the status of redistricting. Members may reply to current constituent inquiries on the subject in the same manner and using official resources to reply as they would reply on any matter. Members should use caution and common sense to limit use of federal funds to discussion of only the redistricting process. Similarly, Members may be reimbursed for expenses of attending public meetings of a state legislative committee or redistricting commission to testify, for example, about how dividing cohesive communities among multiple districts might complicate constituent casework. But a Member may not seek reimbursement for expenses of attending delegation meetings to discuss how certain redistricting plans might affect future elections.

The *Members' Congressional Handbook* restricts in various ways the use of official resources for activities outside Members' current districts. Members may not use official funds, including the use of staff resources, to conduct "town hall" meetings or other official gatherings outside their districts. The rules also prevent use of official resources for travel other than "in support of the official and representational duties of [the] Member to the district from which elected." Under the franking statute, a Member "may not send any mass mailing outside the congressional district from which the Member was elected."<sup>1</sup>

In addition, Members may not devote official resources to performing casework for individuals who live outside the district. When contacted by persons living in other districts, Members may, however, use official funds to refer them to their own Representative or Senators.

Some issues arise concerning areas to be added to a Member's district by redistricting ("new areas"). To summarize the principles relating to new areas:

- Use of Member office funds and resources for a primary purpose relating exclusively to the new areas is impermissible, and mass mailings may not be sent to any new area.
- A Member and staff may not travel to new areas using House funds or resources except in support of duties to the existing district.

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<sup>1</sup> 39 U.S.C. § 3210(a)(7).

- As a general matter, a Member's office may not handle casework requests from residents of new areas.
- A Member is free to respond to letters and other communications on legislative issues received from residents of new areas.

*Use of Campaign Resources related to Redistricting*

In circumstances where a Member cannot use official resources to host or participate in events in the area to be added to their district by redistricting, they may sponsor events in those areas using campaign staff and resources to the extent such sponsorship is permissible under federal election laws and regulations. Any questions regarding the appropriate use of campaign funds should be directed to the Federal Election Commission.

*Participation in Legal Challenges to Redistricting*

Members may wish to participate in fundraising for groups raising legal challenges to a state's redistricting process. In order to solicit on behalf of these groups, Members must seek written permission from the Committee on Ethics. If approved, any such solicitations would be subject to the same restrictions applicable to all solicitations made by Members (e.g., use of official resources for such solicitations would be prohibited).<sup>2</sup>

A Member may also want to personally challenge the redistricting process in the Member's state. In order to fund these challenges, Members may seek written permission from the Ethics Committee to establish a Legal Expense Fund for that purpose. Written permission must be received before a Member may solicit or receive any donations, including in-kind contributions. If a Legal Expense Fund is approved, it will be subject to a number of restrictions and reporting requirements.<sup>3</sup>

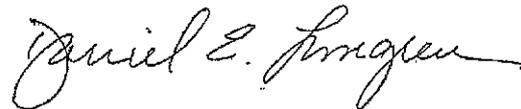
Solicitations by Members relating to redistricting may be subject to limitations on sources and amounts imposed by the Federal Election Campaign Act (as amended). Members should consult with the Federal Election Commission regarding these matters.

We trust you find this guidance helpful. Kindly address any questions you may have to either the Committee on Ethics at x5-7103 or the Committee on House Administration at x5-8281 (majority) or x5-2061 (minority).

Sincerely,



Jo Bonner  
Chairman  
Committee on Ethics



Daniel E. Lungren  
Chairman  
Committee on House Administration



Linda T. Sanchez  
Ranking Member  
Committee on Ethics



Robert A. Brady  
Ranking Member  
Committee on House Administration

<sup>2</sup> See 2008 House Ethics Manual at 347-49.

<sup>3</sup> See 2008 House Ethics Manual at 63-65, 394-96.

Jo Bonner, Alabama  
*Chairman*  
Linda T. Sánchez, California  
*Ranking Member*

Michael T. McCaul, Texas  
K. Michael Conaway, Texas  
Charles W. Dent, Pennsylvania  
Gregg Harper, Mississippi

John A. Yarmuth, Kentucky  
Donna F. Edwards, Maryland  
Pedro R. Pierluisi, Puerto Rico  
Joe Courtney, Connecticut



ONE HUNDRED TWELFTH CONGRESS

## U.S. House of Representatives

COMMITTEE ON ETHICS

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Joanne White  
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November 29, 2011

### MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

**FROM:** Committee on Ethics  
Jo Bonner, Chairman *JB*  
Linda T. Sánchez, Ranking Member *AS*

**SUBJECT:** Rules Regarding Personal Financial Transactions

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The purpose of this memorandum is to summarize various rules and standards of conduct that may apply to personal financial transactions of Members, officers, and House employees.<sup>1</sup> The matters discussed here include the use of nonpublic information when engaging in a personal financial transaction, conflicts of interest, gifts, and financial disclosure.

#### The Use of Nonpublic Information

##### *Information Obtained Outside Official Duties*

Members and employees may obtain material nonpublic information about a public company outside of their official duties from family, friends, acquaintances, or from their own involvement with a company. If the Member or employee chooses to trade on this information, they may have engaged in insider trading. Members and employees could also incur liability through a practice known as tipping.<sup>2</sup> Tipping is passing along inside information in violation of a duty of confidentiality; the recipient of a tip (the "tippee," in this case the Member or employee) becomes subject to a duty not to trade while in possession of that information. A tip occurs when an insider (the "tipper") discloses inside information to another person, who knows or should know that the tipper was breaching a duty by disclosing the information and that the tipper was providing the information for an improper purpose. Both tippees and tippers may be subject to liability for insider trading.

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<sup>1</sup> The terms "staff" and "employee" are used interchangeably throughout this memorandum to refer to persons who are employed by a Member, committee, leadership office, or other legislative branch office.

<sup>2</sup> See 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5.

Material nonpublic information is any information concerning a company, security, industry or economic sector, or real or personal property that is not available to the general public and which an investor would likely consider important in making an investment decision. A good rule of thumb to determine whether information may be material nonpublic information is whether or not the release of that information to the public would have an effect on the price of the security or property.

For example, a House employee has a friend who works for the Food and Drug Administration (FDA). During a personal conversation, the friend, in violation of FDA rules on confidentiality, informs the House employee that a new miracle weight loss drug is going to be approved by the FDA. That information is not public. The House employee buys shares in the company that manufactures the drug. Once the news of the drug approval is made public, the company share price increases and the employee sells at a profit. The employee may be subject to liability for violation of federal civil and criminal insider trading statutes. However, if the House employee waits to purchase the shares until the information regarding the FDA decision becomes public, the employee would not be subject to liability.

#### *Information Obtained in the Course of Official Duties*

The House Code of Official Conduct prohibits House Members, officers, and employees from receiving compensation “by virtue of influence improperly exerted” from a congressional position.<sup>3</sup> The Code of Ethics for Government Service, which was adopted by the 85<sup>th</sup> Congress in 1958, states that no one in government service shall use “information coming to him confidentially in the performance of governmental duties as a means for making private profit.”<sup>4</sup> The Code of Ethics for Government Service was adopted by the House as a concurrent resolution and this Committee concluded that the ethical standards set forth in the code “represent continuing traditional standards of ethical conduct to be observed by Members of the House at all times.”<sup>5</sup> Therefore, the Committee’s guidance has been that House Rules prohibit Members and employees from entering into personal financial transactions to take advantage of any confidential information obtained through performing their official governmental duties.

Moreover, clause 1 of the Code of Official Conduct requires Members and staff to “behave at all times in a manner that shall reflect creditably on the House.”<sup>6</sup> Whether or not the traditional statutes and regulations governing insider trading apply,<sup>7</sup> Members

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<sup>3</sup> House Rule 23, cl. 3.

<sup>4</sup> Code of Ethics for Government Service ¶ 8, reprinted in *2008 House Ethics Manual* at 355.

<sup>5</sup> House Comm. on Standards of Official Conduct, *In the Matter of a Complaint Against Representative Robert L.F. Sikes*, H. Rep. 94-1364, 94th Cong., 2d Sess. 8, at 3 (1976) (hereinafter *Sikes Report*).

<sup>6</sup> House Rule 23, cl. 1.

<sup>7</sup> For instance, in addition to violating House Rules and guidance as indicated above, the misappropriation (such as, use of information covered by some policy or agreement of confidentiality) of material nonpublic information for the purpose of trading in public securities may subject any person to

and employees who engage in trading with the benefit of material nonpublic information gained in congressional service may be investigated for, and may be found in violation of, clause 1.

Much information about the work of Congress, such as information obtained during public briefings or hearings, is considered public information. Examples of material nonpublic information gained during the course of government service may include, but are not limited to, legislation and amendments prior to their public introduction, information from conference or caucus meetings regarding votes or other issues, and information learned in private briefings from either the public or private sector.

For example, a House employee learns during a closed hearing that a bomber contract is going to be awarded to a particular aircraft company. Following the hearing, the House employee buys shares in the company that manufactures the plane. Once the news of the contract award is made public, the company share price increases and the employee sells at a profit. The employee may be subject to liability for violating Code of Ethics for Government Service and clauses 1 and 3 of the Code of Conduct. However, if the House employee, in this example waits to purchase the shares until the information regarding the contract award becomes public, the employee would not be subject to liability.

### Conflicts of Interest<sup>8</sup>

Voting on matters before the House is among the most fundamental of a Member's representational duties, and historical precedent has taken the position that there is no authority to deprive a Member of the right to vote on the House floor.<sup>9</sup> Thus, as a general matter, the decision on whether to refrain from voting on a particular matter on the floor rests with individual Members, rather than the Speaker or the Committee. However, general ethical principles and historical practice provide specific guidance as to the limited circumstances when it is advisable that a Member abstain from voting on a particular matter. Among these principles is that Members may not use their congressional position for personal financial benefit.

Certain matters go to the very heart of a Member's official responsibilities. Chief among them is voting on legislation. Clause 1 of House Rule 3 provides: "Every

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liability under the federal civil and criminal insider trading statutes. For further discussion on this topic, see Congressional Research Service memorandum, "Insider Trading and Members of Congress" (November 18, 2011).

<sup>8</sup> For a fuller discussion of the conflicts of interest issue, please see the *2008 House Ethics Manual* at pages 233 to 238.

<sup>9</sup> John V. Sullivan, Parliamentarian, *Constitution, Jefferson's Manual and Rules of the House of Representatives*, 112<sup>th</sup> Cong., 2d Sess. (2010), § 672, at 375; 5 *Hinds' Precedents of the House of Representatives* § 5952, at 506 (1907).

Member . . . shall vote on each question put, unless having a direct personal or pecuniary interest in the event of such question.”

No statute or rule requires the divestiture of private assets or holdings by Members, officers, or employees of the House upon entering their official position. Since legislation considered by Congress affects a broad spectrum of business and economic endeavors, a Member of the House may be confronted with the possibility of voting on legislation that would have an impact upon a personal economic interest. This situation may arise, for example, where a bill authorizes appropriations for a project for which the contractor is a corporation in which the Member is a shareholder, or where a Member holds a municipal security for which a bill would provide federal guarantees.

Longstanding House precedents have not found such interests to warrant abstention, under the above-quoted House Rule that instructs Members to vote on each question presented, unless they have a direct personal or pecuniary interest in the event of such question. Rather, it has generally been found that where legislation affects a class of people or entities, as distinct from individuals, a Member may vote.<sup>10</sup> Thus, in the past, Members who were bar owners were permitted to vote on Prohibition and Members who were veterans were permitted to vote on government benefits for former military personnel.<sup>11</sup> However, some precedents in the House have indicated that the rule might apply if legislation affects only one specific business or property, rather than a class or group of businesses or properties.<sup>12</sup>

However, while the Committee has endorsed the principle that “each individual Member has the responsibility of deciding for himself whether his personal interest in pending legislation requires that he abstain from voting,” it has, in the past, investigated allegations that a Member had violated the rule by not refraining from voting in a particular instance.<sup>13</sup> It has also occasionally provided confidential advice to Members that it would be inappropriate for them to vote or to introduce legislation that directly affected significant and uniquely held financial interests. This analysis must necessarily depend on the facts of a particular situation.

The provisions of House Rule 3, clause 1, discussed in this section, apply only to Members voting on the House floor. They do not apply to other actions that Members may normally take on particular matters in connection with their official duties, such as sponsoring legislation, advocating or participating in an action by a House committee, or contacting an executive branch agency. Such actions entail a degree of advocacy above and beyond that involved in voting, and thus a Member’s decision on whether to take any such action on a matter that may affect the Member’s personal financial interests requires added circumspection. Moreover, such actions may implicate the rules and standards discussed above that prohibit the use of one’s official position for personal gain.

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<sup>10</sup> See *5 Hinds’ Precedents of the House of Representatives* § 5952, at 504 (1907).

<sup>11</sup> See *2008 House Ethics Manual* at 235.

<sup>12</sup> See, e.g., *Sikes Report*, *supra* note 6, at 4-5, 15-16.

<sup>13</sup> *Sikes Report*, *supra* note 6, at 15-16; see also 121 Cong. Rec. 38135 (Dec. 2, 1975).

Whenever a Member is considering taking any such action on a matter that may affect the Member's personal financial interests, it is advisable for the Member to first contact the Committee for guidance. A Member should also exercise caution before accepting a position on the board of an organization that is subject to the oversight of a committee on which the Member sits.

### Gifts

House rules define the term "gift" to mean:

a gratuity, favor, discount, entertainment, hospitality, loan forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.<sup>14</sup>

Members, officers, and employees may not accept any gift, except as specifically permitted by House rules.<sup>15</sup>

House rules permit a Member or employee to accept anything for which they pay the "market value."<sup>16</sup> If a Member or employee is provided with the opportunity to make an investment at below fair market value, taking advantage of that opportunity may constitute the Member or employee accepting an impermissible gift. If the Member or employee is receiving an opportunity at a discount or receiving a special price, they must be aware that the discount or special price might be an impermissible gift and should exercise caution prior to accepting it.

Members and employees may accept opportunities, like discounted investments, that are "available to the public or to a class consisting of all Federal employees."<sup>17</sup> For example, a developer is selling houses next to a golf course. The public may purchase a house prior to July 1 at a discounted price. If an employee purchases a house on June 15, the discounted price is a permissible gift because the offer was available to the public.

Members and employees may also accept opportunities that are "[o]ffered to members of a group or class in which membership is unrelated to congressional employment."<sup>18</sup> For example, assume that the developer in the prior example is a country club in which the employee became a member prior to House employment. All members of the club are permitted to purchase a house on a new golf course at a discounted price. If the employee purchases a house, the discounted price is a permissible gift because the

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<sup>14</sup> House Rule 25, cl. 5(a)(2)(A).

<sup>15</sup> House Rule 25, cl. 5(a)(1)(A)(i); *see also* House Rule 23, cl. 4.

<sup>16</sup> House Rule 25, cl. 5(a)(3)(A).

<sup>17</sup> House Rule 25, cl. 5(a)(3)(R).

<sup>18</sup> *Id.*

offer was available to a group of people in which the employee was a member unrelated to congressional employment.

If, however, the Member or employee took advantage of an investment opportunity received solely because of their congressional status and the opportunity was offered and accepted at less than fair market value, then the Member or employee received an impermissible gift.<sup>19</sup> In the example above, if the developer offered the employee the discounted price after the generally-available July 1 cutoff date solely because the person works for the House, it would constitute an impermissible gift.

### Financial Disclosure Requirements

As discussed above, the private financial interests and investments of Members and employees may present potential conflicts of interest with official duties. In addition, all Members and employees are prohibited from improperly using their official positions for personal gain. As a general matter, however, Members and employees need not divest themselves of assets upon assuming their positions, nor must Members disqualify themselves from voting on issues that generally affect their personal financial interests. Instead, public financial disclosure provides a means of monitoring and deterring conflicts of interest.

Under Title I of the Ethics in Government Act of 1978, Members, senior staff, and principal assistants are required to file annual Financial Disclosure Statements that report all transactions or groups of transactions in real property or securities which exceed \$1,000. For each transaction, the filer must report a description of the asset, the date, type of transaction, and the category reflecting the amount of the transaction.<sup>20</sup> Based on the information provided in the Statements, which are publicly available, the public can make a determination regarding whether a Member or employee may have a conflict with any public matter before the House.

\* \* \*

This memorandum summarizes some of the key rules and standards that apply to personal financial transactions of Members, officers, and employees. It is not an exhaustive compilation of all rules or standards that could conceivably apply. In addition, analysis of proposed conduct under these standards must be done on a case by case basis. The Committee is available to provide confidential advice to Members, officers, and employees on these and other issues. Any questions on these matters should be directed to the Committee's Office of Advice and Education at (202) 225-7103.

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<sup>19</sup> See *2008 House Ethics Manual* at 27, 32.

<sup>20</sup> See 5 U.S.C. app. 4 § 104(a)(5).

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ONE HUNDRED TWELFTH CONGRESS

## U.S. House of Representatives

COMMITTEE ON ETHICS

December 9, 2011

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### MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

**FROM:** Committee on Ethics   
Jo Bonner, Chairman  
Linda T. Sánchez, Ranking Member 

**SUBJECT:** Holiday Guidance on the Gift Rule

The House gift rule, codified at House Rule 25, clause 5, applies to all Members, officers, and employees (Members and staff) at all times, even during the holiday season. This memorandum is a reminder of some of the restrictions of the gift rule and some of the more common questions that arise during the holiday season. This guidance does not cover every situation. As a result, if you are unsure about a particular situation, please contact the Committee at (202) 225-7103.

#### Overview of the Gift Rule and other Gift Statutes

Members and staff may not knowingly accept any gift, except as provided in the gift rule.<sup>1</sup> The rule defines the term “gift” broadly to mean “a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.”<sup>2</sup> The gift rule contains numerous exceptions permitting Members and staff to accept gifts. There are certain gifts that staff may accept without worry. For example, there are no restrictions on accepting gifts, including cash or cash equivalents, of any dollar value, from relatives.<sup>3</sup> There are also no restrictions on accepting gifts from co-workers and supervisors.<sup>4</sup>

Generally, Members and supervisors may not accept gifts from their subordinates.<sup>5</sup> However, the Committee has provided for a common-sense exception for voluntary gifts extended on special occasions such as holidays.<sup>6</sup> Accordingly, Members and supervisors may accept gifts from their subordinates that are customarily extended during the holiday season.

<sup>1</sup> House Rule 23, clause 4 and House Rule 25, clause 5(a)(1)(A)(i).

<sup>2</sup> House Rule 25, clause 5(a)(2)(A).

<sup>3</sup> House Rule 25, cl. 5(a)(3)(C). The term “relative” is broadly defined, and it includes fiancés/fiancées and in-laws. See *2008 House Ethics Manual* at 69 and 5 U.S.C. app. 4 § 109(16).

<sup>4</sup> House Rule 25, cl. 5(a)(3)(F).

<sup>5</sup> 5 U.S.C. § 7351.

<sup>6</sup> See *2008 House Ethics Manual* at 70.

In certain circumstances, Members and staff must seek written permission before accepting a gift. Members and senior staff<sup>7</sup> must also disclose the receipt and value of gifts on their annual Financial Disclosure Statements in certain circumstances, as explained more fully in the final section of this memorandum.

While the gift rule defines what Members and staff may accept, it does not authorize them to ask for any gift. There is also a statutory gift provision, which prohibits Members and staff from asking for or accepting anything of value from anyone who seeks official action from the House, does business with the House, or has interests that may be substantially affected by the performance of official duties.<sup>8</sup> The statutory provision also prohibits Members and staff from soliciting on behalf of other individuals or entities, other than political solicitations or solicitations for charity.

A brief description of some of the common gift rule exceptions applicable to the holiday season are listed below.

### **Parties and Receptions**

During the holiday season, Members and staff may be invited as guests to parties or related events that are sponsored by individuals or organizations that have, or plan to have, business dealings before Congress. Provided the guidance below is followed, Members and staff may accept an invitation to the following:

- An event where the per person cost or ticket price (if sold) is less than \$50, provided:
  - 1) The invitation is not from a federal lobbyist, foreign agent, or private entity that retains or employs such individuals; and
  - 2) The total value of gifts or other invitations you accept from the host under this exception is less than \$100 for the calendar year.<sup>9</sup>

Example 1: If a non-lobbyist invites you to a holiday dinner party and your meal is less than \$50, you may accept the meal under the “less than \$50 exception,” provided the aggregate value of all gifts and similar invitations you accept from the host does not exceed \$100 for the year.

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<sup>7</sup> House employees paid at or above \$119,553.60 for 60 days or more during calendar year 2011 are considered senior staff and must file an annual Financial Disclosure Statement.

<sup>8</sup> 5 U.S.C. § 7353.

<sup>9</sup> House Rule 25, clause 5(a)(1)(B)(i). Any gift worth less than \$10 does not count towards the annual limitation. However, accepting gifts less than \$10 from one source on a repetitive basis is contrary to the spirit of the gift rule. *See also 2008 House Ethics Manual* at 37.

Example 2: If an organization that does not employ a federal lobbyist sends perishable food, such as a fruit basket, to a House office for all the staff, the gift is considered a gift to the individual recipients and not to the employing Member. Therefore, each staff member may accept items from the fruit basket having a value of less than \$50, provided that no recipient accepts more than \$100 of gifts in the aggregate from the organization during the year.

- A non-business event, such as a holiday party, hosted by an individual, at the personal residence of that individual or the individual's family, unless offered by a registered lobbyist or foreign agent.

Example: A non-lobbyist invites you to a holiday party at his personal residence to celebrate the holiday season. You may accept food and refreshments offered within the home under the personal hospitality exception.

- A **reception**, provided that only food and refreshments of nominal value are offered other than as a part of a meal (*i.e.*, appetizers and beverages, including alcoholic beverages). This exception **does not** include full meals or luxury food items, such as caviar.

Example: A lobbying firm invites you to attend a holiday reception in its office, at which it will serve moderate appetizers and drinks. Provided that the food and refreshments are of "nominal value" and offered "other than as part of a meal," you may attend and accept these items.

- An event where invitations are offered to a group or class in which membership is **unrelated to House employment**.

Example: Your college alumni association is having a holiday party for its members. You may attend as an alumnus of the college.

- An event that is **open to the public or to all federal employees**.

Example: Your local park is having a free holiday concert that is open to the public. You may attend as a member of the public.

- An event where invitations are offered because of the **outside business or activity of the invitees or their spouses**, provided the invitation:

- 1) was not offered or enhanced because of the individual's House status; and

2) is customarily provided to others in similar circumstances.<sup>10</sup>

Example: Your spouse's company is having a holiday party and all employees may bring their spouses as guests. You may attend as your spouse's guest and receive the same food, refreshments, and entertainment that are provided to all attendees, including a full meal or luxury food items.

- A "widely attended event," provided:

- 1) The invitation comes from the event sponsor;
- 2) The sponsor has a reasonable expectation that at least 25 non-congressional invitees will be in attendance;
- 3) The event is open to the public, or will be attended by a diverse group of individuals interested in a given topic; and
- 4) The event relates to the Members' or employees' official duties.<sup>11</sup>

Please note: The **widely attended event** exception **does not** apply to holiday parties that are purely social in nature and not related to one's official duties.

- An event paid for by a foreign government that is **less than \$350** per person, per occasion. Under the Foreign Gifts and Decorations Act (FGDA), Members and staff may receive a gift item received as a souvenir or mark of courtesy.<sup>12</sup> The Committee has interpreted this provision to allow Members and staff to accept meals and entertainment in the United States related to their official duties.

Example: A foreign embassy in Washington, D.C., is having a holiday luncheon at a local D.C. restaurant. The cost of your meal will be \$100. You may accept the lunch under the FGDA.

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<sup>10</sup> House Rule 25, clause 5(a)(3)(G)(i).

<sup>11</sup> House Rule 25, clause 5(a)(4)(A).

<sup>12</sup> 5 U.S.C. § 7342.

- 2) Whether the donor personally paid for the gift, or whether the donor sought a tax deduction or business reimbursement for it; and
- 3) Whether the donor gives the same or similar gifts to other Members or staff at the same time.

Example: Your former roommate, who is a real estate agent, offers you a \$100 ticket to a holiday play. The roommate personally paid for the ticket. You and the roommate have exchanged gifts throughout the years. The roommate does not contact you or your office on official matters. To the best of your knowledge, the roommate has not made a similar offer to other Members or staff. You may accept the ticket without seeking Committee approval.

- **Gifts from a foreign government** under the FGDA. As noted above, gifts valued at less than \$350 per person, per occasion, that are offered as a souvenir or mark of courtesy.<sup>18</sup>

Example: A French government official sends you a \$300 bottle of French champagne, on behalf of the foreign government. You may accept the champagne under the FGDA.

### Handling Unacceptable Gifts

If Members or staff receive invitations to events or gifts that they may not accept under the gift rule, they may:

- Pay the donor the “market value”<sup>19</sup> and keep the gift;
- Return the gift to the donor; or
- For perishable items (*i.e.*, flowers or food), donate the items to charity or destroy them.<sup>20</sup>

Please note: For tickets to events that do not have a printed cost on the ticket, the value of the ticket is the highest cost of a ticket with a face value for that particular event.<sup>21</sup>

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<sup>18</sup> 5 U.S.C. § 7342.

<sup>19</sup> Items are valued at their retail, rather than wholesale, prices. For tickets, the fair market value is the cost printed on the ticket, regardless of whether the donor paid more or less. *See* House Rule 25, clause 5(a)(3)(A); *2008 House Ethics Manual* at 73.

<sup>20</sup> House Rule 25, clause 5(a)(6).

<sup>21</sup> House Rule 25, clause 5(a)(1)(B)(ii).

### Other Holiday Gifts

In addition to the provisions discussed above, other gift rule exceptions may permit acceptance of holiday gifts. Provided the guidance below is followed, Members and staff may accept the following:

- Gifts (other than cash or cash equivalent)<sup>13</sup> valued at **less than \$50**, provided:
  - 1) The gift is not from a federal lobbyist, foreign agent, or private entity that retains or employs such individuals; and
  - 2) The total amount of gifts you accept from the donor is less than \$100 for the year.<sup>14</sup>

Example: If a non-lobbyist gives you a \$40 pen set during the holiday season, you may accept the gift under the “less than \$50 exception,” provided the aggregate value of all gifts you accept from the donor under this exception does not exceed \$100 for the year.

- A **baseball hat, T-shirt, or any item valued at less than \$10**, even if from a lobbyist. This exception does **not** include food items.<sup>15</sup>

Example: A company sends the office 10 T-shirts along with a letter stating that one is to be given to the Member and any staff member that would like to receive one. The Member and staff may each accept one of the T-shirts under this exception.

- Gifts based on **personal friendship**.<sup>16</sup> Members and staff may, without seeking Committee approval, accept a gift based on personal friendship if the gift’s value is less than \$250.<sup>17</sup> The following factors must be considered before accepting a gift under this exception:
  - 1) The history of the recipient’s relationship with the donor, including any previous exchange of gifts;

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<sup>13</sup> Gift cards and gift certificates are considered “cash equivalent” and may not be accepted under this exception.

<sup>14</sup> House Rule 25, clause 5(a)(1)(B)(i).

<sup>15</sup> House Rule 25, clause 5(a)(3)(W).

<sup>16</sup> House Rule 25, clause 5(a)(3)(D).

<sup>17</sup> You must seek Committee written approval before accepting a gift over \$250 under the personal friendship exception. Please see the section below regarding seeking written Committee approval for details on how to submit a request.

Example: You are invited to sit in the premium box for the Nutcracker Ballet. The offer does not meet one of the gift exceptions, but you would still like to attend. Your ticket does not have a price on it, but the highest ticket price for that particular ballet performance is \$285. You must pay the donor \$285 in order to accept the ticket.

### **Prior Written Committee Approval Required**

Members and staff must seek written Committee approval before accepting the following:

- A gift based on personal friendship with a value over \$250.<sup>22</sup> The Committee will only grant written approval for a personal friendship gift exceeding \$250 in value in response to a written request. The request should include: (1) the donor's identity and employment; (2) any interests the donor may have before Congress; (3) the history of the recipient's relationship with the donor; (4) the nature of the gift; and (5) whether the donor will be paying for the gift personally.
- A gift that is not otherwise acceptable, but that the Member or staffer believes the Committee should permit them to accept. The Committee has "flexibility to allow the acceptance of gifts . . . in cases where there is no potential conflict of interest or appearance of impropriety."<sup>23</sup> Thus, House Rule 25, clause 5(a)(3)(T), authorizes the Committee to grant a waiver to permit acceptance of a gift "in an unusual case." Members and staff must submit a written request for a gift waiver from the Committee prior to accepting such a gift. Any request should include, at a minimum, a description of the gift, including its market value, the identity of the donor, and a statement of the reasons believed to justify acceptance of the gift.

### **Financial Disclosure Requirements**

Members and senior staff must disclose certain gifts valued over \$350 from a single source in a calendar year on Schedule VI on their annual Financial Disclosure Statements.<sup>24</sup> This disclosure must include the source of such gifts and a brief description of the gifts. Any gift with a market value of less than \$140 need not be counted towards the \$350 disclosure threshold.

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<sup>22</sup> House Rule 25, clause 5(a)(5).

<sup>23</sup> See House Bipartisan Task Force on Ethics, *Report on H.R. 3660*, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess. (Comm. Print, Comm. on Rules 1989), reprinted in 135 Cong. Rec. H9255 (daily ed. Nov. 21, 1989).

<sup>24</sup> 5 U.S.C. app. 4 § 102(a)(2).

Please note: Gifts from relatives and gifts of personal hospitality do not have to be disclosed.<sup>25</sup> In addition, gifts that are received by your spouse or children, independent of your House status, do not have to be disclosed. However, all other gifts that are over \$350 in value must be disclosed.

Example: Your spouse's college roommate gives your spouse a \$400 coat as a holiday present. You would not have to report this gift on your Financial Disclosure Statement if you believe that the gift was given regardless of your House status.

Members and staff seeking a waiver of the reporting requirement must send a written request to the Committee. The written request and the Committee's response will be made publicly available.

*If you have any questions, please contact the Committee's Advice and Education staff at (202) 225-7103.*

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<sup>25</sup> See 5 U.S.C. app. 4 § 102(a)(2)(A).

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## U.S. House of Representatives

COMMITTEE ON ETHICS

December 20, 2011

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### MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

**FROM:** Committee on Ethics  
Jo Bonner, Chairman *JB*  
Linda T. Sánchez, Ranking Member *LS*

**SUBJECT:** Revised Legal Expense Fund Regulations

The House gift rule permits the acceptance of “a contribution or other payment to a legal expense fund established for the benefit of a Member, officer, or employee that is otherwise lawfully made in accordance with the restrictions and disclosure requirements of the Committee on Ethics,” as long as the contribution is not from a registered lobbyist or an agent of a foreign principal.<sup>1</sup> On June 10, 1996, the Committee first issued Legal Expense Fund Regulations (1996 LEF Regulations) governing the restrictions and disclosure requirements pursuant to that provision.<sup>2</sup>

**The regulations attached hereto supersede the 1996 LEF Regulations and take effect as of January 1, 2012.** The prior regulations remain in effect until that date. Once they take effect, the revised regulations will apply to all existing LEFs and all LEFs approved by the Committee in the future.

Based on the Committee’s experience interpreting and applying the 1996 LEF Regulations, the Committee hereby issues revised LEF regulations. There are a number of changes to the regulations, but the Committee would like to highlight the following substantive changes:

- Clarification of the permissible bases for establishing an LEF Trust (Regulation 1.2);
- Definition of the requirement that trustees have no “family, business, or employment relationship” with the beneficiary (Regulation 2.2);
- Discussion of the duties of the trustee (Chapter 2);
- Attribution of a contribution of a partnership, limited liability company or S corporation to individual owners of the business (Regulation 3.3);

<sup>1</sup> House Rule 25, clause 5(a)(3)(E).

<sup>2</sup> See Comm. on Standards of Official Conduct, Legal Expense Fund Regulations (June 1996), *reprinted in Appendix to the 2008 House Ethics Manual* at 394.

- Rules for departing Members and employees who have an LEF trust (Regulation 4.8);
- Use of official resources related to a trust (Chapter 5);
- Provisions related to the termination of a trust (Chapter 6); and
- Enforcement provisions (Chapter 7).

Any Member or employee with an existing LEF should be aware of several requirements that apply to existing trusts. First, under Regulation 8.1, any Member who established a trust prior to January 1, 2012, must make any necessary modifications to the trust document to bring it into compliance with the revised regulations and file a copy of the amended trust document with the quarterly report of activity due by January 30, 2012. Proposed amendments are not effective until they receive written approval from the Committee. In addition, pursuant to Regulation 8.2, by January 30, 2012, each trustee for an LEF must provide an affidavit to the Committee, with a copy to the Clerk at the Legislative Resource Center, stating the trustee has read and understands the revised regulations, and consents to administer the trust in conformity with these regulations.

The Committee reviews the regulations on an ongoing basis and welcomes feedback from the House community. If you have any questions or comments about the revised regulations, please contact the Committee's Advice and Education staff at (202) 225-7103.

## LEGAL EXPENSE FUND REGULATIONS

Effective January 1, 2012

### CHAPTER 1: ESTABLISHMENT OF LEGAL EXPENSE FUND TRUSTS

Regulation 1.1 – A Member, officer, or employee who wishes to solicit and/or receive donations for a Legal Expense Fund, in cash or in kind, to pay legal expenses shall obtain the prior written permission of the Committee on Ethics (Committee).<sup>1</sup>

Regulation 1.2 – The Committee shall grant permission to establish a Legal Expense Fund only where the legal expenses arise in connection with:

- A. the individual's candidacy for, or election to, federal office;
- B. the individual's official duties or position in Congress (including legal expenses incurred in connection with (i) an amicus brief filed in a Member's official capacity or (ii) matters before the Office of Congressional Ethics or Committee on Ethics);
- C. a civil action filed in a Member's official capacity challenging the validity of a federal law or regulation;
- D. a criminal prosecution of the Member, officer, or employee; or
- E. a civil matter bearing on the individual's reputation or fitness for office.

Regulation 1.3 – The Committee shall not grant permission to establish a Legal Expense Fund where the legal expenses arise in connection with a matter that is primarily personal in nature (*e.g.*, a matrimonial action, personal injury claim, or personal contract dispute).

Regulation 1.4 – A Member, officer, or employee seeking to establish a trust (Trustor) must make a written request to the Committee that provides the name and contact information for the proposed Trustee, attaches a proposed trust document, and states the following:

- A. the nature of the legal proceeding (or proceedings) which necessitate the establishment of such a trust fund;
- B. that he or she will be bound by these Regulations; and
- C. that although a Trustee will oversee the trust, that he or she bears ultimate responsibility for the proper administration of the trust.

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<sup>1</sup> Permission is not required to solicit and/or receive a donation in any amount from a relative or a donation of up to \$250 from a personal friend, as defined by House Rule 25, cls. 5(a)(3)(C) and (D) and 5(a)(5).

Regulation 1.5 – No contribution shall be solicited for, or accepted by, a Legal Expense Fund prior to the Committee’s written approval of the completed trust document (including the name of the Trustee) and its filing with the Legislative Resource Center of the Clerk of the House (B-106 Cannon House Office Building).

Regulation 1.6 – No amendment of the trust document is effective, and no successor or substitute Trustee may be appointed, without the Committee’s written approval and the filing of the amended trust document with the Legislative Resource Center.

Regulation 1.7 – No Member, officer, or employee may establish and/or maintain more than one Legal Expense Fund at any one time.

## CHAPTER 2: SELECTION AND DUTIES OF TRUSTEES

Regulation 2.1 – A Legal Expense Fund shall be set up as a trust, administered by an independent Trustee, who shall oversee fundraising for the trust.

Regulation 2.2 – The Trustee shall not have any family, business, or employment relationship with the Trustor within two years prior to the establishment of the trust or at any time while serving as Trustee. For example, any individual or institution serving as an employee of, or a consultant, attorney, or advisor to, a requesting Member’s congressional or campaign offices, or private business may not serve as the Trustee. The Trustee shall not delegate any responsibilities of administering the trust to any person with any family, business, or employment relationship with the Trustor.

Regulation 2.3 – The Trustee shall provide an affidavit to the Committee, with a copy to the Clerk at the Legislative Resource Center, stating that the Trustee has read and understands the provisions of these Regulations governing the establishment, administration, and termination of a Legal Expense Fund, and that the Trustee consents to administer the trust in conformity with these Regulations and House Rules.

Regulation 2.4 – In addition to the duties imposed by any applicable state laws, the Trustee shall be responsible for the receipt of contributions to the trust; authorization of expenditures and disbursements from the trust; providing information to the Trustor so that the Trustor can file the reports required by Chapter 4 of these Regulations; and the performance of other tasks incident to the administration of the trust.

Regulation 2.5 – The Trustee must inform the Committee as soon as practicable of any change in his or her contact information.

## CHAPTER 3: CONTRIBUTIONS AND USE OF FUNDS

Regulation 3.1 – Official resources may not be used to assist with fundraising for a Legal Expense Fund. As with any organization that is not a 501(c)(3) nonprofit, any Member, officer, or employee who wants to solicit funds in their personal capacity for the Legal Expense Fund

of another Member, officer, or employee must first seek written permission from the Committee.

Regulation 3.2 – Other than as specifically barred by law or regulation, a Legal Expense Fund may accept contributions from any individual or organization, including a corporation, labor union, or political action committee (PAC).

Regulation 3.3 – If the organization making the contribution is a partnership, limited liability company (LLC) that is not taxed as a corporation, or S corporation the contribution of the partnership, LLC, or S corporation will be attributed to the partnership, LLC, or S Corporation and to each partner, member, or shareholder in direct proportion to the partner, member, or shareholder's share of the organization's profits.

Regulation 3.4 – A Legal Expense Fund shall not accept any contribution from a lobbyist registered under the Federal Regulation of Lobbying Act or any successor statute, including the Lobbying Disclosure Act of 1995 (2 U.S.C. § 1601 *et seq.*) or an agent of a foreign principal registered under the Foreign Agents Registration Act (22 U.S.C. § 611 *et seq.*).

Regulation 3.5 – A Legal Expense Fund shall not accept more than \$5,000 in a calendar year from any individual or organization.

Regulations 3.6 – The limitations and prohibitions on contributions in this Chapter apply to both contributions of funds and in-kind donations of goods or services. Any in-kind donation will be valued at its fair market value.

Regulation 3.7 – A Member, officer, or employee may accept *pro bono* legal assistance without limit only for the following purposes:

- A. to file an amicus brief in his or her capacity as a Member of Congress;
- B. to bring a civil action challenging the validity of any federal law or regulation; or
- C. to bring a civil action challenging the lawfulness of an action of a federal agency, or an action of a federal official taken in an official capacity, provided that the action concerns a matter of public interest, rather than a matter that is personal in nature.

Regulation 3.8 – *Pro bono* legal assistance for other purposes shall be deemed a contribution, valued at fair market value, subject to the restrictions of these Regulations. For purposes of the annual contribution limit, a law firm and its partners and employees are considered one donor. If a law firm reaches the contribution limit, no partner or employee of the law firm may provide *pro bono* legal assistance individually.

Regulation 3.9 – Trust funds shall be used only for legal expenses (including reimbursement for previously paid legal expenses) related to those legal proceedings for which the Committee has given written permission for payment from the Legal Expense Fund (and expenses

incurred in soliciting for and administering the trust, and for the discharge of federal, state, and local tax liabilities, should any be deemed to exist, which are incurred as a result of the creation, operation, or administration of the trust), except that any excess funds shall be returned to contributors at the time of the trust's termination. Under no circumstances may the beneficiary of a Legal Expense Fund convert the funds to any other purpose.

- A. Examples of common legal expenses include attorney and expert witness fees, copying costs, electronic discovery costs, court costs, costs related to depositions and interviews, and travel costs associated directly with the case.
- B. Examples of common expenses relating to solicitation for the trust include costs for mailings, a Web site, or fundraisers.
- C. Any costs associated with completing the quarterly report required under Chapter 4 of these Regulations are costs payable from the trust.
- D. If the beneficiary is seeking to have an uncommon cost paid, either the beneficiary or the Trustee should seek the guidance of the Committee before payment.

Regulation 3.10 – The Trustor may choose to include present and former House staff as beneficiaries of the trust. The Trustor must seek written Committee permission to add any individual other than the Trustor as a beneficiary. The Trustor must receive written permission before any bill for House staff is paid. If the Committee grants permission, the Trustor must comply with the following guidelines:

- A. Any staff person added as a beneficiary should avoid being represented by any counsel who simultaneously represents the Trustor, or counsel who is employed by the same law firm as any counsel who has been engaged to represent the Trustor. Should any staff member choose to be represented by the same counsel and/or law firm which represents the Trustor, the Committee requires that both parties execute a written agreement consenting to dual representation consistent with the ABA Model Rules.
- B. While the Trustor, or the Trustor's attorney, may recommend a particular counsel to staff, trust funds may only be used to pay staff legal expenses if each staff member is free to engage counsel of the staff's own choosing, regardless of any such recommendation.
- C. While the Trustor is not required to use trust funds to pay the legal expenses of every staff person requesting such reimbursement, to avoid any appearance of impropriety the Trustor should exercise caution and apply uniform standards in determining whose legal expenses to reimburse.
- D. Any staff for whom the trust intends to pay legal expenses should be furnished with a copy of these Regulations by the Trustor and encouraged to contact the Committee with any questions or concerns regarding these Regulations.

Regulation 3.11 – The Committee may grant permission to establish a trust to pay for legal expenses incurred prior to the Member, officer, or employee seeking approval to establish a trust. The Member, officer, or employee should submit a written request to the Committee that details the amount, time period, and matters for which legal expenses are being sought, and an explanation for the delay in seeking permission to establish a trust to pay such expenses. The Committee will review the request and determine whether the use of a Legal Expense Fund to pay the expenses is appropriate.

Regulation 3.12 – All contributions to a Legal Expense Fund must be kept in a separate bank account established for that purpose. The funds must be segregated from, and may not be commingled with, the personal, political, or official funds of the Trustor, or the funds of any other individual or legal entity.

Regulation 3.13 – Contributions to a Legal Expense Fund are gifts under House Rule 25, clause 5. As such, any contribution (or group of contributions) in a calendar year totaling more than the minimal value as established by Foreign Gifts and Decorations Act, 5 U.S.C. § 7342(a)(5), must be disclosed in the Trustor’s annual Financial Disclosure Statement. The dollar amount of the minimum value is provided on the Committee Web Site, in the Financial Disclosure Instruction Manual, and on the annual Financial Disclosure form, or may be obtained by contacting the Committee.

#### CHAPTER 4: DISCLOSURE AND REPORTING REQUIREMENTS

Regulation 4.1 – Within one week of the Committee’s approval of the trust document, the Trustor shall file a copy of the trust document with the Legislative Resource Center, B-106 CHOB, for public disclosure.

Regulation 4.2 – The Trustor of a Legal Expense Fund shall also report the following information to the Committee on a quarterly basis:

- A. any contribution from a corporation, partnership, LLC, or labor union;
- B. any contribution (or group of contributions) exceeding \$250 in a calendar year from any other single source;
- C. any expenditure (or group of expenditures) from the Legal Expense Fund exceeding \$250 in a calendar year to any single payee, directly or indirectly; and
- D. The names of any staff members whose legal expenses are paid by the Legal Expense Fund.

Regulation 4.3 – Any Member, officer, or employee accepting *pro bono* legal services pursuant to Regulation 3.6 must report the fair market value of the services provided on the quarterly report.

Regulation 4.4 – The quarterly reports shall state the full name and street address of each donor, contributor, or recipient required to be disclosed. For donations from partnerships, LLCs, and S corporations, the report shall state the full name and address of the partnership, LLC, or S corporation and the full names and addresses of the partners, members, or shareholders of the partnership, LLC, or S corporation and the amount of the contribution attributed to each partner, member, or shareholder. For pro bono services, the report must identify both the names of the individual attorneys who provide the services and the name of the law firm. For recipients, the report shall also state the purpose of the payment.

Regulation 4.5 – The original signed copy of each quarterly report must be filed with the Committee and a copy shall be filed for public disclosure at the Legislative Resource Center.

Regulation 4.6 – The quarterly reports shall be due as follows:

<u>Reporting Period</u>	<u>Due Date</u>
January 1 to March 31	April 30
April 1 to June 30	July 30
July 1 to September 30	October 30
October 1 to December 31	January 30

Should the filing date fall on a Saturday, Sunday, or holiday, the next succeeding business day shall be deemed the due date.

Regulation 4.7 – The Trustor must file quarterly reports until the trust has been terminated, as described in Chapter 5, or the Trustor files a final departing Trustor report under these Regulations, whichever occurs first.

Regulation 4.8 – If the Trustor is departing office or leaving House employment, the Trustor must file a final departing Trustor report no later than the first due date following the end of the Trustor’s congressional service which contains the following:

- A. a report of contributions received and expenditures made pursuant to these Regulations covering the period between the last-filed quarterly report and the date the Trustor departed office or left House employment; and
- B. a statement as to whether the trust will be terminated or remain in force upon the Trustor departing office or left House employment.

Regulation 4.9 – All documents filed pursuant to these Regulations shall be available at the Legislative Resource Center for public inspection and copying. Any person requesting such documents shall be required to pay a reasonable fee to cover the cost of reproduction.

## CHAPTER 5: USE OF OFFICIAL RESOURCES

Regulation 5.1 – Members and employees may not use official resources for any work related to a Legal Expense Fund if the Legal Expense Fund was created for the purpose stated in Regulation 1.2 (A) (an individual’s candidacy or election to office, including redistricting) or (E) (a civil matter bearing on the individual’s reputation and fitness for office).

Regulation 5.2 – Members should consult with the Committee before using any official resources for work related to the Member’s Legal Expense Fund if the Legal Expense Fund was created for purpose stated in Regulation 1.2 (D) (a criminal prosecution of the Trustor).

Regulation 5.3 – Members may use official resources for any work related to a Legal Expense Fund if the Legal Expense Fund was created for the purpose stated in Regulation 1.2 (B) (the Trustor’s official position in office) or (C) (a civil matter filed in the Member’s official capacity challenging a federal law or regulation).

## CHAPTER 6: TERMINATION OF TRUSTS

Regulation 6.1 – A trust may only be terminated by the Trustee according to the terms of the trust at the earlier of: (A) the end of the time period for which the trust was established; (B) the purpose of the trust is fulfilled or no longer exists; (C) at the direction of the Trustor; or (D) at the direction the Committee for noncompliance with these Regulations.

Regulation 6.2 – Within 90 days of the termination of the trust, the Trustee must distribute any remaining funds or assets to contributors of the trust on a *pro rata* basis as determined by the Trustee or donated to one or more organizations described in § 501(c)(3) of the Internal Revenue Code of 1954 and exempt from taxation under § 501(a) thereof. The Trustor must receive written approval from the Committee of the 501(c)(3) organization(s) to which the Trustor wishes to donate the excess funds prior to making any such donations. Funds from a Legal Expense Fund may not be donated to an organization that was established or is controlled by the Trustor.

Regulation 6.3 – After a trust has been terminated, the Trustor must file a final quarterly report of contributions received and expenditures made pursuant to these Regulations covering the period between the last filed quarterly report and the date the trust was terminated. In addition, the final report must contain a statement certifying that any remaining funds were distributed to contributors pursuant to these Regulations.

## CHAPTER 7: COMMITTEE ENFORCEMENT

Regulation 7.1 – The Committee shall monitor the activities of any Legal Expense Fund established pursuant to these Regulations, and may direct specific remedial actions, or that an audit be made of such trust when, in the judgment of the Committee or Chairman and Ranking Member there is reason to believe that the trust is being improperly administered, or for other good cause.

Regulation 7.2 – Upon a determination by the Committee or Chairman and Ranking Member that an audit of a trust should be made, the Committee shall select a qualified auditor to examine the records of such a trust. The expense of an audit performed at the direction of the Committee shall be borne by the Committee.

Regulation 7.3 – Upon a finding by the Committee or Chairman and Ranking Member that the trust is being improperly administered, if the Trustor and/or the Trustee fail to comply with these Regulations or the trust agreement, or for other good cause, the Committee or Chairman and Ranking Member may direct that the trust be terminated and that the funds be distributed in accordance with the provisions in Chapter 5. The Committee shall notify the Trustor in writing and a copy shall be provided to the Legislative Resource Center for public disclosure.

Regulation 7.4 – Upon a finding by the Committee that a trust has been improperly administered, or that these Regulations have been otherwise violated, the Committee may recommend disciplinary action to be taken in accordance with House Rules and the Rules of the Committee.

#### CHAPTER 8: CONFORMING EXISTING TRUSTS

Regulation 8.1 – Any Member, officer, or employee who established a Legal Expense Fund prior to January 1, 2012, shall make any necessary modifications to the trust document to bring it in compliance with these Regulations and shall disclose the amended trust document with his or her quarterly report due on January 30, 2012.

Regulation 8.2 – No later than January 30, 2012, the Trustee for an existing trust shall provide an affidavit to the Committee, with a copy to the Clerk at the Legislative Resource Center, stating that the Trustee has read and understands the provisions of these Regulations governing the establishment, administration, and termination of a Legal Expense Fund, and that the Trustee consents to administer the trust in conformity with these Regulations and House Rules by January 30, 2012.

Jo Bonner, Alabama  
*Chairman*  
Linda T. Sánchez, California  
*Ranking Member*

Michael T. McCaul, Texas  
K. Michael Conaway, Texas  
Charles W. Dent, Pennsylvania  
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ONE HUNDRED TWELFTH CONGRESS

## U.S. House of Representatives

### COMMITTEE ON ETHICS

Daniel A. Schwager  
*Staff Director and Chief Counsel*

Joanne White  
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January 24, 2012

#### MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

**FROM:** Committee on Ethics  
Jo Bonner, Chairman *JB*  
Linda T. Sánchez, Ranking Member *LTS*

**SUBJECT:** Member Participation in Certain Events Taking Place During a  
National Political Convention

The purpose of this advisory memorandum is to remind Members about the provision of the House Rules (House Rule 25, clause 8) that prohibits Member participation at certain events held during a national political convention.<sup>1</sup> The provision provides as follows:

During the dates on which the national political party to which a Member (including a Delegate or Resident Commissioner) belongs holds its convention to nominate a candidate for the office of President or Vice President, the Member may not participate in an event honoring that Member, other than in the capacity as a candidate for such office, if such event is directly paid for by a registered lobbyist under the Lobbying Disclosure Act of 1995 or a private entity that retains or employs such a registered lobbyist.

Under this provision, a Member may not “participate<sup>[2]</sup> in an event honoring that Member” if the event takes place during a national political convention, other than to participate in the Member’s capacity as a candidate for President or Vice President, and when certain other criteria are met. Member participation prohibited under the provision is for an event where the Member is named, including through the use of any personal

<sup>1</sup> See The Honest Leadership and Open Government Act of 2007, Pub. L. No. 110-81, § 305, 121 Stat. 735, 753 (Sept. 14, 2007).

<sup>2</sup> The term “participate” is not defined in the underlying Act or the House rule. In the Committee’s view, the prohibition on participation in the events that are the subject of the provision concerns Member attendance at the event. Members should contact the Committee with any questions regarding whether activities other than attendance may constitute participation in such events.

title,<sup>3</sup> as an honoree (including as a “special guest”) in any invitations, promotional materials, or publicity for the event. Member participation also would be prohibited if the Member were to receive, through the Member’s participation in the event, some 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.

According to the legislative history of this provision, the restriction set forth above is intended to have the “effect of preventing lobbyists or an entity employing such lobbyists from directly paying for a party to honor a *specific* Member.”<sup>4</sup> Thus, an event that is organized to honor a convention delegation, House committee, or caucus, without naming any specific Member of the delegation, committee, or caucus, or providing any special benefit or opportunity to a particular Member, would be an event that Members may participate in under the rule – provided that, as discussed below, attendance at the event otherwise would be in compliance with the House gift rule (House Rule 25, clause 5). There is no numerical minimum, or maximum, on the size of the delegation or caucus invited to or participating in such an event. Furthermore, a Member would not be prohibited from participating in an event taking place during a national convention if the Member’s name appears, for example, in a listing of the names of the honorary host committee members for the event if that listing includes the names of non-congressional host committee members.

The provision is very specific in prohibiting Member participation in an event that is “directly paid for” by a lobbyist or private entity that retains or employs lobbyists. The 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 retains or employs lobbyists, by itself, would not disqualify a Member from participating in the organization’s event.

The provision also states that Member participation is prohibited only at certain events taking place “[d]uring the dates” on which a national convention is held. Accordingly, the rule does not prohibit Member participation in an event that takes place on a date other than the dates on which the national convention is held.<sup>5</sup>

It is important to note that the provision does not establish a new type of event for which free attendance may be accepted under the gift rule. In other words, a Member may accept an offer of free attendance at an event taking place during a national political convention only in accordance with the gift rule – that is, the event is a reception or it satisfies all of the criteria of a widely attended event, a charity event, or a fundraising or campaign event sponsored by a political organization. As it has in previous Presidential

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<sup>3</sup> A Member’s personal titles include Congressman/Congresswoman, Representative, and Member of Congress, as well as any role in House leadership, or service as chair or ranking member of a full committee.

<sup>4</sup> 153 Cong. Rec. E1759 (daily ed. Aug. 4, 2007) (statement of Rep. John Conyers, Jr.) (emphasis added).

<sup>5</sup> For 2012, the restricted dates are August 27 to 30, 2012, for the Republican convention, and September 4 to 6, 2012, for the Democratic convention.

election years, the Committee will be reissuing guidance that addresses the rules and standards relating to gifts received in connection with the national political conventions.

Any questions on these matters should be directed to the Committee's Office of Advice and Education at extension 5-7103.

Jo Bonner, Alabama  
*Chairman*  
Linda T. Sánchez, California  
*Ranking Member*

Michael T. McCaul, Texas  
K. Michael Conaway, Texas  
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Joe Courtney, Connecticut



ONE HUNDRED TWELFTH CONGRESS

## U.S. House of Representatives

### COMMITTEE ON ETHICS

January 30, 2012

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#### MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

**FROM:** Committee on Ethics  
Jo Bonner, Chairman *JB*  
Linda T. Sánchez, Ranking Member *LS*

**SUBJECT:** The 2012 Outside Earned Income Limit and Salaries Triggering the Financial Disclosure Requirement and Post-Employment Restrictions Applicable to House Officers and Employees

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A House employee's salary level may trigger certain public disclosure requirements and employment restrictions, including the:

1. Requirement to file financial disclosure (FD) statements;
2. Restrictions on outside employment; and
3. Post-employment restrictions.

Due to the federal pay freeze,<sup>1</sup> the triggering salaries and limits have not changed from those in effect during calendar year (CY) 2011. This memorandum provides the triggering salary figures for CY 2012 for each of the categories noted above.

#### FINANCIAL DISCLOSURE

House officers and employees whose "rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule" for at least 60 days at any time during a calendar year are required to file FD statements, provided that the officer or employee "performs the duties of his [or her] position or office for a period in excess of sixty days in that calendar year."<sup>2</sup> The GS-15, step 1, basic pay rate for CY 2012 is \$99,628. The applicable 120% calculation for that rate for CY 2012 is \$119,553.60,<sup>3</sup> or a monthly salary at or above \$9,962.80.

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<sup>1</sup> See Continuing Appropriations Act, 2011, Pub. L. 111-242, § 147, as amended by Continuing Appropriations and Surface Transportation Extensions Act, 2011, Pub. L. 111-322, § 1(b)(1).

<sup>2</sup> Ethics in Government Act (EIGA) §§ 109(13) and 101(d), 5 U.S.C. app. 4 §§ 109(13) and 101(d) (hereinafter all citations to the EIGA will be to the appropriate federal code citation). In addition, all House Members are required to file FD statements. 5 U.S.C. app. 4 §§ 101(e) and (f).

<sup>3</sup> This amount is referred to as the "senior staff rate."

As a result, House officers and employees whose basic rate of pay is equal to or greater than the senior staff rate (\$119,553.60 for CY 2012) for at least 60 days<sup>4</sup> during 2012 must file an FD statement on or before May 15, 2013.<sup>5</sup> In addition, any new employee paid at the senior staff rate must file a “new employee” FD statement within 30 days of assuming employment with the House.<sup>6</sup>

Please note that the requirement to file an FD statement covering calendar year 2011 applies to officers and employees whose basic rate of pay for at least 60 days in 2011 was also \$119,553.60 or more. Annual FD statements for CY 2011 are due on Tuesday, May 15, 2012, for those individuals who continue to be Members, officers, or employees of the House on that date.

In addition, House Members, officers, and employees paid at or above the senior staff rate for 60 days or more in a calendar year who terminate their House employment during that calendar year are required to file an FD statement within 30 days of their termination.<sup>7</sup>

### **THE OUTSIDE EARNED INCOME LIMIT AND OUTSIDE EMPLOYMENT RESTRICTIONS**

House officers and employees whose rate of basic pay is equal to or greater than the senior staff rate for more than 90 days are subject to limits on the amount of outside earned income<sup>8</sup> attributable to each calendar year.<sup>9</sup> As noted above, the senior staff rate for CY 2012 is \$119,553.60, or a monthly salary of \$9,962.80 or more.

The limit on outside earned income attributable to a calendar year is 15% of the rate of basic pay for Executive Schedule Level II in effect on January 1 of the year. The rate of basic pay for Executive Level II on that date was \$179,700. Accordingly, the outside earned income

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<sup>4</sup> The House payroll department operates on a 30-day payroll cycle, meaning that each monthly pay period, regardless of its actual length, is counted as 30 days. Thus, a change to an employee’s base rate of pay in any two months during the calendar year (even non-consecutive months) may trigger the requirement to file a Financial Disclosure Statement. This is true even if the pay change affects only part of a month.

<sup>5</sup> 5 U.S.C. app. 4 §§ 101(c) and 109(f).

<sup>6</sup> See 5 U.S.C. app. 4 § 101(a). The only exception to this filing requirement is for new employees who assume employment with the House within 30 days of leaving a position with the federal government in which they filed a publicly-available financial disclosure statement. Individuals who are exempt from filing under these circumstances must notify the Clerk of the House in writing of that fact.

<sup>7</sup> See 5 U.S.C. app. 4 § 101(e). The only exception is for filers who, within 30 days of their termination from the House, accept a position with the federal government that requires the filing of a publicly-available financial disclosure statement. Departing employees who are exempt from filing under these circumstances must notify the Clerk of the House in writing of that fact.

<sup>8</sup> The term “outside earned income” means any “wages, salaries, fees, and other amounts received or to be received as compensation for personal services actually rendered” by a House Member, officer, or employee. House Rule 25, cl. 4(d)(1). It does not include the individual’s salary from the House, nor does it include income for services rendered before the individual was employed by the House. *Id.* at cls. 4(d)(1)(A), (B).

<sup>9</sup> 5 U.S.C. app. 4 § 501(a)(1); House Rule 25, cls. 1(a)(1) and 4(a)(1).

limit for House Members, officers, and employees paid at or above the senior staff rate for CY 2012 remains **\$26,955**.<sup>10</sup>

Members, officers, and House employees paid at or above the senior staff rate for more than 90 days are also subject to a number of specific limitations on the types of outside employment.<sup>11</sup> Detailed information regarding these limitations may be found on pages 213 to 238 of the *2008 House Ethics Manual*, which is available on the Committee's Web site ([ethics.house.gov](http://ethics.house.gov)). The Committee's Office of Advice and Education (extension 5-7103) is available to explain these limitations further.

### POST-EMPLOYMENT RESTRICTIONS

House Members and officers, as well as certain other House employees, are subject to post-employment restrictions on lobbying.<sup>12</sup> A former employee of a Member, committee, or leadership office is subject to the restrictions if, for at least **60 days** during the one-year period preceding termination of House employment, the employee was paid at a rate equal to or greater than 75% of the basic rate of pay for Members at the time of termination.<sup>13</sup> The basic rate of pay for Members in 2012 remains \$174,000. Therefore, the post-employment threshold for employees who depart from a job in a Member, committee, or leadership office during 2012 is **\$130,500**, or a monthly salary of \$10,875 or more. The triggering salary for employees of other House or legislative branch offices (such as the CBO, GAO, GPO, Capitol Police, Library of Congress, Clerk, Parliamentarian, Office of Legal Counsel, and Chief Administrative Officer) is Executive Schedule Level IV, which for 2012 is \$155,500, or a monthly salary of \$12,958.33 or more.

Information on the post-employment restrictions applicable to Members, officers, and very senior staff is available in two Committee advisory memoranda, one for Members and one for officers and staff. Copies of both memoranda are available on the Committee's Web site ([ethics.house.gov](http://ethics.house.gov)).

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<sup>10</sup> This amount is proportionally reduced when an individual becomes a Member, officer, or senior employee during the calendar year. For example, an individual who is hired into a senior staff position on July 1 has an outside earned limit that is one-half of the full amount, or \$13,478. See 5 U.S.C. app. 4 § 501(a)(2); House Rule 25, cl. 1(b).

<sup>11</sup> See 5 U.S.C. app. 4 § 502(a); House Rule 25, cls. 1-4.

<sup>12</sup> 18 U.S.C. § 207.

<sup>13</sup> This amount is referred to as the "very senior staff rate."

\* \* \* \* \*

CALENDAR YEAR 2012

<b>OUTSIDE EARNED INCOME AND OUTSIDE EMPLOYMENT THRESHOLD</b> (for more than 90 days).....	\$119,553.60
<b>OUTSIDE EARNED INCOME LIMIT</b> .....	\$ 26,955.00
<b>FINANCIAL DISCLOSURE THRESHOLD</b> (for 60 days or more) .....	\$119,553.60
<b>POST-EMPLOYMENT THRESHOLD</b>	
For employees of Member, committee, or leadership offices .....	\$130,500.00
For employees of "other legislative offices" .....	\$155,500.00

Jo Bonner, Alabama  
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*Ranking Member*

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ONE HUNDRED TWELFTH CONGRESS

## U.S. House of Representatives

### COMMITTEE ON ETHICS

March 9, 2012

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#### MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

**FROM:** Committee on Ethics  
Jo Bonner, Chairman *JB*  
Linda T. Sánchez, Ranking Member *AS*

**SUBJECT:** Change in Rules Regarding Providing a Hyperlink from Campaign Internet Sites to Official Internet Sites

In order to reduce confusion among constituents and the general public, and to help clarify the difference between campaign media and official media, the Committee is announcing a recent change, made after consideration of a request from the Franking Commission, in the policy regarding whether Members' campaign Web sites and other Internet communications resources, such as Facebook, Twitter, and YouTube (collectively Internet Sites), may contain language notifying constituents of Members' official Internet Sites and provide hyperlinks to those resources. Members' campaign Internet Sites may now provide a hyperlink to Members' official Internet Sites *if that hyperlink is presented in a brief notification that has been approved by the Committee on Ethics in advance.*

The Committee on Ethics has approved the use of the following notification:

Thank you for visiting my campaign (Web site/Twitter page/Facebook page). If your intention was to visit my official House of Representatives (Web site/Twitter page/Facebook page), please [click here](#). [The "click here" would be hyperlinked to the appropriate Web site.]

Members must seek written approval of the Committee on Ethics prior to using any other language in their disclaimer. This new policy remains an exception to the general rule that campaign resources may not be used to advertise the contact information, such as the address or telephone number, for the official congressional office. *Therefore, any Internet Sites that do not use a specifically-approved notification, such as the one above, may not contain a hyperlink or reference to a Member's official Internet Site.*

Note that this exception applies only to a hyperlink to an official Internet Site from a Member's campaign Internet Site. The new policy does not cover the reverse

situation; thus, a Member's official Internet Site still may not contain a reference or link to any campaign Internet Site.

\* \* \*

Any questions on these matters should be directed to the Committee's Office of Advice and Education at extension 5-7103.

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Joe Courtney, Connecticut



ONE HUNDRED TWELFTH CONGRESS

## U.S. House of Representatives

COMMITTEE ON ETHICS

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April 4, 2012

### MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

**FROM:** Committee on Ethics *JB*  
Jo Bonner, Chairman  
Linda T. Sánchez, Ranking Member *LS*

**SUBJECT:** New Ethics Requirements Resulting from the STOCK Act

The purpose of this memorandum is to summarize the new rules and clarifications put in place by the enactment of the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act).<sup>1</sup> Many of the new ethics requirements discussed below took effect on **April 4, 2012**, when the STOCK Act was signed into law. Other provisions take effect at a later date. The effective date of each change is included in the discussion below.

Provisions of the STOCK Act that affect House Members and staff include:

- Financial disclosure filers must periodically report transactions in certain securities  
*(Provision applies to transactions executed on or after July 3, 2012);*
- Members must disclose personal residence liabilities (e.g., mortgages)  
*(Provision applies to Members' financial disclosure statements to be filed May 15, 2012);*
- Extensions in financial disclosure matters will be disclosed on the Clerk of the House's Web site  
*(Provision applies to extensions granted for filings made in 2012. They will be made public not later than August 31, 2012);*
- Limitations are imposed on participation in Initial Public Offerings  
*(Provision applies to participation on or after April 4, 2012);*

<sup>1</sup> Stop Trading on Congressional Knowledge Act, S 2038, as enrolled, PL 112-\_\_\_ (Enacted April 4, 2012) (hereinafter STOCK Act).

- All senior staff must submit employment negotiation and recusal notices (*Provision applies to negotiations commenced on or after April 4, 2012*); and
- Prohibitions on “insider trading” are clarified and re-affirmed.

## DEFINITION OF SENIOR STAFF

Among other actions, the STOCK Act amends certain requirements, and adds new requirements, for Financial Disclosure (FD) filings under the Ethics In Government Act (EIGA).<sup>2</sup> Many of the requirements apply to Members and “senior staff,” as defined in the EIGA. *While these provisions have not changed, the Committee takes this opportunity to remind you that it is your responsibility to know if you are senior staff and to comply with the ethics requirements that attach to that designation.*

As a reminder, “senior staff” are those House officers and employees whose “rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule” for at least 60 days at any time during a calendar year, provided that the officer or employee “performs the duties of his [or her] position or office for a period in excess of sixty days in that calendar year.”<sup>3</sup> For CY 2011 and CY 2012 the annual threshold rate of pay is **\$119,553.60**,<sup>4</sup> or a monthly salary at or above \$9,962.80. If your gross base salary was raised above the senior staff rate, \$9,962.80, for any two months<sup>5</sup> in a calendar year then you are senior staff for that calendar year for FD purposes. This often happens when House employees are awarded year-end bonuses that are paid out over two paychecks.

## PERIODIC TRANSACTION REPORTS

In general, FD filers must report on their annual FD filing each purchase, sale, or exchange transaction involving real property, stocks, bonds, commodities futures, or other securities made by the filer, their spouse, or dependent child when the amount of the transaction exceeds \$1,000. For sales transactions, the \$1,000 threshold is based on the total dollar value of the transaction, not the gain or loss made on the sale.

Section 6 of the STOCK Act now requires Members, officers, and employees who file annual FD Statements pursuant to the EIGA to also file periodic reports of certain

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<sup>2</sup> Ethics In Government Act (EIGA), 5 U.S.C. app. 4 §§ 101 *et seq.* Hereinafter all citations to the EIGA will be to the appropriate federal code citation.

<sup>3</sup> 5 U.S.C. app. 4 §§ 109(13) & 101(d). In addition, all House Members are required to file FD statements. 5 U.S.C. app. 4 §§ 101(e)-(f).

<sup>4</sup> This amount is referred to as the “senior staff rate.”

<sup>5</sup> The House payroll department operates on a 30-day payroll cycle, meaning that each monthly pay period, regardless of its actual length, is counted as 30 days. Thus, a change to an employee’s base rate of pay in any two months during the calendar year (even non-consecutive months) may trigger the requirement to file a Financial Disclosure Statement. This is true even if the pay change affects only part of a month.

personal financial transactions in stocks, bonds, and other securities. As a result, Members and officers and employees who are senior staff must file Periodic Transactions Reports (PTR) for transactions that are executed on or after **July 3, 2012**.<sup>6</sup> The requirement to file PTRs also applies to House employees who are not paid at the senior staff rate but are required to file an annual FD because they were designated to file as a principal assistant by their employing Member. A PTR must be filed within 30 days of the filer's receiving notice that a reportable transaction has been made, but no later than 45 days after the transaction has occurred.

As a general matter, all securities transactions that are already reportable on an annual FD Statement must now also be reported on a PTR, with certain exceptions, as described below.

**Exception:** You are not required to file a PTR for transactions in a widely held investment fund (*e.g.*, a mutual fund or exchange traded fund) if:

1. You neither exercise control over nor have the ability to exercise control over the financial interests held by the fund, and
2. The fund is publicly traded or the assets of the fund are widely diversified.

A fund is widely diversified if it both:

1. Holds no more than 5% of the value of its portfolio in the securities of any issuer (other than the U.S. government), and
2. Holds no more than 20% of the value of its portfolio in any particular economic or geographic region.<sup>7</sup>

Note that while transactions in these types of securities do not have to be reported on a PTR, *they must still be reported on your annual FD Statement.*

Also note that purchase and sales transactions involving assets held within self directed retirement accounts such as 401(k) plans and IRAs must be disclosed on both a PTR and your annual FD Statement if they exceed \$1,000 in value or generate more than \$200 in income for any one asset. For example, if you have a 401(k) plan and direct the plan administrator to sell your entire \$10,000 holding in "Mega Corporation" stock and purchase shares in "Zoro Company" stock you must separately disclose each of these transactions on the transactions report. Likewise, the reallocation of funds among currently-held assets within these accounts are also considered purchase and sales transactions and must be disclosed.

The reporting threshold for disclosure of transactions is reached when the *gross* amount of either a single purchase or sales transaction exceeds \$1,000. *This includes transactions that result in a net loss.* Thus, a sales transaction of an asset for \$5,000 for

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<sup>6</sup> 5 U.S.C. app. 4 §§ 101(c), 109(f) and 103(l).

<sup>7</sup> See 5 C.F.R. § 2634.310(c)(3) (2006).

which you previously paid \$7,000 must be disclosed on a PTR even though it resulted in a \$2,000 net loss.

The Committee will issue additional guidance regarding PTRs, as well as forms for use in filing a PTR, and provide additional training, closer to the date the first reports will be due.

### **MEMBER DISCLOSURE OF MORTGAGES ON PERSONAL RESIDENCES ON THE ANNUAL FD STATEMENT**

The EIGA requires all FD filers to report any liabilities secured by real property that generates income or is held for investment purposes.<sup>8</sup> To date, this requirement had excepted disclosure of any liability on real property that was used solely as a personal residence (*i.e.*, that did not generate any rental income and was not held for an investment purpose).<sup>9</sup>

Section 13 of the STOCK Act deletes the personal residence exception for Members. Pursuant to the STOCK Act, Members are now required to report all liabilities secured by real property that they own or that they own jointly with another person, regardless of whether or not the property generates any rental income or is held for an investment purpose. (This requirement does not apply to officers or employees.) As a result, Members now must report on Schedule V of their annual FD Statement any mortgage, home equity loan, or home equity line of credit on any property, including a personal residence. In addition to a Member's primary personal residence, this includes, but is not limited to, the mortgage on a vacation or second home or vacant piece of property. Members must report the liability at the highest amount owed during the reporting period. This reporting requirement will apply to annual reports due on or after **May 15, 2012**.

### **PUBLIC DISCLOSURE OF FD EXTENSIONS**

The EIGA permits the Committee to grant an extension of time for the filing of any Statement required under the statute.<sup>10</sup> Section 8(a)(2) of the STOCK Act now requires any grant of an extension to be publicly filed by the Clerk, together with the report for which the extension was granted.

Any filer seeking an extension of time to file an FD Statement should use the appropriate form created by the Committee for that purpose. Extension request forms for annual filers, PTR filers, and candidates are available on the Committee Web site ([ethics.house.gov](http://ethics.house.gov)) under Financial Disclosure / Information & Forms. Instructions for completing and submitting an extension request to the Committee appear on the

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<sup>8</sup> 5 U.S.C. app. 4 § 102(a)(4).

<sup>9</sup> 5 U.S.C. app. 4 § 102(a)(4)(A).

<sup>10</sup> 5 U.S.C. app. 4 § 101(g).

extension request forms. The Committee will submit all granted extension requests to the Clerk for public filing. Please remember that an extension will only be granted if the request is received on or before the original due date.

### **LIMITATION ON PARTICIPATION IN INITIAL PUBLIC OFFERINGS**

Section 12 of the STOCK Act bans Member, officers, and employees who file FD statements from participating in Initial Public Offerings (IPO) in a manner “other than is available to members of the public generally.” IPO participation, however, is often unavailable to the general public at all. This limitation took effect immediately upon enactment of the STOCK Act on April 4, 2012. If you would like to participate in an IPO, please first contact the Committee in advance to determine whether or not the purchase would be permissible.

### **DISCLOSURE OF EMPLOYMENT NEGOTIATIONS AND RECUSAL REQUIREMENTS**

House Rule 27 requires all Members, officers, and those employees who are deemed “very senior staff” to file a statement of negotiation with the Committee within three days of entering job negotiations with a private employer. “Very senior staff” are employees of a Member, leadership, or committee office who have been paid at an annual rate of \$130,500 for at least 60 days in the past 12 months.<sup>11</sup>

Section 17 of the STOCK Act extends this requirement to all employees who file a Financial Disclosure Statement pursuant to EIGA. *Thus, the requirement to file a written notice of job negotiations now applies to both senior staff and those staff designated as principal assistants, as well as to Members, officers, and very senior staff.* In addition, Members and these employees must also recuse themselves from matters where there is a conflict of interest or the appearance of a conflict and notify the Ethics Committee in writing of the recusal. This requirement took effect immediately upon enactment of the STOCK Act on April 4, 2012.

The Committee has issued forms, available on the Committee Web site ([ethics.house.gov](http://ethics.house.gov)), to be used for these notification requirements. When notifying the Committee of negotiations or agreements for future employment or compensation, Members and employees should complete and sign an employment negotiation form, formally titled the “Notification of Negotiations or Agreement for Future Employment.” The original, completed form must be submitted to the Committee, but all filers should keep a copy of their submission for their records. There is a separate form for notifying the Committee of recusal, entitled the “Statement of Recusal.” As with the job negotiation form, the original Statement of Recusal must be submitted to the Committee.

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<sup>11</sup> The very senior staff rate for employees of other legislative offices, such as the Architect of the Capitol, Government Accountability Office, Government Printing Office, Library of Congress, Congressional Budget Office, and Capitol Police, is \$155,500 for CY 2012.

Note that Rule 27, clause 4, requires that any Member who recuses from any action under the rule must then file the Member's Notice of Negotiations with the Clerk for public disclosure. (Officers and staff are not subject to this public disclosure requirement).

Guidance for determining when either a Notice of Negotiations or Statement of Recusal must be filed is provided in a pair of advisory memoranda (one for Members and one for House staff). The two memoranda, "Negotiations for Future Employment and Restrictions on Post-Employment" for Members or staff, are available on the Committee Web site ([ethics.house.gov](http://ethics.house.gov)) under "General Advisories."

### PROHIBITION AGAINST INSIDER TRADING

The Committee previously issued guidance regarding several statutes and rules that already prohibit so-called insider trading by Members and staff.<sup>12</sup> The STOCK Act explicitly affirms that Members and all employees are subject to the insider trading prohibitions arising under the securities laws, which include Section 10(b) of the Securities Exchange Act of 1934 and 17 C.F.R. § 240.10b-5 (popularly known as Rule 10b-5). The prohibition applies to information learned both in an official capacity and in a personal capacity.

As discussed in the Committee's earlier advisory memorandum, Members and employees may obtain material nonpublic information about a public company or economic sector (e.g., energy, telecommunications, or healthcare) during the course of their official duties or in their personal capacity from family, friends, acquaintances, or from their own involvement with a company. If the Member or employee chooses to trade on this information, they may have engaged in insider trading.

Material nonpublic information is any information concerning a company, security, industry or economic sector, or real or personal property that is not available to the general public and which an investor would likely consider important in making an investment decision. A good rule of thumb to determine whether information may be material nonpublic information is whether or not the release of that information to the public would have an effect on the price of the security or property.

For example, a House employee learns in a meeting with Food and Drug Administration (FDA) staff that a new miracle weight loss drug is going to be approved by the FDA. The staffer is informed at the meeting that this information is confidential. The House employee then buys shares in the company that manufactures the drug. Once the news of the drug approval is made public, the company share price increases and the employee sells at a profit. As the STOCK Act explains, the employee would be subject to liability for violation of federal civil and criminal insider trading statutes. However, if

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<sup>12</sup> Comm. on Ethics, *Rules Regarding Personal Financial Transactions* (Nov. 29, 2011). While the Committee may issue additional guidance on these restrictions in the future, the guidance cited above is incorporated herein in satisfaction of Section 3 of the STOCK Act.

the House employee waits to purchase the shares until the information regarding the FDA decision becomes public, the employee would not be subject to liability.

Finally, Section 4 of the STOCK Act also makes clear that each member of Congress or employee of Congress owes a duty arising from a relationship of trust and confidence to the Congress, the United States Government, and the citizens of the United States, with respect to material, nonpublic information derived from such person's position as a Member or employee of Congress.

As with any criminal statutes or Executive Branch regulations, the Committee cannot provide binding interpretations of securities law. However, as House Rules and standards have long prohibited related activities, the Committee is available to discuss these matters and assist staff in any appropriate manner.

\* \* \*

As noted above, the Committee will be providing training directed at several of the provisions discussed above, particularly as they relate to financial disclosures. However, any additional questions on any of these matters may be directed to the Committee's Office of Advice and Education at (202) 225-7103.

Jo Bonner, Alabama  
*Chairman*  
Linda T. Sánchez, California  
*Ranking Member*

Michael T. McCaul, Texas  
K. Michael Conaway, Texas  
Charles W. Dent, Pennsylvania  
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## U.S. House of Representatives

COMMITTEE ON ETHICS

June 1, 2012

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### MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

**FROM:** Committee on Ethics  
Jo Bonner, Chairman *JB*  
Linda T. Sánchez, Ranking Member *LTS*

**SUBJECT:** Gift Rules Applicable to National Political Conventions

With the time for the 2012 Presidential nominating conventions approaching, we believe it would be helpful to provide you with a summary of the key provisions of the House gift rule (House Rule 25, clause 5) that apply in the context of the conventions. Any questions on how these provisions apply to a specific proposed event or other gift should be directed to the Committee.

Note that the advice contained in this memorandum should be read in conjunction with the guidance provided in the Committee's general advisory memorandum of January 24, 2012, entitled "Member Participation in Certain Events Taking Place During a National Political Convention," addressing events held in honor of a Member and sponsored by a lobbyist or entity that employs lobbyists. While that memorandum addressed a particular rule applicable only to national political conventions, this memorandum summarizes the general rules that are always applicable, and places them in the context of the national political conventions.

\* \* \*

The gift rule prohibits Members and House staff from accepting any gift – including any meal, entertainment, transportation, services, or anything else having monetary value – except as specifically provided in the rule. Members and staff are also generally prohibited from *soliciting* any gift, whether for themselves or for others. Under the gift rule as applied by the Committee, gifts that *may* be accepted in connection with the conventions include the following.

1. Any gift paid for by the host *cities of Tampa or Charlotte*, or any unit of federal, state, or local government, may be accepted. However, this provision does *not* apply when a governmental entity is being used merely as a conduit for a gift from another person or entity. Thus, for example, if a city were given event tickets that were designated by the donor, either formally or informally, for distribution to Members or

staff, those tickets would be deemed a gift from the original donor and would be subject to the restrictions of the rule that apply to gifts from that source.

2. The rule allows the acceptance of a range of gifts – including meals, lodging, entertainment, and transportation – from a *political organization in connection with a campaign or fundraising event* that the organization is sponsoring. Under this provision, as applied by the Committee, Members and staff may accept such gifts provided in connection with the convention from the Democratic National Committee (DNC) or Republican National Committee (RNC) or the Democratic or Republican Convention Committee, as well as from the convention host committees for Tampa and Charlotte.<sup>1</sup> In addition, travel expenses to the convention may be accepted from a state or local party organization, or a Member may use the Member's campaign funds to pay travel expenses to the convention.<sup>2</sup>

3. At times, state or local party organizations, campaign committees, and other political organizations sponsor their own *campaign or fundraising events* at the conventions. Under the same gift rule provision that is referred to in item 2, Members and staff may accept an offer of free attendance, and related benefits, at such events from the sponsoring political organization (but not from anyone other than the sponsoring political organization). However, Members and staff should consult with the FEC regarding their attendance at non-federal political fundraising events.

4. Attendance at *receptions*, at which the food served is limited to moderate appetizers, beverages, and similar items and does not include a meal, is permissible under the gift rule.

5. Staff and Members who are *convention delegates* may accept invitations to events and other gifts that are offered to all of the convention delegates or to, for example, all of the convention delegates from their state.

6. A Member or staff person, as well as one accompanying individual, may accept an offer of free attendance at a "*widely attended*" event, if all of the following are true: (a) the invitation is extended by the event organizer; (b) the event will have at least 25 non-congressional attendees; (c) the event is open to the general public, or the non-congressional attendees represent a wide range of individuals interested in a given matter; and (d) the Member or employee will have some participatory role in the event, or their attendance is connected to the performance of their official duties. This provision

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<sup>1</sup> However, the same caveat noted at item 1 with regard to gifts earmarked for distribution to Members or staff applies as well with regard to any such gifts received from these committees. Any such gifts would be deemed to be from the original donor, and not from the party, convention, or host committee.

<sup>2</sup> The Federal Election Commission (FEC) has issued advisory opinions that address circumstances in which a Member may use campaign funds to pay, in addition, the convention-related travel expenses of the Member's spouse or child, or those of a congressional staff member. Please note, however, that a congressional employee may attend a convention only on the individual's own time, not on official time. FEC staff should be consulted directly with regard to use of campaign funds to pay the convention-related travel expenses of these other individuals.

generally does not allow free attendance at events such as shows or sporting events. In addition, events that are political in nature or are fundraising events for any entity generally are deemed not to be connected to official duties for purposes of the gift rule.

7. A House Member or employee may accept free attendance at a *charity event* provided that: (a) the invitation is extended by the event organizer; and (b) the primary purpose of the event is to raise funds for an organization qualified under § 170(c) of the Internal Revenue Code (including § 501(c)(3) charitable organizations). This latter criterion is generally satisfied when more than half of the cost of the admission fee is deductible as a charitable donation.

8. A Member or staff person may also accept any gift (other than cash or cash equivalent) having a value of *less than \$50*, provided the donor is not a federal lobbyist, registered foreign agent, or an entity that employs or retains such individuals. Each Member or staff person has a cap of less than \$100 in gifts from any one source during the calendar year under this exception. *Members and staff must be especially cautious about accepting invitations to sporting events, shows, recreational activities, or small group or one-on-one meals.* Unless acceptable under one of the gift rule provisions noted above, attendance likely will be permissible only if the market value of the gift is worth less than \$50.

9. At times Members wish to hold an event of their own, such as a reception, at the convention. As a general matter, Members may pay for such events with their campaign funds.

\* \* \*

Further explanation of the gift rule and guidance on the application of its provisions is available from the Committee's Office of Advice and Education at extension 5-7103.

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June 7, 2012

#### MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics *JB*  
Jo Bonner, Chairman  
Linda T. Sánchez, Ranking Member *ATS*

SUBJECT: Periodic Reporting of Personal Financial Transactions Pursuant to the STOCK Act

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Among other requirements, the Stop Trading on Congressional Knowledge Act (STOCK Act)<sup>1</sup> requires Members, officers, and employees who file personal Financial Disclosure (FD) Statements pursuant to the Ethics in Government Act of 1978 (EIGA)<sup>2</sup> to file periodic reports of their personal financial transactions valued over \$1,000 in stocks, bonds, and other securities executed on or after July 3, 2012. This memorandum summarizes the rules regarding the periodic reporting of personal financial transactions made by House Members, officers, and certain senior employees<sup>3</sup> as required by the STOCK Act.

*NOTE: Staff may become subject to this filing requirement mid-year due to a pay raise or bonus.*

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<sup>1</sup> Stop Trading on Congressional Knowledge Act, Pub. L. No. 112-105 (Apr. 4, 2012) (hereinafter STOCK Act).

<sup>2</sup> 5 U.S.C. app. 4 §§ 101 *et seq.*

<sup>3</sup> The terms "staff" and "employee" are used interchangeably throughout this memorandum to refer to persons who are employed by a House Member, committee, leadership office, or other legislative branch office. See note 5 below for more information on other legislative branch offices.

## WHO IS REQUIRED TO FILE PERIODIC TRANSACTION REPORTS

The requirement to file Periodic Transaction Reports (PTR) applies to:

- Members,<sup>4</sup>
- Officers, and
- Senior staff, meaning any employee paid at the senior staff rate for any two months during a calendar year, as explained more fully below.<sup>5</sup>

While the definition of “senior staff” has not changed, the Committee takes this opportunity to remind you that *it is your responsibility to know if you are senior staff and to comply with the ethics requirements that attach to that designation.*

### Senior Staff

The EIGA defines senior staff as those House officers and employees whose “rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule” for at least 60 days at any time during a calendar year, provided that the officer or employee “performs the duties of his [or her] position or office for a period in excess of sixty days in that calendar year.”<sup>6</sup> For CY 2012 the triggering rate of annual pay is \$119,553.60,<sup>7</sup> or a monthly salary at or above \$9,962.80.<sup>8</sup> An employee whose base salary is raised above the senior staff rate, \$9,962.80, for any two months (which for House purposes means two pay periods)<sup>9</sup> in a calendar year is senior staff for that calendar year for EIGA purposes. The months do not have to be consecutive. This often happens when House employees are awarded

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<sup>4</sup> The requirement to file PTRs does not apply to candidates for the U.S. House of Representatives. See 5 U.S.C. app. 4 § 103(l).

<sup>5</sup> The obligation to file PTRs also applies to FD Statement filers who are employees of various legislative branch agencies, including, but not necessarily limited to, the Architect of the Capitol, United States Capitol Police, Congressional Budget Office, and Library of Congress. 5 U.S.C. app. 4 § 103(h)(1)(A)(i)(I). Pursuant to its authority under 5 U.S.C. app. 4 § 106(b), the Committee has delegated to the Congressional Budget Office, Library of Congress, Architect of the Capitol, Government Printing Office, and Capitol Police the responsibility of reviewing and certifying FD Statements and PTRs for their own employees. Employees of those agencies should contact their respective general counsel's offices with any questions about their disclosure obligations. Employees of agencies designated under the authority of the U.S. Senate for these purposes should consult with the Senate for rules regarding PTRs.

<sup>6</sup> 5 U.S.C. app. 4 §§ 109(13) & 101(d).

<sup>7</sup> This amount is referred to as the “senior staff rate.”

<sup>8</sup> The Committee publishes a memorandum at the beginning of each calendar year that provides the senior staff rate for that year. The memorandum is available on the Committee Web site, [www.ethics.house.gov](http://www.ethics.house.gov), under “General Advisories.”

<sup>9</sup> The House payroll department operates on a 30-day payroll cycle, meaning that each monthly pay period, regardless of its actual length, is counted as 30 days. Thus, a change to an employee's base rate of pay in any two months during the calendar year (even non-consecutive months) may trigger the requirement to file an FD Statement. This is true even if the pay change affects only part of a month.

year-end bonuses that are paid out over two paychecks. As a result, House officers and employees whose basic rate of pay is equal to or greater than the senior staff rate (\$119,553.60 for CY 2012) for at least 60 days (two pay periods) during 2012 must file PTRs for transactions that are executed on or after July 3, 2012.<sup>10</sup>

*NOTE: Paying a bonus through a lump sum payment rather than through raising an employee's base rate of pay does not trigger the EIGA filing requirements and therefore would not trigger the requirement to file PTRs.*

FD filings and filing requirements are generally considered on a calendar-year basis. Thus, new employees and employees paid at or above the senior staff rate on January 1, or their first day of employment if after January 1, must file PTRs for that calendar year. Any employee who receives a pay increase (or mid-year bonus) that results in the employee being paid the senior staff rate (\$9,962.80 monthly gross in 2012) in two pay periods must begin filing PTRs for all transactions executed following the second pay period. However, the PTR filing requirement would not attach to an employee who does not become "senior staff" until December 31 (for example, by receiving a year-end bonus), unless the employee's pay rate remains above the senior staff rate on January 1. Specific examples demonstrating these rules are provided below.

The PTR filing requirement remains in effect for senior staff who take leave without pay (LWOP) or medical or family leave (including maternity or paternity leave) from their House employment.

#### Principal Assistants

Pursuant to the EIGA, every Member office must have at least one employee who files an annual FD Statement.<sup>11</sup> Most offices will have at least one employee who is paid at or above the senior staff rate and therefore is required to file both an annual FD Statement and PTRs. If a Member does not have an employee paid at or above the senior staff rate, the Member must designate at least one current employee as a principal assistant to file an annual FD Statement. *However, principal assistants are not required to file PTRs.* Thus, the only employees required to file PTRs are those who qualify as senior staff, as defined above.

#### Examples of Employees Who Must File PTRs

1. An employee is hired with a starting salary of \$130,000 and begins work on October 1, 2012. The employee must file a PTR for any reportable transaction on or after October 1, 2012 (new employee beginning House employment at senior staff rate).

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<sup>10</sup> 5 U.S.C. app. 4 §§ 101(c), 101(f)(10), 103(l), and 109(13).

<sup>11</sup> 5 U.S.C. app. 4 §§ 101(d), 101(f)(10), and 109(13).

2. An employee's salary for the year, on January 1, 2013, is \$135,000. That employee must file a PTR for any reportable transaction on or after January 1, 2013 (senior staff at start of new reporting period).
3. An employee is promoted on June 1, 2012, and her June and July monthly gross pay rate is now \$9,963. The employee must file a PTR for every reportable transaction executed on or after August 1, 2012 (staffer becomes a senior staffer after 60 days at senior staff pay rate; PTR filing requirement begins at 60-day mark of being senior staff).
4. An employee receives a bonus in February and August 2012 that increases his gross rate of pay above \$9,962.80 for those two months. The employee must file a PTR for every reportable transaction executed on or after September 1, 2012 (staffer becomes a senior staffer after 60 days at senior staff pay rate; PTR filing requirement begins at 60-day mark of being senior staff).
5. An employee whose base salary rate for 2012 is \$115,000 receives a bonus in November and December 2012 that increases her gross rate of pay above \$9,962.80 for those two months. The employee's salary is \$115,000 on January 1, 2013. The employee will not file PTRs in 2013, but will file an annual FD Statement covering all of CY 2012 (not senior staff until end of 2012 pay period, and not senior staff at start of new 2013 reporting period).
6. An employee whose base salary rate for 2012 is \$115,000 receives a bonus in November and December 2012 that increases his gross rate of pay above \$9,962.80 for those two months. The employee's salary is increased to \$125,000 starting on January 1, 2013. The employee must file a PTR for any reportable transaction on or after January 1, 2013, and will also file an annual FD Statement for CY 2012 (not senior staff until end of 2012 pay period, but is senior staff at start of new 2013 reporting period; has PTR filing requirement for all 2013 transactions).
7. An employee whose base salary rate for 2012 is \$115,000 receives a bonus in December 2012 and January 2013 that increases his gross rate of pay above \$9,962.80 for those two months. The employee's salary is decreased to \$115,000 starting on February 1, 2013. The employee must file a PTR for any reportable transaction on or after January 1, 2013, but will not file an annual FD Statement for CY 2012 (bonus made the person senior staff at start of new reporting period).
8. A Member designates an employee as her principal assistant on August 15, 2012. The employee must file an annual FD Statement on May 15, 2013, but is not required to file any PTRs (designated PA filer; no PTR filing requirement).

## WHAT TRANSACTIONS MUST BE REPORTED

Among other requirements, filers must report on their annual FD Statement each purchase, sale, or exchange transaction involving stocks, bonds, commodities futures, or other securities owned by the filer (or the filer jointly with any other person) when the amount of the transaction(s) in an asset exceeds \$1,000. In addition to this annual disclosure, FD filers are now required to report on a PTR individual transactions executed on or after July 3, 2012, for which the gross value of the transaction exceeds \$1,000, with some exceptions. The STOCK Act did not eliminate the need to report these transactions on the annual FD Statement, and therefore each transaction reported on a PTR also must be reported on the annual FD Statement. Please see the chart at the end of this document for examples of how some typical assets are treated on PTRs and the annual FD Statement.

### Reportable Transactions

*A PTR filing is required for any single purchase, sale, or exchange transaction of a stock, bond, commodities future, or other security when the amount of the transaction exceeds \$1,000.*<sup>12</sup> For sales transactions, the \$1,000 threshold is based on the total dollar value of the transaction, not the gain or loss made on the sale.

The term “security” has been broadly defined in the securities statutes<sup>13</sup> to include notes, options, futures, debentures, and “investment contracts,” among other things. The Supreme Court laid down a basic test for an investment contract in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). The test is whether “a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party.”<sup>14</sup> Among the types of interests which have been deemed securities under this standard are interests in: oil and gas drilling programs; partnerships; farm animals; commodity options contracts; whiskey warehouse receipts; and multilevel distributorship arrangements and merchandise marketing schemes. While the above definitions and standards may not be binding for purposes of reporting under the EIGA, they do provide helpful guidance to determine what must be reported. If you have a question regarding whether your asset is a security, please contact the Committee.

#### *Purchase transactions which must be disclosed on a PTR include:*

- Individual purchases involving an asset listed above in which the transaction amount exceeds \$1,000; or

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<sup>12</sup> Voluntary over-disclosure on annual FD Statements and on PTRs is always permitted. However, voluntary disclosure regarding an asset on the annual FD Statement does not necessarily create a PTR obligation regarding that asset. Filers may want to include a comment or footnote regarding the voluntary disclosure so that anyone reviewing the reports understands the characteristics of the asset or transactions that make them exempt from reporting on a PTR.

<sup>13</sup> See 15 U.S.C. § 77b(a)(1) and 15 U.S.C. § 78c(a)(10).

<sup>14</sup> *SEC v. W.J. Howey Co.*, 328 U.S. at 299.

- Reinvestment of income (such as dividends or interest) in a reportable asset in which the amount of a single reinvestment transaction exceeds \$1,000.

*Sales transactions which must be disclosed on a PTR are:*

- Individual sales involving an asset listed above in which the transaction amount exceeds \$1,000. As stated above, for sales transactions, the \$1,000 threshold is based on the total dollar value of the transaction, not the gain or loss made on the sale.

*Exchange transactions* valued at more than \$1,000 must be disclosed on a PTR. Such transactions, however, are somewhat rare and refer only to a single set of circumstances that involves the exchange of stock certificates following the purchase of one company by another or a merger of two companies. For example, if you own stock in Company A and that company is purchased by (or merged with) Company B, your Company A stock may be exchanged for Company B stock. An exchange transaction may be disclosed in a single entry on a PTR. For example, you may state in the "Asset" column "Company A stock exchanged for Company B stock following merger." There are many transactions that filers believe are exchanges, but are really purchases and sales. If you believe you have an exchange and it does not fit the example above, please contact Committee staff for guidance.

*NOTE: Purchase and sales transactions involving assets held within self directed retirement accounts such as 401(k) plans and IRAs must be disclosed on a PTR if they exceed \$1,000 in value.* For example, if you have a 401(k) plan and direct the plan administrator to sell your entire \$10,000 holding in "Mega Corporation" stock and purchase shares in "Zoro Company" stock, you must separately disclose both of these transactions on a PTR. Likewise, the reallocation of funds among currently-held assets within these accounts is also considered to be both purchase and sale transactions and must be disclosed if the transaction exceeds \$1,000 in any asset. However, purchases or sales of widely held investment funds within retirement accounts do not have to be reported on a PTR, as discussed below under "Excluded Transactions."

The reporting threshold for disclosure of transactions is reached when the *gross* amount of either a single purchase or sales transaction exceeds \$1,000. *This includes transactions that result in a net loss.* Thus, a sales transaction of an asset for \$5,000 for which you previously paid \$7,000 must be disclosed even though it resulted in a \$2,000 loss. You do not need to indicate on a PTR whether you had a capital gain or loss resulting from a sale.<sup>15</sup>

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<sup>15</sup> If the sale of the asset resulted in a capital gain of over \$200 that capital gain must be reported as unearned income on Schedule III of your annual FD Statement.

## Excluded Transactions

Transactions in certain types of assets are excluded from the PTR filing requirement, as explained below. *In addition, the PTR filing requirement applies only to assets owned in whole or in part by the filer.* As drafted and incorporated into the EIGA, the STOCK Act does not require the periodic reporting on a PTR of transactions in assets wholly owned by the filer's spouse or dependent children.<sup>16</sup> The requirement to report such transactions, however, still applies to the filer's annual FD Statement. Therefore, spouse and dependent child transactions which are wholly separate and independent of the filer must be reported only on the annual FD Statement.

You are not required to report transactions in a widely held investment fund (e.g., a mutual fund or exchange traded fund (ETF)) on a PTR if:

1. You neither exercise control over nor have the ability to exercise control over the financial interests held by the fund; and
2. (a) The fund is publicly traded; or  
(b) The assets of the fund are widely diversified.<sup>17</sup>

*As a result of this exception, every transaction of a publicly traded fund (mutual fund or ETF) is exempted from disclosure on a PTR.* Examples of assets for which transaction reports would not be required include, but are not limited to, the Vanguard Energy Fund (sector mutual fund), Fidelity Contrafund (mutual fund), T. Rowe Price High Yield Fund (mutual fund), SPDR S&P 500 (ETF), iShares S&P Target Date 2045 Index Fund (ETF), iShares S&P Europe 350 Index Fund (geographic ETF), and VEST Potomac Portfolio (Virginia 529). However, transactions in these funds must still be disclosed on the filer's annual FD Statement if they meet the \$1,000 threshold.

A fund is widely diversified if it:

1. Holds no more than 5% of the value of its portfolio in the securities of any issuer (other than the U.S. government); and
2. Holds no more than 20% of the value of its portfolio in any particular economic sector or geographic region.<sup>18</sup>

Further explanation of certain terms used in the definition of "widely diversified" is as follows:

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<sup>16</sup> See 5 U.S.C. app. 4 §§ 101(f)(9) and (10), 102(e), 103(f), and 109(13).

<sup>17</sup> STOCK Act at § 14. Transactions in a widely held investment fund should continue to be reported on the annual FD Statement even though they are exempted from PTR disclosure.

<sup>18</sup> See 5 C.F.R. § 2634.310(c)(3) (2006).

- **Issuer:** A legal entity that develops, registers, and sells securities for the purpose of financing its operations.
- **Economic Sector:** An area of the economy in which businesses share or offer the same or a related product or service and share common characteristics. Investors use sectors to place stocks and other investments into categories like technology, health care, energy, utilities, and telecommunications.
- **Geographic Region:** A single region of the globe, such as Europe, Asia, or Latin America, or an individual country or small group of countries. This definition only applies to geographic regions outside the United States.

If you have a question regarding whether your non-publicly traded fund (*e.g.*, hedge fund or private equity fund) is widely diversified, you should contact Committee staff for guidance. If you determine that you do not need to file a PTR for transactions in a non-publicly traded fund, in which the particular holdings are confidential, you must obtain a letter from the fund manager, on the fund stationery, in which the fund manager states that the assets held by the fund are confidential and are not disclosed to anyone. In addition, the letter must state that the fund holds no more than 5% of the value of its portfolio in the securities of any issuer (other than the U.S. government) and that it holds no more than 20% of the value of its portfolio in any particular economic sector or geographic region. The letter should be filed as a part of your annual FD Statement filing, and will be publicly disclosed.

The following transactions are not required to be disclosed on a PTR, but may be required to be disclosed on the annual FD Statement:

- Any transaction with a gross value equal to or less than \$1,000;
- Any transaction in real property;
- The purchase or sale of any widely held investment fund that is either publicly traded or widely diversified and is not controlled by the filer;
- Any transaction in a mutual fund or Exchange Traded Fund (ETF); and
- Any transaction in an asset owned solely by your spouse or dependent child (and not you), or in a trust that benefits your spouse or dependent child (and not you).

The following transactions are not required to be disclosed on either a PTR or the annual FD Statement:

- Any transactions solely by and between you, your spouse, or your dependent child;

- Any transactions in a federal retirement program, including the Thrift Savings Plan (TSP);
- Bequests or inheritances;
- Stock splits and spin-offs;
- The opening or closing of bank or similar accounts (such as money market funds), or deposits or withdrawals from a bank account;
- The purchase or sale of certificates of deposit; and
- The rollover of assets from one retirement account to another.

### ATTESTATION REGARDING IPO PARTICIPATION

Section 12 of the STOCK Act amends the Securities Exchange Act of 1934 to ban Members, officers, and employees who file FD statements from participating in an Initial Public Offering (IPO) in a manner “other than is available to members of the public generally.” However, opportunities for the general public to participate in an IPO are very limited.<sup>19</sup> As a result of the ban, filers will be required to indicate whether they purchased any shares that were allocated as part of an IPO on the PTR form. If you answer “yes” to the question because you received an IPO allocation, please contact Committee staff to discuss the disclosure format.<sup>20</sup>

### WAIVERS AND EXCLUSIONS

Section 6 of the STOCK Act requires the filing of PTRs “subject to any waivers and exclusions.” As a result, any House employee who receives a filing waiver under section 101(i) of the EIGA is not required to file PTRs. In addition, PTRs are not required to be filed for transactions in a “Qualified Blind Trust” as defined in section 102(f)(3) of the EIGA or an “excepted trust” as defined in EIGA section 102(f)(2)(B). An excepted trust is a trust (1) which was not created by the filer, or by the filer’s spouse or dependent child; and (2) for which neither the filer nor the filer’s spouse or dependent child have any knowledge of the contents.

Some filers may have trusts (or other financial arrangements) that do not meet the above criteria because the filer does receive reports on the contents of the trust. However, some trust beneficiaries are entitled, under the terms of the trust or state law, to

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<sup>19</sup> If you would like to participate in an IPO, we recommend contacting the Committee in advance to determine whether or not the purchase would be permissible.

<sup>20</sup> While interpretation of the STOCK Act regarding participation in IPOs will fall to the Securities and Exchange Commission, Department of Justice, or the courts, the opinion of the Committee is that, as drafted, the STOCK Act prohibits only the filer from participating in IPOs, but not the filer’s spouse or dependent child, assuming the assets used for the purchase and the securities purchased are wholly owned by the spouse or dependent child, separate and independent of the filer. *See* STOCK Act at § 13.

receive such reports only on a quarterly or annual basis, rather than monthly. In such circumstances, the Committee may also waive the PTR filing requirement for such trusts or other financial arrangements on a *case-by-case basis*. To qualify for such a waiver, you must meet the following criteria:

1. You have a beneficial interest in a trust or some other financial arrangement;
2. If it is a trust, the trust was not established by you (or you jointly with another person), your spouse, or dependent child;
3. You do not have the power to direct the investments of the trust or other financial arrangement; and
4. You are not entitled by law or contract (including trust documents) to receive statements on a monthly (or more frequent) basis.

With regard to item 1, the types of non-trust financial arrangements that will qualify for this waiver are very limited. With regard to item 3, whether you have the authority or discretion to direct, *even if not exercised*, the investment in a trust or other financial arrangement is construed broadly by the Committee when making waiver determinations. The power to direct includes, but is not limited to, the ability to select the investments among a variety of investment options, the ability to allocate the percentage of your contributions among your designated investment options, the ability to move funds among and between your designated investment options (or select new ones), and the ability to place a certain investment option "off limits."

To receive a PTR filing waiver for such a trust, you must seek written approval of the Committee. Any such request must include a letter from the trustor (or representative of the investment company) attesting that (1) you do not have power to direct the investments of the trust or account, and (2) under state law, the trust agreement, or some other legal authority, you are entitled to reports only on a quarterly, annual, or other, less-than-monthly basis. A waiver request must also contain a certification by you, or by the trustee or financial institution, that the trust was not created by you, your spouse, or your dependent child.

The Committee's letter granting your waiver will be placed in the public record by the Clerk of the House. This waiver would apply only to the filing of PTRs; the transaction information will still be required on your annual FD Statement.

#### WHEN MUST TRANSACTIONS BE REPORTED

Transactions executed on or after July 3, 2012, must be reported to the Office of the Clerk, Legislative Resource Center, B-106 Cannon House Office Building, *within 30 days of you becoming aware of the transaction, but no later than 45 days after the transaction*. Unless it is the 45th day, if the date on which a report is required to be filed falls on a weekend or holiday, the filing deadline is extended to the next business day. If the 45th day falls on a holiday or weekend, the deadline will be the last business day

before the holiday or weekend. Reports are considered timely if they are received or legibly postmarked on or before the due date.

Even if you do not find out about a transaction until after the 45-day deadline, by statute, the PTR is late. Subject to a 30-day grace period, any required late fee must be attached to the late report, but you may simultaneously seek a waiver of that fee, as discussed below under "Late Filing Fee." You do not need to amend a previously filed report that should have included a transaction, rather you should submit a new report that includes the omitted transaction.

*No extensions of the 30- or 45-day time limits will be allowed.* No such extensions are permitted by the terms of the STOCK Act.

*You are responsible for alerting your broker, investment advisor, trustee, or anyone else who makes reportable transactions on your behalf that they must inform you of any reportable transaction in a timely fashion.* For example, if you currently receive only quarterly statements from your broker, you may need to change to monthly reports to meet the PTR filing requirement.

If, by law or binding agreement to which you are not a party, you are not entitled to prompt notice of a reportable transaction, please consult the "Waivers and Exclusions" section above and/or contact the Committee for guidance.

#### Examples of PTR Due Dates

The following examples illustrate when a PTR would be due under various circumstances.

1. You direct the purchase of Mega Corporation stock on July 10. You must report that transaction by August 9 (30 days after awareness of the transaction).
2. Your broker purchases Mega Corporation stock on July 10 and informs you of the transaction on July 16. You must report that transaction by August 15 (30 days after awareness of the transaction, but still within the 45-day limit).
3. Your broker purchases Mega Corporation stock on July 10 and informs you of the transaction on July 31. You must report that transaction by August 24 (30 days after awareness of the transaction, but capped by the 45-day limit).
4. Your broker purchases Mega Corporation stock on July 12 and informs you of the transaction on July 31. August 26, the 45<sup>th</sup> day after July 12, falls on a weekend. As a result, you must report that transaction by August 24 (30 days after awareness of the transaction, but capped by the 45-day limit, which is rolled back to the 43<sup>rd</sup> day because of the weekend).

5. Your broker purchases Mega Corporation stock on July 10 and informs you of the transaction on September 3. You must report that transaction immediately, but no late fee is due (report is late, but is filed within the 30-day grace period).
6. Your broker purchases Mega Corporation stock on July 10 and informs you of the transaction on September 30. You must report that transaction immediately and enclose a check for \$200 payable to the U.S. Treasury as a late fee. You may also request a waiver of the late filing fee, which will be granted in "extraordinary circumstances" (report is late and is filed outside of the 30-day grace period, meaning a late fee is due).

*Again, you are responsible for alerting your broker, investment advisor, trustee, or anyone else who makes reportable transactions on your behalf that they must inform you of any reportable transaction in a timely fashion.*

#### HOW AND WHERE TRANSACTIONS MUST BE REPORTED

The form ("Ethics in Government Act Periodic Transaction Report") for use in making a PTR is available on the Committee Web site, [www.ethics.house.gov](http://www.ethics.house.gov), under the "Financial Disclosure" tab. Until the electronic filing system is available, Members must file an original (with an original signature) and two copies of the PTR, and staff must file an original and one copy. Due to impending electronic filing requirements, a PTR must be filed on the designated PTR form and no other form of submission can be accepted. Therefore, you may not submit brokerage statements or your own spreadsheet in lieu of completing, or as an attachment to, a PTR form.<sup>21</sup>

The reports may be hand delivered or mailed to the Legislative Resource Center, B-106 Cannon House Office Building, Washington, D.C. 20515. A report is timely if it is postmarked (legibly) by the due date. The Legislative Resource Center does not accept submissions by facsimile or email.

#### LATE FILING FEE

As stated above, no extensions of the 30- or 45-day filing limits will be granted. An individual who files a PTR or any amendment more than 30 days after the date the PTR or amendment is required to be filed must pay a late filing fee of \$200. Filers will owe a late filing fee for each PTR that is late and not filed within the grace period. The late fee shall be paid by check or money order made out to the United States Treasury and submitted to the Clerk at the filing address along with the PTR. Payment of the fee does not preclude the Committee from taking other disciplinary action authorized by law or the rules of the House of Representatives.

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<sup>21</sup> The STOCK Act requires the development and implementation of an electronic filing procedure that will produce searchable, sortable, and downloadable filings. This procedure is expected to be implemented by October of 2013. See STOCK Act at § 8.

The Committee has authority to waive the fee, but only in extraordinary circumstances. Waiver requests must be directed in writing to the Chairman and Ranking Member of the Committee and signed by the filer, and must state the circumstances believed to justify the waiver. The request may either be faxed to the Committee at (202) 225-3713 or submitted with the PTR at the time of filing.

*Any PTR that is submitted more than 30 days after the due date without the required late filing fee shall be deemed procedurally deficient and not properly filed.* Thus, you must submit the late filing fee at the time you file your PTR. The fee will be deposited immediately *unless* a fee waiver is requested at the time of filing, in which case it will not be deposited until the Committee acts on the fee waiver request. If the fee waiver is granted, your check or money order will be returned to you by the Clerk of the House.

#### PENALTIES FOR FAILURE TO FILE AND FILING FALSE INFORMATION

Each individual is responsible for the completeness and accuracy of the information contained in the individual's PTR, even if someone else prepared, or assisted in preparing, all or part of the report. The EIGA provides that the Attorney General may seek up to one year in prison and a fine of up to \$50,000 against an individual who knowingly and willfully falsifies a PTR, and up to a \$50,000 fine for anyone who knowingly and willfully fails to file a PTR required by the EIGA.

In addition, 18 U.S.C. § 1001, as amended by the False Statements Accountability Act of 1996, is applicable to PTRs. That criminal statute provides for a fine and/or imprisonment for up to five years for knowingly and willfully making any materially false, fictitious, or fraudulent statement or representation, or falsifying, concealing, or covering up a material fact, in a filing under the EIGA.

House Rule 26 provides that title I of the EIGA shall be deemed to be a rule of the House with regard to House Members, officers, and employees. The House, acting on the recommendation of the Committee, may therefore impose penalties on Members, officers, and employees in addition to those noted above.

#### GETTING ASSISTANCE

Filers are encouraged to carefully read these instructions and the instructions that accompany the PTR form. Any filer who has questions concerning the reporting requirements or how to fill out the PTR should call the Committee at (202) 225-7103. Committee staff is available to review your PTR before filing (pre-screen). To have your PTR pre-screened, please fax it to (202) 225-3713 or e-mail it to [financial.disclosure@mail.house.gov](mailto:financial.disclosure@mail.house.gov).

Additional copies of the form can be obtained by visiting the Committee Web site at [www.ethics.house.gov](http://www.ethics.house.gov) and clicking on the "Financial Disclosure" tab. If you would like additional information about financial disclosure requirements generally, it can be found in the FORM A Instruction Guide, also available on the Committee Web site.

DISCLOSURE REQUIREMENT FOR SELECTED ASSETS

Asset	Report on PTR <sup>22</sup>	Report on FD Sch. IV <sup>23</sup>	Report on FD Sch. III <sup>24</sup>	Do Not Report
Stocks	X	X	X	
Bonds	X	X	X	
TSP Contributions				X
U.S. Treasury Bonds	X	X	X	
Mutual Funds		X	X	
Exchange Traded Funds (ETFs)		X	X	
Real Estate Investment Trusts (REITs)	Maybe <sup>25</sup>	X	X	
Options	X	X	X	
Futures	X	X	X	
529 Prepaid Plans		X	X	
529 Portfolio/ Mutual Funds		X	X	
529 Stocks/ Bonds	X	X	X	
Hedge/Private Equity Funds	Maybe <sup>26</sup>	X	X	
Bank Accounts/ Money Markets			X	
Life Insurance Policies <sup>27</sup>	Maybe	Maybe	X	

<sup>22</sup> Reportable if the gross value of the transaction in the asset is more than \$1,000.

<sup>23</sup> Schedule IV is the transaction schedule on the annual FD Statement. Reportable if the gross value of the transaction or series of transactions in an asset is over \$1,000.

<sup>24</sup> Schedule III is the assets and unearned income schedule on the annual FD Statement. Reportable if the asset is worth more than \$1,000 or generates unearned income of more than \$200.

<sup>25</sup> If the REIT is publicly traded, transactions in the REIT do not have to be reported on PTRs. If the REIT is private, they do need to be reported.

<sup>26</sup> Please consult factors outlined in the "Excluded Transactions" section on page 7.

<sup>27</sup> Transactions in assets within a variable annuity may be reportable if otherwise independently reportable. Transactions in fixed annuities and universal and whole life insurance policies are not reportable transactions.

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*Chairman*  
Linda T. Sánchez, California  
*Ranking Member*

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K. Michael Conaway, Texas  
Charles W. Dent, Pennsylvania  
Gregg Harper, Mississippi

John A. Yarmuth, Kentucky  
Donna F. Edwards, Maryland  
Pedro R. Pierluisi, Puerto Rico  
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ONE HUNDRED TWELFTH CONGRESS

## U.S. House of Representatives

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August 17, 2012

### MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

**FROM:** Committee on Ethics  
Jo Bonner, Chairman *JB*  
Linda T. Sánchez, Ranking Member *AS*

**SUBJECT:** Periodic Reporting of Personal Financial Transactions Pursuant to the STOCK Act, as amended<sup>1</sup>

Among other requirements, the Stop Trading on Congressional Knowledge Act (STOCK Act)<sup>2</sup> requires Members, officers, and employees who file personal Financial Disclosure (FD) Statements pursuant to the Ethics in Government Act of 1978 (EIGA)<sup>3</sup> to file Periodic Transaction Reports (PTRs) with the Clerk of the House. Filers must make periodic reports of financial transactions valued over \$1,000 in stocks, bonds, and other securities owned by the filer or by the filer jointly with another person. *Starting on September 30, 2012, this requirement extends to transactions in assets owned by the filer's spouse and dependent child.* If the filer, the filer's spouse, or the filer's dependent children do not have any reportable transactions, then no PTR is required (although the transactions may still need to be reported on the filer's annual FD). This memorandum summarizes the rules regarding the periodic reporting of personal financial transactions by House Members, officers, and certain senior employees,<sup>4</sup> as required by the amended STOCK Act.

*NOTE: Staff may become subject to this filing requirement mid-year due to a pay raise or bonus.*

<sup>1</sup> This memo supersedes and replaces the original memorandum issued on this topic on June 7, 2012. The STOCK Act was amended by the passage of S. 3510 on August 2, 2012, which was enacted as Pub. L. 112-\_\_\_ following its signature by the President on August 16, 2012. This memorandum reflects guidance on the implementation of the STOCK Act following its amendment.

<sup>2</sup> STOCK Act, Pub. L. No. 112-105, as amended (Apr. 4, 2012) (hereinafter STOCK Act).

<sup>3</sup> 5 U.S.C. app. 4 §§ 101 *et seq.*

<sup>4</sup> The terms "staff" and "employee" are used interchangeably throughout this memorandum to refer to persons who are employed by a House Member, committee, leadership office, or other legislative branch office. See note 5 below for more information on other legislative branch offices.

## WHO IS REQUIRED TO FILE PERIODIC TRANSACTION REPORTS

The requirement to file PTRs applies to:

- Members,<sup>5</sup>
- Officers, and
- Senior staff, meaning any employee paid at the senior staff rate for any two months during a calendar year, as explained more fully below.<sup>6</sup>

While the definition of “senior staff” has not changed, the Committee takes this opportunity to remind you that *it is your responsibility to know if you are senior staff and to comply with the ethics requirements that attach to that designation.*

### Senior Staff

The EIGA defines senior staff as those House officers and employees whose “rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule” for at least 60 days at any time during a calendar year, provided that the officer or employee “performs the duties of his [or her] position or office for a period in excess of sixty days in that calendar year.”<sup>7</sup> For CY 2012 the triggering rate of annual pay is \$119,553.60,<sup>8</sup> or a monthly salary at or above \$9,962.80.<sup>9</sup> An employee whose base salary is raised above the senior staff rate, \$9,962.80, for any two months (which for House purposes means two pay periods)<sup>10</sup> in a calendar year is senior staff for that calendar year for EIGA purposes. The months do not have to be consecutive. This often happens when House employees are awarded

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<sup>5</sup> The requirement to file PTRs does not apply to candidates for the U.S. House of Representatives. See 5 U.S.C. app. 4 § 103(f).

<sup>6</sup> The obligation to file PTRs also applies to FD Statement filers who are employees of various legislative branch agencies, including, but not necessarily limited to, the Architect of the Capitol, United States Capitol Police, Congressional Budget Office, and Library of Congress. 5 U.S.C. app. 4 § 103(h)(1)(A)(i)(I). Pursuant to its authority under 5 U.S.C. app. 4 § 106(b), the Committee has delegated to the Congressional Budget Office, Library of Congress, Architect of the Capitol, Government Printing Office, and Capitol Police the responsibility of reviewing and certifying FD Statements and PTRs for their own employees. Employees of those agencies should contact their respective general counsel’s offices with any questions about their disclosure obligations. Employees of agencies designated under the authority of the U.S. Senate for these purposes should consult with the Senate for rules regarding PTRs.

<sup>7</sup> 5 U.S.C. app. 4 §§ 109(13) & 101(d).

<sup>8</sup> This amount is referred to as the “senior staff rate.”

<sup>9</sup> The Committee publishes a memorandum at the beginning of each calendar year that provides the senior staff rate for that year. The memorandum is available on the Committee Web site, [www.ethics.house.gov](http://www.ethics.house.gov), under “General Advisories.”

<sup>10</sup> The House payroll department operates on a 30-day payroll cycle, meaning that each monthly pay period, regardless of its actual length, is counted as 30 days. Thus, a change to an employee’s base rate of pay in any two months during the calendar year (even non-consecutive months) may trigger the requirement to file an FD Statement. This is true even if the pay change affects only part of a month.

year-end bonuses that are paid out over two paychecks. As a result, House officers and employees whose basic rate of pay is equal to or greater than the senior staff rate (\$119,553.60 for CY 2012) for at least **60 days** (two pay periods) during **2012** must file PTRs for transactions in their own assets and those they hold jointly with another person.<sup>11</sup> They must also report transactions in assets that are in the name of their spouse or dependent child that are made on or after **September 30, 2012**.<sup>12</sup>

***NOTE: Paying a bonus through a lump sum payment rather than through raising an employee's base rate of pay does not trigger the EIGA filing requirements and therefore would not trigger the requirement to file PTRs.***

FD filings and filing requirements are generally considered on a calendar-year basis. Thus, new employees and employees paid at or above the senior staff rate on January 1, or their first day of employment if after January 1, must file PTRs for that calendar year. Any employee who receives a pay increase (or mid-year bonus) that results in the employee being paid the senior staff rate (\$9,962.80 monthly gross in 2012) in two pay periods must begin filing PTRs for all transactions executed following the second pay period. However, the PTR filing requirement would not attach to an employee who does not become "senior staff" until December 31 (for example, by receiving a year-end bonus), unless the employee's pay rate remains above the senior staff rate on January 1. Specific examples demonstrating these rules are provided below.

The PTR filing requirement remains in effect for senior staff who take leave without pay (LWOP) or medical or family leave (including maternity or paternity leave) from their House employment.

### **Principal Assistants**

Pursuant to the EIGA, every Member office must have at least one employee who files an annual FD Statement.<sup>13</sup> Most offices will have at least one employee who is paid at or above the senior staff rate and therefore is required to file both an annual FD Statement and PTRs. If a Member does not have an employee paid at or above the senior staff rate, the Member must designate at least one current employee as a principal assistant to file an annual FD Statement. ***However, principal assistants are not required to file PTRs.*** Thus, the only employees required to file PTRs are those who qualify as senior staff, as defined above.

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<sup>11</sup> STOCK Act § 6; 5 U.S.C. app. 4 §§ 101(c), 101(f)(10), 103(l), and 109(13).

<sup>12</sup> S. 3510 § 2, 112th Cong. 2d. Sess. (Aug. 2, 2012), Pub. L. No. 112-\_\_\_ § 2 (Aug. 16, 2012).

<sup>13</sup> 5 U.S.C. app. 4 §§ 101(d), 101(f)(10), and 109(13).

### Examples of Employees Who Must File PTRs

1. An employee is hired with a starting salary of \$130,000 and begins work on October 1, 2012. The employee must file a PTR for any reportable transaction on or after October 1, 2012 (new employee beginning House employment at senior staff rate).
2. An employee's salary for the year, on January 1, 2013, is \$135,000. That employee must file a PTR for any reportable transaction on or after January 1, 2013 (senior staff at start of new reporting period).
3. An employee is promoted on August 1, 2012, and her August and September monthly gross pay rate is now \$9,963. The employee must file a PTR for every reportable transaction executed on or after October 1, 2012 (staffer becomes a senior staffer after 60 days at senior staff pay rate; PTR filing requirement begins at 60-day mark of being senior staff).
4. An employee receives bonuses in February and October 2012 that increases his gross rate of pay above \$9,962.80 for those two months. The employee must file a PTR for every reportable transaction executed on or after November 1, 2012 (staffer becomes a senior staffer after 60 days at senior staff pay rate; PTR filing requirement begins at 60-day mark of being senior staff).
5. An employee whose base salary rate for 2012 is \$115,000 receives a bonus in November and December 2012 that increases her gross rate of pay above \$9,962.80 for those two months. The employee's salary is \$115,000 on January 1, 2013. The employee will not file PTRs in 2013, but will file an annual FD Statement covering all of CY 2012 (not senior staff until end of 2012 pay period, and not senior staff at start of new 2013 reporting period).
6. An employee whose base salary rate for 2012 is \$115,000 receives a bonus in November and December 2012 that increases his gross rate of pay above \$9,962.80 for those two months. The employee's salary is increased to \$125,000 starting on January 1, 2013. The employee must file a PTR for any reportable transaction on or after January 1, 2013, and will also file an annual FD Statement for CY 2012 (not senior staff until end of 2012 pay period, but is senior staff at start of new 2013 reporting period; has PTR filing requirement for all 2013 transactions).
7. An employee whose base salary rate for 2012 is \$115,000 receives a bonus in December 2012 and January 2013 that increases his gross rate of pay above \$9,962.80 for those two months. The employee's salary is decreased to \$115,000 starting on February 1, 2013. The employee must file a PTR for any reportable transaction on or after January 1, 2013, but will not file an annual FD Statement for CY 2012 (bonus made the person senior staff at start of new reporting period).

8. A Member designates an employee as her principal assistant on August 15, 2012. The employee must file an annual FD Statement on May 15, 2013, but is not required to file any PTRs (designated PA filer; no PTR filing requirement).

### WHAT TRANSACTIONS MUST BE REPORTED

Among other requirements, filers must report on their annual FD Statement each purchase, sale, or exchange transaction involving stocks, bonds, commodities futures, or other securities owned by the filer, the filer's spouse, and the filer's dependent child, (or owned jointly with any other person) when the amount of the transaction(s) in an asset exceeds \$1,000. (The requirement to report transactions in the assets of spouses and dependent children is effective for transactions executed on or after September 30, 2012).

In addition to this annual disclosure, FD filers are now required to report on a PTR individual transactions for which the gross value of the transaction exceeds \$1,000, with some exceptions. The STOCK Act did not eliminate the need to report these transactions on the annual FD Statement, and therefore each transaction reported on a PTR also must be reported on the annual FD Statement. Please see the chart at the end of this document for examples of how some typical assets are treated on PTRs and the annual FD Statement.

*NOTE: If the filer, the filer's spouse, or the filer's dependent children do not have any reportable transactions, then no periodic report is required (although the transactions may still need to be reported on the filer's annual FD). This differs from the requirement to file annual FDs, which must be filed even where a filer has no transactions, assets, or other reportable items to disclose.*

### Reportable Transactions

*A PTR filing is required for any single purchase, sale, or exchange transaction of a stock, bond, commodities future, or other security when the amount of the transaction exceeds \$1,000.*<sup>14</sup> For sales transactions, the \$1,000 threshold is based on the total dollar value of the transaction, not the gain or loss made on the sale.

The term "security" has been broadly defined in the securities statutes<sup>15</sup> to include notes, options, futures, debentures, and "investment contracts," among other things. The Supreme Court laid down a basic test for an investment contract in *SEC v. W.J. Howey Co.*, 328 U.S. 293 (1946). The test is whether "a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third

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<sup>14</sup> Voluntary over-disclosure on annual FD Statements and on PTRs is always permitted. However, voluntary disclosure regarding an asset on the annual FD Statement does not necessarily create a PTR obligation regarding that asset. Filers may want to include a comment or footnote regarding the voluntary disclosure so that anyone reviewing the reports understands the characteristics of the asset or transactions that make them exempt from reporting on a PTR.

<sup>15</sup> See 15 U.S.C. § 77b(a)(1) and 15 U.S.C. § 78c(a)(10).

party.”<sup>16</sup> Among the types of interests which have been deemed securities under this standard are interests in: oil and gas drilling programs; partnerships; farm animals; commodity options contracts; whiskey warehouse receipts; and multilevel distributorship arrangements and merchandise marketing schemes. While the above definitions and standards may not be binding for purposes of reporting under the EIGA, they do provide helpful guidance to determine what must be reported. If you have a question regarding whether a particular asset is a security, please contact the Committee.

*Purchase transactions which must be disclosed on a PTR include:*

- Individual purchases involving an asset listed above in which the transaction amount exceeds \$1,000; or
- Reinvestment of income (such as dividends or interest) in a reportable asset in which the amount of a single reinvestment transaction exceeds \$1,000.

*Sales transactions which must be disclosed on a PTR are:*

- Individual sales involving an asset listed above in which the transaction amount exceeds \$1,000. As stated above, for sales transactions, the \$1,000 threshold is based on the total dollar value of the transaction, not the gain or loss made on the sale.

*Exchange transactions* valued at more than \$1,000 must be disclosed on a PTR. Such transactions, however, are somewhat rare and refer only to a limited set of circumstances that involves the exchange of stock certificates following the purchase of one company by another or a merger of two companies. For example, if you own stock in Company A and that company is purchased by (or merged with) Company B, your Company A stock may be exchanged for Company B stock. An exchange transaction may be disclosed in a single entry on a PTR. For example, you may state in the “Asset” column “Company A stock exchanged for Company B stock following merger.” There are many transactions that filers believe are exchanges, but are really purchases and sales. If you believe you have an exchange and it does not fit the example above, please contact Committee staff for guidance.

**NOTE:** *Purchase and sales transactions involving assets held within self directed retirement accounts such as 401(k) plans and IRAs must be disclosed on a PTR if they exceed \$1,000 in value.* For example, if you have a 401(k) plan and direct the plan administrator to sell your entire \$10,000 holding in “Mega Corporation” stock and purchase shares in “Zoro Company” stock, you must separately disclose both of these transactions on a PTR. Likewise, the reallocation of funds among currently-held assets within these accounts is also considered to be both purchase and sale transactions and must be disclosed if the transaction exceeds \$1,000 in any asset. However, purchases or sales of widely held investment funds within retirement accounts do not have to be reported on a PTR, as discussed below under “Excluded Transactions.”

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<sup>16</sup> *SEC v. W.J. Howey Co.*, 328 U.S. at 299.

The reporting threshold for disclosure of transactions is reached when the *gross* amount of either a single purchase or sales transaction exceeds \$1,000. *This includes transactions that result in a net loss.* Thus, a sales transaction of an asset for \$5,000 for which you previously paid \$7,000 must be disclosed even though it resulted in a \$2,000 loss. You do not need to indicate on a PTR whether you had a capital gain or loss resulting from a sale.<sup>17</sup>

### **Excluded Transactions**

Transactions in certain types of assets are excluded from the PTR filing requirement, as explained below.

You are not required to report transactions in a widely held investment fund (e.g., a mutual fund or exchange traded fund (ETF)) on a PTR if:

1. You neither exercise control over nor have the ability to exercise control over the financial interests held by the fund; **and**
2. (a) The fund is publicly traded; **or**  
(b) The assets of the fund are widely diversified.<sup>18</sup>

*As a result of this exception, every transaction of a publicly traded fund (mutual fund or ETF) is exempted from disclosure on a PTR.* Examples of assets for which transaction reports would not be required include, but are not limited to, the Vanguard Energy Fund (sector mutual fund), Fidelity Contrafund (mutual fund), T. Rowe Price High Yield Fund (mutual fund), SPDR S&P 500 (ETF), iShares S&P Target Date 2045 Index Fund (ETF), iShares S&P Europe 350 Index Fund (geographic ETF), and VEST Potomac Portfolio (Virginia 529). However, transactions in these funds must still be disclosed on the filer's annual FD Statement if they meet the \$1,000 threshold.

A fund is widely diversified if it:

1. Holds no more than 5% of the value of its portfolio in the securities of any issuer (other than the U.S. government); **and**
2. Holds no more than 20% of the value of its portfolio in any particular economic sector or geographic region.<sup>19</sup>

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<sup>17</sup> If the sale of the asset resulted in a capital gain of over \$200 that capital gain must be reported as unearned income on Schedule III of your annual FD Statement.

<sup>18</sup> STOCK Act § 14. Transactions in a widely held investment fund must continue to be reported on the annual FD Statement even though they are exempted from PTR disclosure.

<sup>19</sup> See 5 C.F.R. § 2634.310(c)(3) (2006).

Further explanation of certain terms used in the definition of “widely diversified” is as follows:

- **Issuer:** A legal entity that develops, registers, and sells securities for the purpose of financing its operations.
- **Economic Sector:** An area of the economy in which businesses share or offer the same or a related product or service and share common characteristics. Investors use sectors to place stocks and other investments into categories like technology, health care, energy, utilities, and telecommunications.
- **Geographic Region:** A single region of the globe, such as Europe, Asia, or Latin America, or an individual country or small group of countries. This definition only applies to geographic regions outside the United States.

If you have a question regarding whether your non-publicly traded fund (*e.g.*, hedge fund or private equity fund) is widely diversified, you should contact Committee staff for guidance. If you determine that you do not need to file a PTR for transactions in a non-publicly traded fund, in which the particular holdings are confidential, you must obtain a letter from the fund manager, on the fund stationery, in which the fund manager states that the assets held by the fund are confidential and are not disclosed to anyone. In addition, the letter must state that the fund holds no more than 5% of the value of its portfolio in the securities of any issuer (other than the U.S. government) and that it holds no more than 20% of the value of its portfolio in any particular economic sector or geographic region.

The following transactions are **not** required to be disclosed on a PTR, **but may be required to be disclosed on the annual FD Statement:**

- Any transaction with a gross value equal to or less than \$1,000;
- Any transaction in real property;
- The purchase or sale of any widely held investment fund that is either publicly traded or widely diversified and is not controlled by the filer; and
- Any transaction in a mutual fund or Exchange Traded Fund (ETF).

The following transactions are **not** required to be disclosed on either a PTR or the annual FD Statement:

- Any transactions solely by and between you, your spouse, or your dependent child;
- Any transactions in a federal retirement program, including the Thrift Savings Plan (TSP);
- Bequests or inheritances;

- Stock splits and spin-offs;
- The opening or closing of bank or similar accounts (such as money market funds), or deposits or withdrawals from a bank account;
- The purchase or sale of certificates of deposit; and
- The rollover of assets from one retirement account to another.

### ATTESTATION REGARDING IPO PARTICIPATION

Section 12 of the STOCK Act amends the Securities Exchange Act of 1934 to ban Members, officers, and employees who file FD statements from participating in an Initial Public Offering (IPO) in a manner “other than is available to members of the public generally.” However, opportunities for the general public to participate in an IPO are very limited.<sup>20</sup> As a result of the ban, filers will be required to indicate whether they purchased any shares that were allocated as part of an IPO on the PTR form. If you answer “yes” to the question because you received an IPO allocation, please contact Committee staff to discuss the disclosure format.<sup>21</sup>

### WAIVERS AND EXCLUSIONS

Section 6 of the STOCK Act requires the filing of PTRs “subject to any waivers and exclusions.” As a result, any House employee who receives a filing waiver under section 101(i) of the EIGA is not required to file PTRs. In addition, PTRs are not required to be filed for transactions in a “Qualified Blind Trust” as defined in section 102(f)(3) of the EIGA or an “excepted trust” as defined in EIGA section 102(f)(2)(B). An excepted trust is a trust (1) which was not created by the filer, or by the filer’s spouse or dependent child; and (2) for which neither the filer nor the filer’s spouse or dependent child have any knowledge of the contents.

Some filers, filer’s spouses, and dependent children may be the beneficiary of trusts (or other financial arrangements) that do not meet the above criteria because the filer, filer’s spouse, or dependent child does receive reports on the contents of the trust. However, some trust beneficiaries are entitled, under the terms of the trust or state law, to receive such reports only on a quarterly or annual basis, rather than monthly. In such circumstances, the Committee may also waive the PTR filing requirement for such trusts or other financial arrangements on a *case-by-case basis*. To qualify for such a waiver, you must meet the following criteria:

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<sup>20</sup> If you would like to participate in an IPO, we recommend contacting the Committee in advance to determine whether or not the purchase would be permissible.

<sup>21</sup> While interpretation of the STOCK Act regarding participation in IPOs will fall to the Securities and Exchange Commission, Department of Justice, or the courts, the opinion of the Committee is that, as drafted, the STOCK Act prohibits only the filer from participating in IPOs, but not the filer’s spouse or dependent child, assuming the assets used for the purchase and the securities purchased are wholly owned by the spouse or dependent child, separate and independent of the filer. See STOCK Act § 13.

1. You (the filer), your spouse, or dependent child must have a beneficial interest in a trust or some other financial arrangement;
2. If it is a trust, the trust was not established by you, your spouse, or dependent child (or you, your spouse, or dependent child jointly with another person);
3. You, your spouse, and dependent child do not have the power to direct the investments of the trust or other financial arrangement; **and**
4. You, your spouse, and dependent child are not entitled by law or contract (including trust documents) to receive statements on a monthly (or more frequent) basis.

With regard to item 1, the types of non-trust financial arrangements that will qualify for this waiver are very limited. With regard to item 3, whether you, your spouse, or dependent child have the authority or discretion to direct, *even if not exercised*, the investment in a trust or other financial arrangement is construed broadly by the Committee when making waiver determinations. The power to direct includes, but is not limited to, the ability to select the investments among a variety of investment options, the ability to allocate the percentage of your contributions among your designated investment options, the ability to move funds among and between your designated investment options (or select new ones), and the ability to place a certain investment option “off limits.”

To receive a PTR filing waiver for such a trust, you must seek written approval of the Committee. Any such request must include a letter from the trustor (or representative of the investment company) attesting that (1) you, your spouse, or dependent child do not have power to direct the investments of the trust or account, and (2) under state law, the trust agreement, or some other legal authority, you, your spouse, or dependent child are entitled to reports only on a quarterly, annual, or other, less-than-monthly basis. A waiver request must also contain a certification by you, or by the trustee or financial institution, that the trust was not created by you, your spouse, or your dependent child.

The Committee’s letter granting your waiver will be placed in the public record by the Clerk of the House. This waiver would apply only to the filing of PTRs; the transaction information will still be required on your annual FD Statement.

#### **WHEN MUST TRANSACTIONS BE REPORTED**

Transactions must be reported to the Office of the Clerk, Legislative Resource Center, B-106 Cannon House Office Building, *within 30 days of you becoming aware of the transaction, but no later than 45 days after the transaction.* Unless it is the 45th day, if the date on which a report is required to be filed falls on a weekend or holiday, the filing deadline is extended to the next business day. If the 45th day falls on a holiday or weekend, the deadline will be the last business day before the holiday or weekend. Reports are considered timely if they are received or legibly postmarked on or before the due date.

Even if you do not find out about a transaction until after the 45-day deadline, by statute, the PTR is late. Subject to a 30-day grace period, any required late fee must be attached to the late report, but you may simultaneously seek a waiver of that fee, as discussed below under “Late Filing Fee.” You do not need to amend a previously filed report that should have included a transaction, rather you should submit a new report that includes the omitted transaction. If you had no reportable transactions, no periodic report is due (although some transactions may still need to be reported on the filer’s annual FD).

*No extensions of the 30- or 45-day time limits will be allowed.* No such extensions are permitted by the terms of the STOCK Act.

*You are responsible for alerting your broker, investment advisor, trustee, or anyone else who makes reportable transactions on your behalf, or on behalf of your spouse or dependent children, that they must inform you of any reportable transaction in a timely fashion.* For example, if you currently receive only quarterly statements from your broker, you may need to change to monthly reports to meet the PTR filing requirement.

If, by law or binding agreement to which you are not a party, you are not entitled to prompt notice of a reportable transaction, please consult the “Waivers and Exclusions” section above and/or contact the Committee for guidance.

#### **Examples of PTR Due Dates**

The following examples illustrate when a PTR would be due under various circumstances.

1. You direct the purchase of Mega Corporation stock on July 10. You must report that transaction by August 9 (30 days after awareness of the transaction).
2. Your broker purchases Mega Corporation stock on July 10 and informs you of the transaction on July 16. You must report that transaction by August 15 (30 days after awareness of the transaction, but still within the 45-day limit).
3. Your broker purchases Mega Corporation stock on July 10 and informs you of the transaction on July 31. You must report that transaction by August 24 (30 days after awareness of the transaction, but capped by the 45-day limit).
4. Your broker purchases Mega Corporation stock on July 12 and informs you of the transaction on July 31. August 26, the 45<sup>th</sup> day after July 12, falls on a weekend. As a result, you must report that transaction by August 24 (30 days after awareness of the transaction, but capped by the 45-day limit, which is rolled back to the 43<sup>rd</sup> day because of the weekend).

5. Your broker purchases Mega Corporation stock on July 10 and informs you of the transaction on September 3. You must report that transaction immediately, but no late fee is due (report is late, but is filed within the 30-day grace period).
6. Your broker purchases Mega Corporation stock on July 10 and informs you of the transaction on September 30. You must report that transaction immediately and enclose a check for \$200 payable to the U.S. Treasury as a late fee. You may also request a waiver of the late filing fee, which will be granted in “extraordinary circumstances” (report is late and is filed outside of the 30-day grace period, meaning a late fee is due).
7. If you, your spouse, or your dependent children have no reportable transactions, then no periodic report is due (although some transactions may still need to be reported on your annual FD).

*Again, you are responsible for alerting your broker, investment advisor, trustee, or anyone else who makes reportable transactions on your behalf, or on behalf of your spouse or dependent children, that they must inform you of any reportable transaction in a timely fashion.*

#### **HOW AND WHERE TRANSACTIONS MUST BE REPORTED**

The form (“Ethics in Government Act Periodic Transaction Report”) for use in making a PTR is available on the Committee Web site, [www.ethics.house.gov](http://www.ethics.house.gov), under the “Financial Disclosure” tab. The Committee is also exploring creating an “Excel” version of the form, and will post that version in the same place as soon as it is available. No changes should be made by a filer to the forms provided.

Until the electronic filing system is available, Members must file an original (with an original signature) and two copies of the PTR, and staff must file an original and one copy. Due to impending electronic filing requirements, a PTR must be filed on the designated PTR form and no other form of submission can be accepted. Therefore, you may not submit brokerage statements or your own spreadsheet in lieu of completing, or as an attachment to, a PTR form.<sup>22</sup>

The reports may be hand delivered or mailed to the Legislative Resource Center, B-106 Cannon House Office Building, Washington, D.C. 20515. A report is timely if it is postmarked (legibly) by the due date. The Legislative Resource Center does not accept submissions by facsimile or email.

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<sup>22</sup> The STOCK Act requires the development and implementation of an electronic filing procedure that will produce searchable, sortable, and downloadable filings. This procedure is expected to be implemented by October of 2013. See STOCK Act § 8.

### LATE FILING FEE

As stated above, no extensions of the 30- or 45-day filing limits will be granted. An individual who files a PTR or any amendment more than 30 days after the date the PTR or amendment is required to be filed must pay a late filing fee of \$200. Filers will owe a late filing fee for each PTR that is late and not filed within the grace period. The late fee shall be paid by check or money order made out to the United States Treasury and submitted to the Clerk at the filing address along with the PTR. Payment of the fee does not preclude the Committee from taking other disciplinary action authorized by law or the rules of the House of Representatives.

The Committee has authority to waive the fee, but only in extraordinary circumstances. Waiver requests must be directed in writing to the Chairman and Ranking Member of the Committee and signed by the filer, and must state the circumstances believed to justify the waiver. The request may either be faxed to the Committee at (202) 225-3713 or submitted with the PTR at the time of filing.

*Any PTR that is submitted more than 30 days after the due date without the required late filing fee shall be deemed procedurally deficient and not properly filed.* Thus, you must submit the late filing fee at the time you file your PTR. The fee will be deposited immediately *unless* a fee waiver is requested at the time of filing, in which case it will not be deposited until the Committee acts on the fee waiver request. If the fee waiver is granted, your check or money order will be returned to you by the Clerk of the House.

### PENALTIES FOR FAILURE TO FILE AND FILING FALSE INFORMATION

Each individual is responsible for the completeness and accuracy of the information contained in the individual's PTR, even if someone else prepared, or assisted in preparing, all or part of the report. The EIGA provides that the Attorney General may seek up to one year in prison and a fine of up to \$50,000 against an individual who knowingly and willfully falsifies a PTR, and up to a \$50,000 fine for anyone who knowingly and willfully fails to file a PTR required by the EIGA.

In addition, 18 U.S.C. § 1001, as amended by the False Statements Accountability Act of 1996, is applicable to PTRs. That criminal statute provides for a fine and/or imprisonment for up to five years for knowingly and willfully making any materially false, fictitious, or fraudulent statement or representation, or falsifying, concealing, or covering up a material fact, in a filing under the EIGA.

House Rule 26 provides that title I of the EIGA shall be deemed to be a rule of the House with regard to House Members, officers, and employees. The House, acting on the recommendation of the Committee, may therefore impose penalties on Members, officers, and employees in addition to those noted above.

### GETTING ASSISTANCE

Filers are encouraged to carefully read these instructions and the instructions that accompany the PTR form. Any filer who has questions concerning the reporting requirements or how to fill out the PTR should call the Committee at (202) 225-7103. Committee staff is available to review your PTR before filing (pre-screen). To have your PTR pre-screened, please fax it to (202) 225-3713 or e-mail it to [financial.disclosure@mail.house.gov](mailto:financial.disclosure@mail.house.gov).

Additional copies of the form can be obtained by visiting the Committee Web site at [www.ethics.house.gov](http://www.ethics.house.gov) and clicking on the "Financial Disclosure" tab. If you would like additional information about financial disclosure requirements generally, it can be found in the FORM A Instruction Guide, also available on the Committee Web site.

**DISCLOSURE REQUIREMENT FOR SELECTED ASSETS**

<b>Asset</b>	<b>Report on PTR<sup>23</sup></b>	<b>Report on FD Sch. IV<sup>24</sup></b>	<b>Report on FD Sch. III<sup>25</sup></b>	<b>Do Not Report</b>
Stocks	X	X	X	
Bonds	X	X	X	
TSP Contributions				X
U.S. Treasury Bonds	X	X	X	
Mutual Funds		X	X	
Exchange Traded Funds (ETFs)		X	X	
Real Estate Investment Trusts (REITs)	Maybe <sup>26</sup>	X	X	
Options	X	X	X	
Futures	X	X	X	
529 Prepaid Plans		X	X	
529 Portfolio/Mutual Funds		X	X	
529 Stocks/ Bonds	X	X	X	
Hedge/Private Equity Funds	Maybe <sup>27</sup>	X	X	
Bank Accounts/Money Markets			X	
Life Insurance Policies <sup>28</sup>	Maybe	Maybe	X	
Income-Producing Real Property		X	X	

<sup>23</sup> Reportable if the gross value of the transaction in the asset is more than \$1,000.

<sup>24</sup> Schedule IV is the transaction schedule on the annual FD Statement. Reportable if the gross value of the transaction or series of transactions in an asset is over \$1,000.

<sup>25</sup> Schedule III is the assets and unearned income schedule on the annual FD Statement. Reportable if the asset is worth more than \$1,000 or generates unearned income of more than \$200.

<sup>26</sup> If the REIT is publicly traded, transactions in the REIT do not have to be reported on PTRs. If the REIT is private, transactions must be reported.

<sup>27</sup> Please consult factors outlined in the "Excluded Transactions" section on page 7.

<sup>28</sup> Transactions in assets within a variable annuity may be reportable if they are otherwise independently reportable. Transactions in fixed annuities and universal and whole life insurance policies are not reportable transactions.

Jo Bonner, Alabama  
*Chairman*  
Linda T. Sánchez, California  
*Ranking Member*

Michael T. McCaul, Texas  
K. Michael Conaway, Texas  
Charles W. Dent, Pennsylvania  
Gregg Harper, Mississippi

John A. Yarmuth, Kentucky  
Donna F. Edwards, Maryland  
Pedro R. Pierluisi, Puerto Rico  
Joe Courtney, Connecticut



ONE HUNDRED TWELFTH CONGRESS

## U.S. House of Representatives

COMMITTEE ON ETHICS

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*Staff Director and Chief Counsel*

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September 18, 2012

### MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

**FROM:** Committee on Ethics   
Jo Bonner, Chairman  
Linda T. Sánchez, Ranking Member 

**SUBJECT:** Purchase of Tablet Computers with Principal Campaign Committee Funds

The purpose of this memorandum is to clarify that a Member may use principal campaign committee funds to pay for tablet computers (*e.g.*, the Apple iPad, Samsung Galaxy, and other similar devices) to be used by the Member and employees of the Member's personal office for both official and campaign purposes ("combined use device"). House Rule 24 permits the use of such funds to purchase "handheld communications devices." The Committee has determined that tablet computers are handheld communications devices for purposes of the rule.<sup>1</sup>

All costs for purchase of a combined use device, as well as any associated costs for maintenance, repair, operation, and use, including any network access or connection fees, must be paid using principal campaign committee funds. No appropriated House funds may be used for these purposes either directly or to reimburse the campaign committee for all or part of these costs. Likewise, use of funds from a leadership PAC or a campaign committee other than a Member's principal campaign committee is also prohibited.

The Committee reminds you that various laws and rules still prohibit campaign use of official resources, as well as performing campaign work on House property or during official hours, even when using combined use devices. These important restrictions are detailed on pages 175-176 ("Expenses of a Cell Phone or Blackberry That Is Used for Official House Business") of the *2008 House Ethics Manual* and should be reviewed prior to employing a combined use device.

Finally, Members are reminded that other House committees and offices may restrict usage of handheld communications devices. Members should contact CAO Technical Support at 5-6002 for technical requirements and other information on connecting any handheld communications device to the House infrastructure. Similarly, the Sergeant-at-Arms is charged with the strict enforcement of comportment with decorum rules set by the Speaker for activity in the Hall of the House, which have generally approved the unobtrusive use of tablet devices on the House floor.

<sup>1</sup> While it appears that the use of campaign funds as described here is permissible under the Federal Election Campaign Act of 1971 ("FECA"), Members should nevertheless consult with the FEC on any questions that arise under FECA, including questions on how payment of any congressional expense is to be disclosed on the reports that a Member's campaign committee files with the Federal Election Commission.

Jo Bonner, Alabama  
*Chairman*  
Linda T. Sánchez, California  
*Ranking Member*

Michael T. McCaul, Texas  
K. Michael Conaway, Texas  
Charles W. Dent, Pennsylvania  
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September 28, 2012

### MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics  
Jo Bonner, Chairman *JB*  
Linda T. Sánchez, Ranking Member *LTS*

SUBJECT: REMINDER: Spouse PTR Transaction Reporting Begins September 30, 2012

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Pending legislation, S. 3625, which has been passed by Congress but is awaiting signature by the President, would modify certain provisions of the STOCK Act. However, Members, officers, and employees should be aware that this legislation would not change any substantive filing obligations or filing deadlines that apply to financial disclosure filers in the House of Representatives. In particular, financial disclosure filers should be aware that the legislation does not change the existing requirement that beginning September 30, 2012, the requirement to make periodic reports of financial transactions valued over \$1,000 in stocks, bonds, and other securities applies not only to securities owned by the filer or by the filer jointly with another person, but also to transactions in assets owned by the filer's spouse and dependent children. The Committee takes this opportunity to remind House filers that such transactions must be reported, beginning on September 30, on the filer's periodic transaction reports ("PTRs") regardless of whether S. 3625 is signed into law.

Instructions for completing the form and blank PTR forms, including a fillable PDF version of the form, are available on the Committee's Web site, <http://ethics.house.gov>, under Financial Disclosure/Information and Forms. In addition, the Committee notes that a filer may not submit a brokerage statement instead of completing and filing the official PTR form.

More information about financial disclosure reporting is available on the Committee's Web site, including the Committee's August 17, 2012, pink sheet that discusses the PTR requirement. As always, please feel free to call the Committee's financial disclosure office, at (202) 225-7103, with any questions you may have about financial disclosure reports and obligations.

Jo Bonner, Alabama  
Chairman  
Linda T. Sánchez, California  
Ranking Member

Michael T. McCaul, Texas  
K. Michael Conaway, Texas  
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ONE HUNDRED TWELFTH CONGRESS

## U.S. House of Representatives

COMMITTEE ON ETHICS

November 19, 2012

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### MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics  
Jo Bonner, Chairman *JB*  
Linda T. Sánchez, Ranking Member *LS*

SUBJECT: Reminder About the 2012 Annual Ethics Training Requirement

This memorandum is a reminder to all offices to encourage staff to complete their 2012 ethics training requirement. A summary of the requirement is included below.

Each House employee must complete one hour of ethics training each calendar year. New House employees (*i.e.*, those who first began employment with the House during 2012) must complete their ethics training within 60 days of commencing House employment. "Existing" (*i.e.*, not new) House employees must complete their hour of training before the end of the calendar year. In addition, employees who are "senior staff"<sup>1</sup> must complete an additional hour of senior staff training during the 112th Congress (*i.e.*, by December 31, 2012).

Annual ethics training for existing House employees must be completed by December 31, 2012. *There are no extensions to this deadline, for any reason.* Each House employee must also certify to the Ethics Committee by January 31, 2013, that they have completed their annual ethics training. However, as explained below, the proper completion of an on-line ethics training course, or attendance at a live presentation, makes that certification automatically, without the employee having to take additional action.

It is a violation of House Rules to fail to complete the annual training requirement. *See* House Rule 11, clause 3(a)(6)(B)(ii). Sanctions for failing to satisfy annual training requirement may include the publication of noncompliant employees' names, along with the identity of their employing House office, additional ethics training, or other sanctions the Committee deems appropriate.

Existing House employees may complete their training on-line through HouseConnect. *Ethics training is only accessible through computers connected to the*

<sup>1</sup> "Senior staff" are those employees who are paid at an annual rate of \$119,553.60 or more (\$9,962.80 per month) for at least 60 days in 2012. These individuals must also file an annual financial disclosure statement.

**House network.** Employees wishing to complete their training should go to the HouseConnect Web site, <https://houseconnect.house.gov>, and log on using the House user ID and password used to log on to their House computer. They should complete the training entitled "2012 General Ethics Training." NOTE: the "2012 General Ethics Training" course is the only course that satisfies the annual ethics training requirement for existing employees. Employees must complete the full course. At the end of the course, employees must click forward to view the confirmation screen in order to receive credit for completing the course. Staff who need to complete the senior staff training should take the course entitled "Senior Staff Ethics Training," which is also available through HouseConnect.

Once an employee has completed the training, the column titled "Complete" next to that training will read "True." (If the session has not been completed, the column will read "False".) Anyone needing to verify that they have completed the on-line training can log in to HouseConnect and view their own screen, and print the screen for verification. Their name appears in the upper right corner of the screen.

Any employee who completed their training on-line through HouseConnect (and the completed column reads "True") has already completed their annual ethics training requirement and made their required certification to the Ethics Committee of its completion. Attendees at a live ethics training presentation received an e-mail message from the Committee shortly after the end of the training session certifying to their attendance. Receipt of the e-mail message also indicates that the recipient has made the certification to the Committee required by Rule 11.

Further guidance on ethics training can be found on the Committee's Web site at <http://ethics.house.gov/training>. If you have any questions about the training requirement, please feel free to contact the Committee at extension 5-7103.

Jo Bonner, Alabama  
*Chairman*  
Linda T. Sánchez, California  
*Ranking Member*

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November 19, 2012

### MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

**FROM:** Committee on Ethics *AB*  
Jo Bonner, Chairman  
Linda T. Sánchez, Ranking Member *RTS*

**SUBJECT:** Negotiations for Future Employment and Restrictions on Post-Employment  
for House Staff

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The purpose of this memorandum is to notify you regarding key issues of concern to staff members<sup>1</sup> who are negotiating for future employment or departing from employment with the House of Representatives or one of the legislative branch offices.<sup>2</sup> The matters discussed here include negotiations for future employment, post-employment restrictions, financial disclosure requirements (termination reports), and outside employment and earned income restrictions. Although this memorandum will be of particular interest to departing staff, current staff and their employing Members should also familiarize themselves with these restrictions, particularly the criminal restrictions on post-employment communications.<sup>3</sup>

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<sup>1</sup> The terms "staff" and "employee" are used interchangeably throughout this memorandum to refer to persons who are employed by a Member, committee, leadership office, or other legislative office (*see* note 2, below). Relevant distinctions among these categories of employees are noted as necessary.

<sup>2</sup> "[O]ther legislative offices" include employees of the Architect of the Capitol, United States Botanic Garden, Government Accountability Office, Government Printing Office, Library of Congress, Office of Technology Assessment, Congressional Budget Office, and Capitol Police. It also includes any other House legislative branch office not covered by the other provisions, such as the Clerk, Parliamentarian, Office of Legal Counsel, and Chief Administrative Officer. *See* 18 U.S.C. § 207(e)(9)(G).

<sup>3</sup> This guidance, as well as some additional requirements and restrictions, also applies to House Members and officers, and is addressed in a separate memorandum entitled "Negotiations for Future Employment and Restrictions on Post-Employment for House Members and Officers." The staff memorandum will not specifically mention the requirements for Members and officers, or how they differ from those pertaining to House staff. Members and officers seeking guidance should consult the companion memorandum referenced above.

## NEGOTIATING FOR FUTURE EMPLOYMENT

In the past, the Committee's general guidance on job negotiations has been that House Members and employees are free to pursue future employment while still employed by the House, subject to certain ethical constraints. This memorandum provides more detailed guidance on the issues presented by such negotiations, as well as mandatory disclosure obligations such negotiations may trigger.

As a general matter, House employees are free to pursue future employment while still employed by the House, subject to certain ethical constraints. The general guidance applicable to any House employee, regardless of salary level, who wishes to engage in negotiations for future employment is as follows. First and foremost, it would be improper for a House employee to permit the prospect of future employment to influence the official actions of the employee, or the employing office of the employee.<sup>4</sup> Some employees may determine to use an agent (e.g., a "headhunter") to solicit job offers on their behalf in order to avoid any appearance of improper activity. Regardless of whether job negotiations are undertaken personally or through an agent, the following generally-applicable principles must be observed.

The term "negotiation" is not defined in the applicable legislation or House rule. In its past guidance, the Committee has given deference to court decisions interpreting a related federal criminal statute that bars Executive Branch employees from participating in matters affecting the financial interests of an entity with which the employee is "negotiating or has any arrangement" concerning future employment.<sup>5</sup> Those decisions found that the term "negotiation" should be construed broadly.<sup>6</sup> However, the Committee makes a distinction between "negotiations," which trigger the rule, and "[p]reliminary or exploratory talks," which do not.<sup>7</sup> The term "negotiations" connotes "a communication between two parties with a view toward reaching an agreement" and in which there is "active interest on both sides."<sup>8</sup> Thus, merely sending a copy of one's resumé to a private entity is not considered "negotiating" for future employment.

Other, more general, ethical rules also bear on the subject of employment negotiations. The House Code of Official Conduct prohibits House Members, officers, and employees from receiving compensation "by virtue of influence improperly exerted" from a congressional position.<sup>9</sup> The Code of Ethics for Government Service forbids anyone in government service from accepting "favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance" of governmental duties.<sup>10</sup> Federal criminal law

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<sup>4</sup> See House Rule 23, cl. 3; Code of Ethics for Government Service ¶¶ 5, 6, reprinted in *2008 House Ethics Manual* at 355.

<sup>5</sup> 18 U.S.C. § 208.

<sup>6</sup> See, e.g., *United States v. Schaltenbrand*, 930 F.2d 1554, 1559 (11th Cir. 1991); *United States v. Conlon*, 628 F.2d 150, 155 (D.C. Cir. 1980).

<sup>7</sup> See *Schaltenbrand*, 930 F.2d at 1558-59.

<sup>8</sup> *United States v. Hedges*, 912 F.2d 1397, 1403 n.2 (11th Cir. 1990) (quoting jury instruction); see also *Schaltenbrand*, 930 F.2d at 1558, 1559 n.2.

<sup>9</sup> House Rule 23, cl. 3.

<sup>10</sup> Code of Ethics for Government Service ¶ 5, reprinted in *2008 House Ethics Manual* at 355.

prohibits a federal official from soliciting or accepting a “bribe”—*i.e.*, anything of value given in exchange for being influenced in an official act.<sup>11</sup> Although bribery necessarily entails a *quid pro quo* arrangement, the same statute also bans seeking or accepting “illegal gratuities”—*i.e.*, anything given because of, or in reward for, a future or past official act, whether or not the official action would be, or would have been, taken absent the reward.<sup>12</sup>

In light of these restrictions, House employees should be particularly careful in negotiating for future employment, especially when negotiating with anyone who could be substantially affected by the performance of the employee’s official duties.<sup>13</sup> It may be prudent for the employee to have an exchange of correspondence with any serious negotiating partner, stipulating that the prospective employer will receive no official favors in connection with the job negotiations. Those employees who will be subject to the post-employment restrictions, which are addressed later in this memorandum, may also wish to establish in correspondence with any prospective employer that the future employer understands that (1) it will receive no official favors as a result of the job negotiations, and (2) the employee is subject to post-employment restrictions, which should be briefly outlined.<sup>14</sup> Former employees who are lawyers should consult their local bar association concerning the application of rules governing their involvement in matters in which they participated personally and substantially during their time with the House.<sup>15</sup> In addition, as addressed in the next section of this memorandum, senior staff must disclose the employment negotiations in writing to the Ethics Committee.

Provided that employees conduct themselves in accordance with the considerations discussed above, they may engage in negotiations for employment in the same manner as any other job applicant. Discussions may specifically address salary, duties, benefits, and other terms.

### DISCLOSURE OF EMPLOYMENT NEGOTIATIONS AND RECUSAL REQUIREMENTS

Certain House staff must notify the Committee within three (3) business days after they commence any negotiation or agreement for future employment or compensation with a *private*

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<sup>11</sup> 18 U.S.C. § 201(b)(2)(A).

<sup>12</sup> *Id.* § 201(c)(1)(B).

<sup>13</sup> See Code of Ethics for Government Service ¶ 5, reprinted in 2008 House Ethics Manual at 355.

<sup>14</sup> See 18 U.S.C. § 207. These restrictions are explained in detail later in this memorandum. Briefly, “very senior” House employees may not contact their former employing Member or Members on official business for one year after leaving office, nor may they assist any foreign government in securing official action from any federal official during that year.

<sup>15</sup> A former employee who joins a law firm should also be aware that a separate statutory provision, 18 U.S.C. § 203, has been interpreted to prohibit a former federal official who joins a firm from sharing in fees attributable to representational services in federally related matters where those services were provided by the firm while the individual was still employed by the government. U.S. Office of Gov’t Ethics (OGE) Advisory Opinion 99 x 24 (Dec. 14, 1999) (available on the OGE Web site at [www.oge.gov/DisplayTemplates/ModelSub.aspx?id=1466](http://www.oge.gov/DisplayTemplates/ModelSub.aspx?id=1466)).

entity.<sup>16</sup> Staff subject to this disclosure requirement are those employees of the House who are paid at or above an annual rate of \$119,553.60 (\$9,962.80 per month) for any two months in a calendar year.<sup>17</sup> Staff paid at this rate are referred to as "senior staff."

The term "negotiation" is not defined in the legislation. Thus, the Committee views negotiations using the standard discussed earlier in this memorandum, namely that there has been "a communication between two parties with a view toward reaching an agreement" and in which there is "active interest on both sides."<sup>18</sup> In addition, senior staff must recuse themselves from "any matter in which there is a conflict of interest or an appearance of a conflict" with the private entity with which they are negotiating or have an agreement for future employment or compensation, and they must notify the Ethics Committee in writing of such recusal.<sup>19</sup>

The terms "conflict" and "appearance of conflict" also are not defined in the rule. The Committee has stated that a "conflict of interest becomes problematic when [an employee] uses his position to enhance his personal financial interests or his personal financial interests impair his judgment in conducting his public duties."<sup>20</sup> Employees also should avoid situations that

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<sup>16</sup> House Rule 27, cl. 2; Stop Trading on Congressional Knowledge Act, Pub. L. No. 112-105 (Apr. 4, 2012) (hereinafter STOCK Act) § 17. House Rule 27, clause 1, which imposes a similar restriction on House Members, limits the disclosure requirement for Members to negotiations with *private* employers. While the express language of clause 2, which covers employees, does not limit its terms to negotiations with private employers, the Committee has read the two clauses consistently as excluding from the disclosure requirement any job negotiations with government entities for both Members and employees.

<sup>17</sup> House Rule 27, clause 2, imposes the disclosure requirement on any "employee of the House earning in excess of 75 percent of the salary paid to a Member." That rate was \$130,500 per year for most House employees. Section 17 of the STOCK Act extended this requirement to "any individual required to file a financial disclosure report under section 101 of the Ethics in Government Act of 1978," which includes all senior staff. For more information on this change, see pages 5-6 of the April 4, 2012, Committee advisory memorandum entitled "New Ethics Requirements Resulting from the STOCK Act," which is available on the Committee Web site at <http://ethics.house.gov/pink-sheets>.

<sup>18</sup> See *Hedges*, 921 F.2d at 1403 n.2.

<sup>19</sup> House Rule 27, cl. 4.

<sup>20</sup> House Comm. on Standards of Official Conduct, *In the Matter of Representative Sam Graves*, H.R. Rep. No. 111-320, 111th Cong., 1st Sess. 16 (2009); see also House Bipartisan Task Force on Ethics, *Report on H.R. 3660*, 101st Cong., 1st Sess. (Comm. Print, Comm. on Rules 1989), reprinted in 135 Cong. Rec. H9253 at H9259 (daily ed. Nov. 21, 1989) ("A conflict of interest is generally defined as a situation in which an official's private financial interests conflict or appear to conflict with the public interest."); House Rule 23, cl. 3 ("A Member may not receive compensation and may not permit compensation to accrue to the beneficial interest of such individual from any source, the receipt of which would occur by virtue of influence improperly exerted from the position of such individual in Congress.").

might be viewed as presenting even a risk that the individual might be improperly influenced by personal financial interests.<sup>21</sup>

The Committee has issued forms, available on the Committee Web site ([ethics.house.gov](http://ethics.house.gov)), to be used for these notification requirements. When notifying the Committee of negotiations or agreements for future employment or compensation, senior staff should complete and sign an employment negotiation form, formally titled the "Notification of Negotiations or Agreement for Future Employment."<sup>22</sup> The original, completed form must be submitted to the Committee, but all filers should keep a copy of their submission for their records. There is a separate form for notifying the Committee of recusal, entitled the "Statement of Recusal." Senior staff who recuse themselves from official matters pursuant to Rule 27 and/or the STOCK Act must complete and submit the original recusal form to the Committee.<sup>23</sup>

### **BENEFITS OFFERED BY PROSPECTIVE EMPLOYERS DURING JOB NEGOTIATIONS**

House employees may accept "[f]ood, refreshments, lodging, transportation, and other benefits . . . customarily provided by a prospective employer in connection with bona fide employment discussions."<sup>24</sup> Thus, subject to the limitations set out in the rule, a House employee may accept travel expenses from an entity with which the individual is interviewing for a position and to meet prospective colleagues. Such travel is *not* subject to the requirement for prior, written approval from the Committee that applies to privately-funded travel undertaken as part of one's House duties. However, travel expenses that exceed \$350 from any one source must be disclosed on Schedule VII of the termination financial disclosure statement required of departing senior employees.<sup>25</sup> In addition, any agreement for future employment also must be disclosed on Schedule IX of that statement.<sup>26</sup>

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<sup>21</sup> See *Federal Conflict of Interest Legislation*, Staff Report to Subcomm. No. 5 of the Comm. on the Judiciary, 85th Cong., 2d Sess. 1 (Comm. Print 1958) ("Within reasonable limits, also, the importance of public confidence in the integrity of the Federal service justifies the requirement that the Federal employee shall avoid the appearance of evil, as well as evil itself."); Code of Ethics for Government Service ¶ 5, reprinted in *2008 House Ethics Manual* at 355 ("Any person in government service should . . . never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties."); see also House Rule 23, cl. 2 ("[An] . . . employee of the House shall adhere to the spirit and letter of the Rules of the House . . .").

<sup>22</sup> House Rule 27, cls. 1-3.

<sup>23</sup> *Id.*, cl. 4. Clause 4 does not require staff to file their notice of negotiation with the Clerk, as is required of House Members.

<sup>24</sup> House Rule 25, cl. 5(a)(3)(G)(ii).

<sup>25</sup> 5 U.S.C. app. 4 § 102(a)(2)(B).

<sup>26</sup> *Id.* § 109(a)(7)(A). Such travel must be disclosed on the employee's Financial Disclosure Statement even if the individual ultimately remains employed by the House rather than accepting private employment.

## POST-EMPLOYMENT RESTRICTIONS

Since 1989, legislative branch officials, including certain employees, have been subject to restrictions on their post-House employment.<sup>27</sup> These limitations are part of the federal criminal code, and they apply to Members and officers of the House, as well as to employees of House Member, committee, and leadership offices who are paid at least 75% of a Member's salary.<sup>28</sup> The basic rate of pay for Members in calendar year 2012 is \$174,000, and thus the post-employment threshold for individuals who terminate their employment with a Member, committee, or leadership office in 2012 is **\$130,500**. The threshold rate for other years is available from the Ethics Committee. For employees of "other legislative offices,"<sup>29</sup> the basic rate of pay triggering the restrictions is level IV of the Executive Schedule, which for 2012 is **\$155,500**.<sup>30</sup>

An employee is subject to these restrictions if the employee is paid at or above the threshold rate for at least 60 days during the one-year period preceding termination of the employee's House service.<sup>31</sup> Accordingly, it is possible for an employee who is usually paid below the threshold rate to become subject to the post-employment restrictions by the receipt of a "bonus" or merit adjustment that is paid in two or more months. Employees who are subject to the restrictions are referred to as "covered" individuals.

For covered individuals, the law establishes a one-year "cooling-off period" that is measured from the date of the individual's departure from the House payroll.<sup>32</sup> When an office continues an individual on the payroll for the purpose of paying for accrued leave after individual's services to the House have ceased, the one-year cooling-off period will not begin until after the individual's final day on the House payroll. House employees whose pay is below the threshold are **not** subject to the post-employment restrictions set out in the statute, and no other provision of federal statutory law or the House rules establishes any comparable restrictions on post-employment activity.

Set out below is a detailed description of prohibited and permitted post-employment activity by covered former employees under the statute. This explanation is followed by a table that briefly summarizes the statutory restrictions. Please note that the statute, as part of the criminal code, is enforced by the Justice Department, rather than by the Ethics Committee, and Committee interpretations of the statute are not binding on the Department.

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<sup>27</sup> See 18 U.S.C. § 207(e), (f).

<sup>28</sup> *Id.* § 207(e)(7).

<sup>29</sup> For the definition of "other legislative offices," see note 2, above.

<sup>30</sup> 18 U.S.C. § 207(e)(7)(B).

<sup>31</sup> *Id.* § 207(e)(7). With regard to House employees who are federal civil service or military annuitants, it is the view of the Ethics Committee that the post-employment restrictions apply to those whose combined House salary and annuity were at or above the threshold rate for the specified time period.

<sup>32</sup> *Id.* § 207(e)(3)-(7).

## Prohibited Activity

Under the statute, a covered former employee may **not**, for a period of **one year** after leaving office:

- × **Knowingly communicate with or appear before the employee’s former employing office or committee** with the intent to influence, on behalf of any other person, the official actions or decisions of a Member, officer, or employee in such office or on such committee.<sup>33</sup> An individual who was employed by more than one House office (*i.e.*, “shared staff”) during the individual’s last twelve months of employment with the House is subject to the post-employment restrictions with respect to each of the individual’s employing offices if the employee’s combined House salaries exceeded the triggering threshold.

The statute excepts certain representations made on behalf of specific types of entities, as described below in the context of “permissible activity.” With regard to restricted activity, the statute specifically provides that:

- Covered former employees on the **personal staff**<sup>34</sup> of a Member may not seek official action, on behalf of other persons, from that Member or from any of the Member’s employees.<sup>35</sup>
- Covered former **committee staff**<sup>36</sup> may not seek official action, on behalf of other persons, from any current Member or employee of the employing committee or from any Member who was on the committee during the last 12 months the former employee worked there.<sup>37</sup> This restriction bars contacts with any of these individuals on any subject relating to official business, regardless of whether it pertains to matters within the committee’s jurisdiction.<sup>38</sup>
- Covered former employees on the **leadership staff**<sup>39</sup> may not seek official action, on behalf of other persons, from current Members of the leadership<sup>40</sup> or any current staff of those Members.<sup>41</sup>

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.* § 207(e)(9)(E).

<sup>35</sup> *Id.* § 207(e)(3). The statute expressly prohibits contacting any employee of a Member whom the departed employee is prohibited from contacting. *Id.* § 207(e)(3)(B)(ii).

<sup>36</sup> *Id.* § 207(e)(9)(A). For the purposes of the statute, a detailee is deemed to be an employee of both the entity from which the detailee comes and the House committee to which the individual is detailed. *Id.* § 207(g).

<sup>37</sup> *Id.* § 207(e)(4).

<sup>38</sup> *Id.* (barring communication or appearances on “any matter” on which the former employee seeks action).

<sup>39</sup> *Id.* § 207(e)(9)(H).

- Covered former employees of any other legislative office<sup>42</sup> may not seek official action, on behalf of other persons, from current officers and employees of that legislative office.<sup>43</sup>
- × Knowingly represent a foreign government or foreign political party before any federal official (including any Member of Congress) with the intent to influence a decision of such official in official duties.<sup>44</sup>
- × Knowingly aid or advise a foreign government or foreign political party with the intent to influence a decision of any federal official (including any Member of Congress) in carrying out his or her official duties.<sup>45</sup>
- × Use confidential information obtained by means of personal and substantial participation in trade or treaty negotiations within one year preceding the employee's departure from the House payroll, in the course of representing, aiding, or advising anyone other than the United States regarding those negotiations.<sup>46</sup>

As to the prohibition against making any "communication to or appearance before" anyone in the legislative branch, former Members should be aware of the broad manner in which the Department of Justice (DOJ) has defined those terms.<sup>47</sup> A DOJ opinion defines "communication" as "the act of imparting or transmitting information with the intent that the

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<sup>40</sup> The "leadership" of the House of Representatives consists of the Speaker; majority leader; minority leader; majority whip; minority whip; chief deputy majority whip; chief deputy minority whip; chairman of the Democratic Steering Committee; chairman and vice chairman of the Democratic Caucus; chairman, vice chairman, and secretary of the Republican Conference; chairman of the Republican Research Committee; chairman of the Republican Policy Committee; and any similar position created after the statute took effect. 18 U.S.C. § 207(e)(9)(L).

<sup>41</sup> See *id.* §§ 207(e)(5)(B) and (e)(9)(H).

<sup>42</sup> For the definition of "other legislative office," see note 2, above.

<sup>43</sup> 18 U.S.C. §§ 207(e)(6) and (e)(9)(G).

<sup>44</sup> *Id.* §§ 207(f)(1)(A) and (i)(1)(B). Section § 207 uses the same definitions of the terms "foreign government" and "foreign political party" as the Foreign Agents Registration Act (22 U.S.C. § 611(e), (f)). See *id.* § 207(f)(3). These restrictions also apply with regard to any foreign commercial corporation that "exercises the functions of a sovereign." See U.S. OGE, Attachment to DO-04-023: *Summary of Post-Employment Restrictions of 18 U.S.C. § 207*, at 11 (July 29, 2004) (available on the OGE Web site at [www.oge.gov/DisplayTemplates/ModelSub.aspx?id=2199](http://www.oge.gov/DisplayTemplates/ModelSub.aspx?id=2199)). Also pertinent to these provisions of the statute is a U.S. Office of Legal Counsel (OLC) opinion of June 22, 2004, which concludes that 18 U.S.C. § 207(f) covers representational contacts with Members of Congress. See U.S. OLC Memorandum Opinion, *Application of 18 U.S.C. § 207(f) to a Former Senior Employee* (available on the OLC Web site at [www.justice.gov/olc/oge\\_op2\\_22jun04.htm](http://www.justice.gov/olc/oge_op2_22jun04.htm)).

<sup>45</sup> 18 U.S.C. § 207(f)(1)(B).

<sup>46</sup> *Id.* § 207(b).

<sup>47</sup> 18 U.S.C. § 207. The provisions of 18 U.S.C. § 207 should not be confused with those of the Lobbying Disclosure Act (2 U.S.C. §§ 1601 *et seq.*) (LDA). In other words, merely because a particular activity does not constitute "lobbying" for purposes of that Act does not mean that the activity is permissible under 18 U.S.C. § 207.

information be attributed to the former official.”<sup>48</sup> Such DOJ guidance is binding on the Ethics Committee.

Further, an advisory memorandum issued by the U.S. Office of Government Ethics (OGE) for Executive Branch employees states, “[a]n ‘appearance’ extends to a former employee’s mere physical presence at a proceeding when the circumstances make it clear that his attendance is intended to influence the United States.”<sup>49</sup> The provision is broad enough that it precludes a covered former employee even from, for example, requesting or scheduling, for or on behalf of any other person, a meeting with any Member, officer, or employee whom the individual is prohibited from contacting on official business.<sup>50</sup> While OGE guidance is merely persuasive, rather than binding, on Committee interpretations of the statute, this Committee endeavors when possible to interpret the statute in a manner consistent with OGE practice.

In addition to these one-year “cooling-off period” restrictions, departing employees should also be aware of a permanent federal statutory restriction that prohibits any U.S. citizen acting without authority of the United States from:

- ✗ **Directly or indirectly commencing or carrying on any correspondence or intercourse with any foreign government**, or any officer or agent thereof, with the intent to influence the measures or conduct of any foreign government or of any officer or agent thereof in relation to any disputes or controversies with the United States, or to defeat the measures of the United States.<sup>51</sup>

#### Permissible Activity

Under federal statutory law, covered former employees **may, immediately** upon leaving office:

- ✓ **Contact Members, officers, and employees of the Senate, and – except for those officials specified above in the section on “Prohibited Activity” – Members,**

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<sup>48</sup> U.S. OLC, “*Communications*” under 18 U.S.C. § 207 at 3 (Jan. 19, 2001) (available on the OLC Web site at [www.justice.gov/olc/207cfinal.htm](http://www.justice.gov/olc/207cfinal.htm)). In that opinion, the OLC provides the following illustrative examples: “A high-ranking official who aggressively publicizes the fact that he is leaving an agency to start a one-man consulting firm, then submits a report to the agency shortly thereafter under the name of that firm, almost certainly intends that the report will be attributed to him. Similarly, a former official who is not introduced by name, but participates on a conference call with his former agency colleagues, almost certainly intends this his colleagues will recognize his voice.” *Id.*

<sup>49</sup> *Summary of Post-Employment Restrictions of 18 U.S.C. § 207*, note 44 above, at 3.

<sup>50</sup> Committee interpretations of the statute contained in this memorandum are based on analysis of the statutory terms and purposes, and opinions and guidance, issued by the Justice Department and OGE. However, as noted above, 18 U.S.C. § 207 is a criminal statute, and Committee interpretations of it are not binding on the Justice Department (*but see* note 75, below).

<sup>51</sup> 18 U.S.C. § 953 (the Logan Act). An eighteenth century law, the Logan Act restricts private correspondence with foreign governments. This statute, which appears to have been a reaction to the attempts of one citizen to engage in private diplomacy, has never been the basis of a prosecution, and this Committee has publicly questioned its constitutionality. House Comm. on Standards of Official Conduct, *Manual of Offenses and Procedures, Korean Influence Investigation*, 95th Cong., 1st Sess. 18-19 (Comm. Print 1977). Members should be aware, however, that the law remains part of the criminal code.

officers, and employees of the House and other Legislative Branch offices, with intent to influence official action so long as not representing a foreign government or political party.

- ✓ **Aid or advise clients** (other than foreign governments or foreign political parties) **concerning how to lobby Congress**, provided the former employee makes no appearance before or communication to those officials specified above in the "Prohibited Activity" section. Such a "background role" would not pose the contemplated risk of improper influence since the current officials would not be aware of the former employee's participation.<sup>52</sup> Any such participation must remain behind-the-scenes; during the one-year "cooling-off" period, former employees must not permit their name to be openly associated with such contact by other persons.<sup>53</sup>
- ✓ **Contact Executive Branch officials** with the intent to influence official action so long as not representing a foreign government or foreign political party.<sup>54</sup>
- ✓ **Contact state government officials** with the intent to influence state government actions or decisions. Former employees should comply with any state laws governing such contacts.
- ✓ **Contact one foreign government on behalf of another foreign government.**<sup>55</sup>
- ✓ **Contact any Members, officers, and employees of the House and other Legislative Branch officials** on official business under any of the following circumstances:

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<sup>52</sup> Former employees who are lawyers may have additional restrictions, as explained in note 15 of this Memorandum.

<sup>53</sup> As noted above, the major restrictions set forth in 18 U.S.C. § 207(e) focus on communications and appearances. By contrast, if a former Member plays a background role, and does not appear in person or convey his or her name on any communications, the law does not appear to prohibit that person from advising those who seek official action from the Congress. This construction is consistent with regulations promulgated by the U.S. OGE, interpreting a comparable prohibition that applies to Executive Branch personnel. See 5 C.F.R. § 2637.201(b)(3), (6). This matter is also addressed in the 2001 U.S. OLC opinion that is cited in note 48 above, including with regard to activities that do not constitute permissible "behind-the-scenes" activities.

<sup>54</sup> Covered former employees who are representing a tribal government as an employee of the tribe or as an officer or employee of the United States assigned to a tribe have an additional restriction on contacts with the Executive Branch and certain other entities. Such individuals must first notify the head of the department, agency, court, or commission being contacted of "any personal and substantial involvement" they had in the matter while a federal employee. See 25 U.S.C. § 450i(j); 18 U.S.C. § 207(j)(1)(B).

<sup>55</sup> No federal statute expressly permits such contacts, but so far as the Committee is aware, no federal statute prohibits such contacts. Thus, it appears that such contacts are permissible under federal law. Covered former employees who intend to undertake such activity, however, should carefully review the Foreign Agents Registration Act (22 U.S.C. §§ 611 *et seq.*) (FARA) to ensure compliance with its requirements. Briefly stated, FARA provides that anyone who acts within the United States under the direction or control of a foreign principal to influence official decisions, official policies, or public opinion on behalf of a foreign principal must register with the Justice Department. See generally 22 U.S.C. §§ 611 *et seq.*; U.S. Dep't of Justice (DOJ), "FARA FAQ" (available on the DOJ Web site, [www.fara.gov/fara-faq.html](http://www.fara.gov/fara-faq.html)).

- The former employee is carrying out official duties on behalf of the **federal government** or the District of Columbia;<sup>56</sup>
  - The former employee is acting as an **elected official of a state or local government**;<sup>57</sup>
  - The former employee is an **employee** (not a private consultant or other independent contractor) of a **state or local government**, or an agency or instrumentality thereof, acting on its behalf;<sup>58</sup>
  - The former employee is an **employee** of an accredited, degree-granting **institution of higher education** and is acting on behalf of such institution;<sup>59</sup> or
  - The former employee is an **employee** of a **charitable hospital or medical research organization** and is acting on behalf of such hospital or organization.<sup>60</sup>
- ✓ **Represent or give aid or advice to international organizations** of which the United States is a member if the Secretary of State certifies in advance that such activities are in the interest of the United States.<sup>61</sup> Otherwise, covered employees must wait one year before engaging in such activities.
- ✓ **Make statements or communications as an employee of a candidate, authorized campaign committee, national or state party, or political committee**, if acting on behalf of that committee or party.<sup>62</sup> However, if the former employee is employed by a person or entity who represents, aids, or advises only such persons or entities, the communications would be prohibited.<sup>63</sup>

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<sup>56</sup> 18 U.S.C. § 207(j)(1)(A).

<sup>57</sup> *Id.*

<sup>58</sup> *Id.* (j)(2)(A).

<sup>59</sup> *Id.* § 207(j)(2)(B). The statute uses the definition of “institution of higher education” contained in § 101 of the Higher Education Act of 1965 (20 U.S.C. § 1001 *et seq.*). As a general matter, the definition includes only nonprofit, degree-granting educational institutions located in the United States or its territories. *See* 20 U.S.C. § 1001(a)-(b).

<sup>60</sup> 18 U.S.C. § 207(j)(2)(B). For this exception to apply, the hospital or medical research organization must be exempted under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3)). *Id.*

<sup>61</sup> *Id.* § 207(j)(3).

<sup>62</sup> *Id.* § 207(j)(7)(A).

<sup>63</sup> *Id.* § 207(j)(7)(B)(ii)(II).

- ✓ **Make statements based upon the “special knowledge”** of the former employee concerning the particular area that is the subject of the statement, if **no compensation** is received in connection therewith.<sup>64</sup>
- ✓ **Give testimony under oath**, or make statements required to be made under penalty of perjury.<sup>65</sup>
- ✓ **Contact staff of the Clerk of the House** regarding the individual’s compliance with the disclosure requirements under the Lobbying Disclosure Act.<sup>66</sup>
- ✓ **Make political contributions** to, and **sponsor or attend political fundraisers** for, current Members of Congress, *provided that* no appearances or communications are made with the intent to influence, on behalf of any other person, the official actions or decisions of current Members or staff.<sup>67</sup>
- ✓ **Interact socially with current Members of Congress and staff** *provided that* no appearances or communications are made with the intent to influence, on behalf of any other person, the official actions or decisions of current Members or staff.<sup>68</sup>

*Example 1.* Staff member *A*, who earns more than 75% of a Member’s salary, resigns from her position on Member *B*’s personal staff. She may not lobby *B* or anyone on his staff for one year (except on behalf of an exempt organization), but she may lobby any other Member or staff member on behalf of anyone other than a foreign government or political party as soon as she leaves the House payroll.

*Example 2.* Staff member *C*, who earns more than 75% of a Member’s salary, resigns from his position on the Ways and Means Committee. He may not lobby any current member or employee of Ways and Means, or any Member who was on that committee during *C*’s last year of congressional service, on behalf of any non-exempt person or entity, for one year. He may, however, lobby any other Member or staff member on any issue, except on behalf of a foreign government.

*Example 3.* Staff member *D*, who earns less than 75% of a Member’s salary, resigns from her position on Member *E*’s staff to become a lobbyist. *D* may immediately lobby *E* or any other Member for any client.

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<sup>64</sup> *Id.* § 207(j)(4). “Special knowledge” is not defined in the statute. The Federal Register, which provides rules on the application of the statute to employees in the Executive Branch, states that a “former employee has special knowledge concerning a subject area if he is familiar with the subject area as a result of education, interaction with experts, or other unique or particularized experience.” 5 C.F.R. § 2641.301(d)(1). In addition, in the proposed rulemaking for this provision, the OGE emphasized that it regarded its interpretation of this exception to be “relatively narrow.” See 73 Fed. Reg. 36183 (June 25, 2008). While these definitions are not binding on the Ethics Committee, they provide guidance as to how the term should be interpreted.

<sup>65</sup> 18 U.S.C. § 207(j)(6).

<sup>66</sup> *Id.* § 207(e)(8).

<sup>67</sup> See *id.* § 207.

<sup>68</sup> See *id.*

*Example 4.* Staff member *F*, who earns more than 75% of a Member's salary, resigns from Member *G*'s staff to accept a position in an Executive Branch agency. *F* may lobby *G* immediately on behalf of the agency.

*Example 5.* Staff member *H*, who earns more than 75% of a Member's salary, resigns from his congressional position to join the staff of the Governor of his state. As a state employee, *H* may lobby anyone in Congress, including his former employing Member, on behalf of the state.

*Example 6.* Staff member *I*, who earns more than 75% of a Member's salary, resigns her congressional position and moves back to her home state. *I* may lobby state government officials on behalf of any clients.

*Example 7.* Staff member *J*, who earns more than 75% of a Member's salary, resigns his position with Member *K* and begins work as a lobbyist at a lobbying firm. One of *J*'s clients is a state university. *J* may not lobby *K* on behalf of the university (or any other client) for one year following his departure from the House. However, if *J* were an employee of the university rather than an outside retained lobbyist, contact with *K* on behalf of the university would be permitted.

*Example 8.* Staff member *L*, who earns more than 75% of a Member's salary, resigns his congressional position to become a lobbyist. For the first year after leaving the Hill, *L* lobbies only Executive Branch personnel, and *L* has no foreign clients. *L* is complying with the law.

*Example 9.* During his final year of House employment, staff member *M* worked for Member *N* from January to June 30, and for a committee from July 1 through December 30. December 30 was *M*'s final day on the House payroll. *M* was paid more than 75% of a Member's salary. *M* may not lobby *N* or the committee for one year following his termination from each employer. Thus, *M* would be barred from lobbying *N* until July 1, and current and former members of the committee and current committee staff until December 31 of the following year.

*Example 10.* During his one-year "cooling-off" period, former staff member *O* wishes to call his former employing Member to request that she meet with representatives of one of his clients to discuss legislation of interest to the client. *O* would not be present at the meeting. *O* would violate the statute by requesting the meeting, in that the request would be a communication intended to influence official action.

*Example 11.* During his first year after leaving House employment, *P*, who had been a committee staff member paid more than 75% of a Member's salary, wishes to contact a current employee of that committee to urge him to support federal funding for a non-profit organization operated by a friend of *P*. The non-profit organization is not a client of *P*, and *P* would receive no compensation for making the contact. *P* would violate the statute by doing so, in that the statute bars such

contacts regardless of whether the former employee would be compensated for them.

*Entity Contacted by Covered Former Employee*

*Entity Represented by Covered Former Employee*

	Former Congressional Office/Committee	Executive Branch	Foreign Governments	State Governments
Private Entity	Must wait 1 year before contacting former Congressional office or committee directly. May immediately advise entity behind scenes. May contact other Congressional offices immediately	May contact immediately	May contact immediately	May contact immediately
Federal, State, or Local Government	May contact all Congressional offices immediately as employee or elected official of the federal, state, or local government	May contact immediately	May contact immediately	May contact immediately
Tribal Government	Must wait 1 year before contacting former Congressional office or committee directly. May immediately advise entity behind scenes. May contact other Congressional offices immediately	May contact immediately if employed by tribe or U.S.; must inform head of agency or department of any personal and substantial involvement in matter while a House employee	May contact immediately	May contact immediately
Foreign Government	Must wait 1 year before contacting any Congressional office or committee directly or advising foreign government behind scenes. Must register with Justice Department if acting as a foreign agent in the U.S.	Must wait 1 year before contacting Executive Branch directly or advising foreign government behind scenes. Must register with Justice Department if acting as a foreign agent in the U.S.	May contact immediately	May contact immediately. Must register with Justice Department if acting as a foreign agent in the U.S.
International Org. of which U.S. is a Member	If Secretary of State approves as in national interests may immediately advise international organization and contact Congress directly. Otherwise, must wait 1 year to do either.	If Secretary of State approves as in national interests may immediately advise international organization and contact Executive Branch directly. Otherwise, must wait 1 year to do either.	May contact immediately	May contact immediately
Accredited U.S. College or University	May contact all Congressional offices immediately as employee of college or university	May contact immediately	May contact immediately	May contact immediately
Charitable Hospital or Medical Research Org.	May contact all Congressional offices immediately as employee of hospital or medical research organization	May contact immediately	May contact immediately	May contact immediately
Candidate, Political Campaign, or Party	May make communications immediately as employee of candidate, authorized campaign committee, or federal or state party or committee, unless employed by entity that advises only such entities	May contact immediately	May contact immediately	May contact immediately

## Penalties

Each violation of the post-employment restrictions set forth in the statute is a felony punishable by imprisonment up to one year (or up to five years for willful violations) and a fine of up to \$50,000 for each violation or the value of the compensation received for the act which violated the restrictions, whichever is greater.<sup>69</sup> The statute further authorizes the Attorney General to seek an injunction prohibiting a person from engaging in conduct that violates the act.<sup>70</sup>

By its terms, 18 U.S.C. § 207 governs the conduct of **former** Members, officers and employees, and does not apply to the conduct of **current** Members, officers and employees. However, the post-employment restrictions have been the subject of recent close attention by the United States Department of Justice, as reflected in the guilty pleas by former House staff and others to criminal violations of the statute.<sup>71</sup> Therefore, current Members and staff who receive or otherwise participate in improper contacts by a covered former employee should be aware that, depending on the circumstances, they may be subject to criminal or House disciplinary action. The recent examples involving § 207 violations indicate that a Member who aids and abets a covered former employee in the violation may be prosecuted for conspiracy to violate the post-employment restrictions.<sup>72</sup>

Furthermore, in an Ethics Committee disciplinary case that was completed in the 106th Congress, a Member admitted to engaging in several forms of conduct that violated House Rules requiring that each Member and staff person "conduct himself at all times in a manner that shall reflect creditably on the House."<sup>73</sup> One of those violations was his engaging in a pattern and practice of knowingly allowing his former chief of staff to appear before and communicate with him in his official capacity during the one-year period following her resignation, "in a manner that created the appearance that his official decisions might have been improperly affected."<sup>74</sup>

An employee (or former employee) who has any concerns about the applicability of the post-employment restrictions to his or her proposed conduct should write to the Ethics Committee to request a written advisory opinion. While, as noted above, Ethics Committee interpretations of 18 U.S.C. § 207 are not binding on the Justice Department, those interpretations are based on the Committee's analysis of the terms and purposes of the statute, as

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<sup>69</sup> 18 U.S.C. § 216.

<sup>70</sup> *Id.* § 216(c).

<sup>71</sup> See, e.g., *United States v. Jack A. Abramoff*, Docket No. 06-CR-001 (D.D.C.) ("*Abramoff* action"). In addition, in September 2006, former Representative Robert W. Ney pleaded guilty to conspiracy to violate, among other statutes, the post-employment restrictions for former covered employees ("*Ney* action").

<sup>72</sup> See, e.g., *Abramoff* and *Ney* actions, note 71 above.

<sup>73</sup> House Rule 23; cl. 1; see also House Comm. on Standards of Official Conduct, *In the Matter of Representative E.G. "Bud" Shuster*, H. Rep. 106-979, 106th Cong., 2d Sess. vol. I (July 19, 2002) ("*Shuster Report*").

<sup>74</sup> House Comm. on Standards of Official Conduct, *Summary of Activities, One Hundred Sixth Congress*, H. Rep. 106-1044, 106th Cong., 2d Sess. at 10, 13, 16 (2000); see also *Shuster Report*, *supra* note 73 above, vol. I.

well as any applicable opinions or guidance of the Justice Department or the U.S. Office of Government Ethics of which the Committee is aware.<sup>75</sup>

### FINANCIAL DISCLOSURE REQUIREMENTS FOLLOWING DEPARTURE FROM HOUSE EMPLOYMENT

A departing staff member who was required to file a financial disclosure statement because of the employee's rate of pay must file a final Financial Disclosure Statement, called a Termination Report, within 30 days of leaving the House payroll.<sup>76</sup> However, an employee in a Member's office who has filed only because the employee was designated as a "Principal Assistant" does not have to file a Termination Report unless the individual was designated as principal assistant to a Member leaving the House.<sup>77</sup> Extensions of up to 90 days are available upon written request.<sup>78</sup> Note that the salary threshold for filing disclosure statements is lower than that which triggers the post-employment restrictions discussed above. For 2012, the financial disclosure filing threshold is an annual salary rate of \$119,553.60 (or a monthly salary of \$9,962.80) for 60 days or more.<sup>79</sup>

The termination report, filed on the same form as the annual report, covers all financial activity through the filer's last day on the House payroll.<sup>80</sup> Schedule IX of the report requires disclosure of any agreement entered into by the filer, oral or written, with respect to future employment.<sup>81</sup> Thus, if a covered employee accepts a future position while still on the House payroll, the employee will have to disclose the agreement on the individual's public termination filing. The date of the agreement, the future employer, the position or title and the starting date must be disclosed, but the amount of the compensation need not be reported.<sup>82</sup> The employee will also have to disclose, on Schedule VII of the report, any travel reimbursements exceeding \$350 received from any source in connection with job-search activity.<sup>83</sup>

However, a departing employee who, prior to thirty days after leaving office, has accepted another federal position requiring the filing of a *public* financial disclosure statement

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<sup>75</sup> It should be noted that one court held that it is a complete defense to a prosecution for conduct assertedly in violation of a related federal criminal strict-liability statute (18 U.S.C. § 208) that the conduct was undertaken in good faith reliance upon erroneous legal advice received from the official's supervising ethics office. *Hedges*, 912 F.2d at 1404-06.

<sup>76</sup> 5 U.S.C. app. 4 § 101(e).

<sup>77</sup> See Comm. on Ethics, *Instruction Guide for Completing Calendar Year 2011 Financial Disclosure Statement Form A (2011 Form A FD Instructions)* at 2.

<sup>78</sup> 5 U.S.C. app. 4 § 101(g)(1); see also *2011 Form A FD Instructions* at 3.

<sup>79</sup> See 5 U.S.C. app. 4 § 109(13)(B)(i). The 60 days do not have to be consecutive; being paid at the senior staff rate for any two months of the calendar year triggers the requirement to file a termination financial disclosure statement.

<sup>80</sup> *Id.* § 101(e).

<sup>81</sup> *Id.* § 102(a)(7).

<sup>82</sup> See *id.*; see also *2011 Form A FD Instructions* at 31.

<sup>83</sup> 5 U.S.C. app. 4 § 102(a)(2)(B).

need not file a Termination Report.<sup>84</sup> Any departing employee who is not required to file a termination report for this reason must notify the Clerk *in writing* of that fact.<sup>85</sup>

## OUTSIDE EMPLOYMENT AND EARNED INCOME RESTRICTIONS

Departing staff remain subject to all House rules, including the gift rule and the limitations on outside employment and earned income,<sup>86</sup> as long as they remain on the government payroll. These rules are particularly important to bear in mind when an employee's prospective employer suggests that the individual begin work early, including, for example, while still drawing pay for accrued annual leave.<sup>87</sup> In calendar year 2010, a covered employee may not receive outside earned income (including, for example, a signing bonus) in excess of \$26,550, and no earned income may be received for: (1) providing professional services involving a fiduciary relationship, including the practice of law, or any consulting or advising; (2) being employed by an entity that provides such services; or (3) serving as a board member or officer of any organization.<sup>88</sup> Regardless of whether compensation is received, a covered employee may not allow his or her name to be used by an organization that provides fiduciary services. In addition, a covered employee may not receive any honoraria (*i.e.*, a payment for a speech, article or appearance),<sup>89</sup> although he or she may receive compensation for teaching, if the employee first secures specific prior permission from this Committee.<sup>90</sup>

*Example 12.* Staff member Q, who earns more than 75% of a Member's salary, plans to join a law firm when he leaves his official position. Since this is a firm providing professional services of a fiduciary nature, Q may not commence his new employment until he is off the congressional payroll.

## ACCEPTANCE OF OFFICIALLY CONNECTED TRAVEL FUNDED BY A PRIVATE SOURCE

After the adjournment *sine die* of Congress, it is questionable whether any employee of a departing Member may participate in any privately-funded travel that is factfinding in nature.

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<sup>84</sup> *Id.* § 101(e).

<sup>85</sup> See 2011 Form A FD Instructions at 2.

<sup>86</sup> House Rule 25, cls. 1-5. The outside employment and earned income limitations are also codified at 5 U.S.C. app. 4 §§ 501-502.

<sup>87</sup> Staff members contemplating future employment with the U.S. Senate, the Architect of the Capitol or any other department or agency of the U.S. government should bear in mind that federal law prohibits "dual compensation" in excess of an annually-adjusted dollar limit for simultaneous employment by the House and any of those entities, 5 U.S.C. § 5533(c)(1). For 2012, the limit is \$33,033. Pursuant to the statute, a departing House employee may not commence employment with any of the above-named governmental entities while receiving from the House payments for accrued annual leave if the employee's aggregated gross annual salaries from the two positions would exceed the statutory limit. *Id.*

<sup>88</sup> House Rule 25, cls. 1-4; see also 5 U.S.C. app. 4 §§ 501-502.

<sup>89</sup> House Rule 23, cl. 5; House Rule 25, cl. 1(a)(2).

<sup>90</sup> House Rule 25, cl. 2(e).

The gift rule requires that such travel be related to official duties,<sup>91</sup> but as of that time, the official responsibilities that may justify participation in such a trip will practically have come to an end. However, this consideration does not limit the ability of an employee of a departing Member to accept travel from a private source for the purpose of enabling the individual to participate substantially in an officially related event, such as to give a speech.

\* \* \*

Any questions on these matters should be directed to the Committee's Office of Advice and Education at (202) 225-7103.

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<sup>91</sup> *Id.*, cl. 5(b)(1)(A).

Jo Bonner, Alabama  
*Chairman*  
Linda T. Sánchez, California  
*Ranking Member*

Michael T. McCaul, Texas  
K. Michael Conaway, Texas  
Charles W. Dent, Pennsylvania  
Gregg Harper, Mississippi

John A. Yarnuth, Kentucky  
Donna F. Edwards, Maryland  
Pedro R. Pierluisi, Puerto Rico  
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ONE HUNDRED TWELFTH CONGRESS

## U.S. House of Representatives

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November 27, 2012

### MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

**FROM:** Committee on Ethics  
Jo Bonner, Chairman *JB*  
Linda T. Sánchez, Ranking Member *LS*

**SUBJECT:** Holiday Guidance on the Gift Rule

The House gift rule, codified at House Rule 25, clause 5, applies to all Members, officers, and employees (Members and staff) at all times, even during the holiday season. This memorandum is a reminder of some of the restrictions of the gift rule and some of the more common questions that arise during the holiday season. This guidance does not cover every situation. As a result, if you are unsure about a particular situation, please contact the Committee at (202) 225-7103.

#### Overview of the Gift Rule and other Gift Statutes

Members and staff may not knowingly accept any gift, except as provided in the gift rule.<sup>1</sup> The rule defines the term “gift” broadly to mean “a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.”<sup>2</sup> The gift rule contains numerous exceptions permitting Members and staff to accept gifts. There are certain gifts that staff may accept without worry. For example, there are no restrictions on accepting gifts, including cash or cash equivalents, of any dollar value, from relatives.<sup>3</sup> There are also no restrictions on accepting personal holiday gifts from co-workers and supervisors.

Generally, Members and supervisors may not accept gifts from their subordinates.<sup>4</sup> However, the Committee has provided for a common-sense exception for voluntary gifts

<sup>1</sup> House Rule 23, clause 4 and House Rule 25, clause 5.

<sup>2</sup> House Rule 25, clause 5(a)(2)(A).

<sup>3</sup> The term “relative” is broadly defined, and it includes fiancés/fiancées and in-laws. *See 2008 House Ethics Manual* at 69 and 5 U.S.C. app. 4 § 109(16).

<sup>4</sup> 5 U.S.C. § 7351.

extended on special occasions such as holidays.<sup>5</sup> Accordingly, Members and supervisors may accept gifts from their subordinates that are customarily extended during the holiday season.

In certain circumstances, Members and staff must seek written permission before accepting a gift. Members and senior staff<sup>6</sup> must also disclose the receipt and value of gifts on their annual Financial Disclosure Statements in certain circumstances, as explained more fully in the final section of this memorandum.

While the gift rule defines what Members and staff may accept, it does not authorize them to ask for any gift. There is also a statutory gift provision, which prohibits Members and staff from asking for or accepting anything of value from anyone who seeks official action from the House, does business with the House, or has interests that may be substantially affected by the performance of official duties.<sup>7</sup> The statutory provision also prohibits Members and staff from soliciting on behalf of other individuals or entities, other than political solicitations or solicitations for charity.

A brief description of some of the common gift rule exceptions applicable to the holiday season are listed below.

### Parties and Receptions

During the holiday season, Members and staff may be invited as guests to parties or related events that are sponsored by individuals or organizations that have, or plan to have, business dealings before Congress. Provided the guidance below is followed, Members and staff may accept an invitation to the following:

- An event where the per person cost or ticket price (if sold) is less than \$50, provided:
  - 1) The invitation is not from a federal lobbyist, foreign agent, or private entity that retains or employs such individuals; and
  - 2) The total value of gifts or other invitations you accept from the host under this exception is less than \$100 for the calendar year. Any gift worth less than \$10 does not count towards the annual limitation.

Example: If a non-lobbyist invites you to a holiday dinner party and your meal is less than \$50, you may accept the meal under the "less than \$50 exception,"

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<sup>5</sup> See 2008 House Ethics Manual at 70.

<sup>6</sup> House employees paid at or above \$119,553.60 for 60 days or more during calendar year 2012 are considered senior staff and must file an annual Financial Disclosure Statement.

<sup>7</sup> 5 U.S.C. § 7353.

provided the aggregate value of all gifts and similar invitations you accept from the host does not exceed \$100 for the year.

- A non-business event, such as a holiday party, hosted by an individual, at the personal residence of that individual or the individual's family, unless offered by a registered lobbyist or foreign agent.

Example: A non-lobbyist invites you to a holiday party at his personal residence to celebrate the holiday season. You may accept food and refreshments offered within the home under the **personal hospitality** exception.

- A **reception**, provided that only food and refreshments of nominal value are offered other than as a part of a meal (*i.e.*, appetizers and beverages, including alcoholic beverages). This exception **does not** include full meals or luxury food items, such as caviar.

Example: A lobbying firm invites you to attend a holiday reception in its office, at which it will serve moderate appetizers and drinks. Provided that the food and refreshments are of "nominal value" and offered "other than as part of a meal," you may attend and accept these items.

- An event where invitations are offered to a group or class in which membership is **unrelated to House employment**.

Example: Your college alumni association is having a holiday party for its members. You may attend as an alumnus of the college.

- An event that is open to the public or to all federal employees.

Example: Your local park is having a free holiday concert that is open to the public. You may attend as a member of the public.

- An event where invitations are offered because of the **outside business or activity of the invitees or their spouses**, provided the invitation:

- 1) was not offered or enhanced because of the individual's House status; and
- 2) is customarily provided to others in similar circumstances.

Example: Your spouse's company is having a holiday party and all employees may bring their spouses as guests. You may attend as your spouse's guest and receive the same food, refreshments, and entertainment that are provided to all attendees, including a full meal or luxury food items.

- A “widely attended event,” provided:
  - 1) The invitation comes from the event sponsor;
  - 2) The sponsor has a reasonable expectation that at least 25 non-congressional invitees will be in attendance;
  - 3) The event is open to the public, or will be attended by a diverse group of individuals interested in a given topic; and
  - 4) The event relates to the Members’ or employees’ official duties.

Please note: The widely attended event exception **does not** apply to holiday parties that are purely social in nature and not related to one’s official duties.

- An event paid for by a **foreign government** that is less than \$350 per person, per occasion. Under the Foreign Gifts and Decorations Act (FGDA), Members and staff may receive a gift item received as a souvenir or mark of courtesy.<sup>8</sup> The Committee has interpreted this provision to allow Members and staff to accept meals and entertainment in the United States related to their official duties.

Example: A foreign embassy in Washington, D.C., is having a holiday luncheon at a local D.C. restaurant to foster inter-country relations. The cost of your meal will be \$100. You may accept the lunch under the FGDA.

#### Other Holiday Gifts

In addition to the provisions discussed above, other gift rule exceptions may permit acceptance of holiday gifts. Provided the guidance below is followed, Members and staff may accept the following:

- Gifts (other than cash or cash equivalent) valued at **less than \$50**, provided:
  - 1) The gift is not from a federal lobbyist, foreign agent, or private entity that retains or employs such individuals; and
  - 2) The total value of gifts you accept from the donor under this exception is less than \$100 for the year.

Please note: Gift cards and gift certificates are considered “cash equivalent” and **may not** be accepted under this exception.

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<sup>8</sup> 5 U.S.C. § 7342.

Example 1: If a non-lobbyist gives you a \$40 pen set during the holiday season, you may accept the gift under the “less than \$50 exception,” provided the aggregate value of all gifts you accept from the donor under this exception does not exceed \$100 for the year.

Example 2: If an organization that does not employ a federal lobbyist sends perishable food, such as a fruit basket, to a House office for all the staff, the gift is considered a gift to the individual recipients and not to the employing Member. Therefore, each staff member may accept items from the fruit basket having a value of less than \$50, provided that no recipient accepts more than \$100 of gifts in the aggregate from the organization during the year.

- A baseball hat, T-shirt, or any item valued at less than \$10, even if from a lobbyist. This exception does not include food items.

Example: A company sends the office 10 T-shirts along with a letter stating that one is to be given to the Member and any staff member that would like to receive one. The Member and staff may each accept one of the T-shirts under this exception.

- Gifts based on **personal friendship**. Members and staff may, without seeking Committee approval, accept a gift based on personal friendship if the gift’s value is less than \$250.<sup>9</sup> The following factors must be considered before accepting a gift under this exception:
  - 1) The history of the recipient’s relationship with the donor, including any previous exchange of gifts;
  - 2) Whether the donor personally paid for the gift, or whether the donor sought a tax deduction or business reimbursement for it; and
  - 3) Whether the donor gives the same or similar gifts to other Members or staff at the same time.

Example: Your former roommate, who is a real estate agent, offers you a \$100 ticket to a holiday play. The roommate personally paid for the ticket. You and the roommate have exchanged gifts throughout the years. The roommate does not contact you or your office on official matters. To the best of your knowledge, the roommate has not made a similar offer to other Members or staff. You may accept the ticket without seeking Committee approval.

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<sup>9</sup> You must seek Committee written approval before accepting a gift over \$250 under the personal friendship exception. Please see the section below regarding seeking written Committee approval for details on how to submit a request.

- **Gifts from a foreign government under the FGDA.** As noted above, gifts valued at less than \$350 per person, per occasion, that are offered as a souvenir or mark of courtesy.

Example: A French government official sends you a \$300 bottle of French champagne, on behalf of the foreign government. You may accept the champagne under the FGDA.

### **Handling Unacceptable Gifts**

If Members or staff receive invitations to events or gifts that they may not accept under the gift rule, they may:

- Pay the donor the "market value"<sup>10</sup> and keep the gift;
- Return the gift to the donor; or
- For perishable items (*i.e.*, flowers or food), donate the items to charity or destroy them.

Please note: For tickets to events that do not have a printed cost on the ticket, the value of the ticket is the highest cost of a ticket with a face value for that particular event.

Example: You are invited to sit in the premium box for the Nutcracker Ballet. The offer does not meet one of the gift exceptions, but you would still like to attend. Your ticket does not have a price on it, but the highest ticket price for that particular ballet performance is \$285. You must pay the donor \$285 in order to accept the ticket.

### **Prior Written Committee Approval Required**

Members and staff must seek written Committee approval before accepting the following:

- A gift based on personal friendship with a value over \$250. The Committee will only grant written approval for a personal friendship gift exceeding \$250 in value in response to a written request. The request should include: (1) the donor's identity and employment; (2) any interests the donor may have before Congress;

<sup>10</sup> Items are valued at their retail, rather than wholesale, prices. For tickets, the fair market value is the cost printed on the ticket, regardless of whether the donor paid more or less. See House Rule 25, clause 5(a)(3)(A); 2008 House Ethics Manual at 73.

(3) the history of the recipient's relationship with the donor; (4) the nature of the gift; and (5) whether the donor will be paying for the gift personally.

- A gift that is not otherwise acceptable, but that the Member or staffer believes the Committee should permit them to accept. The Committee has "flexibility to allow the acceptance of gifts . . . in cases where there is no potential conflict of interest or appearance of impropriety."<sup>11</sup> Thus, House Rule 25, clause 5(a)(3)(T), authorizes the Committee to grant a waiver to permit acceptance of a gift "in an unusual case." Members and staff must submit a written request for a gift waiver from the Committee prior to accepting such a gift. Any request should include, at a minimum, a description of the gift, including its market value, the identity of the donor, and a statement of the reasons believed to justify acceptance of the gift.

### Financial Disclosure Requirements

Members and senior staff must disclose certain gifts valued over \$350 from a single source in a calendar year on Schedule VI of their annual Financial Disclosure Statements.<sup>12</sup> This disclosure must include the source of such gifts and a brief description of the gifts. Any gift with a market value of less than \$140 need not be counted towards the \$350 disclosure threshold.

Please note: Gifts from relatives and gifts of personal hospitality do not have to be disclosed. In addition, gifts that are received by your spouse or children, independent of your House status, do not have to be disclosed. However, all other gifts that are over \$350 in value must be disclosed.

Example: Your spouse's college roommate gives your spouse a \$400 coat as a holiday present. You would not have to report this gift on your Financial Disclosure Statement if you believe that the gift was given regardless of your House status.

Members and staff seeking a waiver of the reporting requirement must send a written request to the Committee. The written request and the Committee's response will be made publicly available.

*If you have any questions, please contact the Committee's Advice and Education staff at (202) 225-7103.*

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<sup>11</sup> See House Bipartisan Task Force on Ethics, *Report on H.R. 3660*, 101<sup>st</sup> Cong., 1<sup>st</sup> Sess. (Comm. Print, Comm. on Rules 1989), reprinted in 135 Cong. Rec. H9255 (daily ed. Nov. 21, 1989).

<sup>12</sup> 5 U.S.C. app. 4 § 102(a)(2).

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ONE HUNDRED TWELFTH CONGRESS

## U.S. House of Representatives

COMMITTEE ON ETHICS

December 4, 2012

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### MEMORANDUM FOR ALL MEMBERS, MEMBERS-ELECT, OFFICERS, AND EMPLOYEES

**FROM:** Committee on Ethics  
Jo Bonner, Chairman *JB*  
Linda T. Sánchez, Ranking Member *LS*

**SUBJECT:** Member Swearing-in and Inauguration Day Receptions, and Attendance at Inaugural-Related Events

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Recently the Committee has received a number of inquiries on the rules relating to two subjects: (1) the receptions that Members wish to hold in connection with their swearing-in and on Inauguration Day, and (2) Member and staff attendance at events held in connection with the Presidential Inauguration. The major rules that apply in these areas are briefly summarized below, and guidance addressed to specific circumstances is available by calling or writing to the Committee.

**Member Swearing-in and Inauguration Day Receptions.** At times Members – especially newly-elected Members – wish to hold a reception or similar event for their supporters in connection with their swearing-in. The Committee has long advised that Members may use their campaign funds to pay the costs of such a reception, and this is so even if the reception is held in the Member's office or another House room. However, such events should not be campaign or political in nature, such as limiting the invitee list to include only campaign contributors. A Member may also use campaign funds to pay for an Inauguration Day reception for visiting constituents held in the Member's office or elsewhere. Questions about the use of the Members' Representational Allowance to hold an event in connection with either ceremony should be directed to the Committee on House Administration.

The Committee has received several inquiries, the substance of which is whether it is permissible for a lobbying firm or other private entity to pay the costs of a Member's swearing-in or Inauguration Day reception. Such arrangements are *not* permissible, as the payment of the costs of the event would constitute an impermissible gift to the Member under the House gift rule (clause 5 of House Rule 25).

**Attendance at Privately-Sponsored Events.** Offers of free attendance at swearing-in or Inaugural-related events are fully subject to the House gift rule. Thus, a Member or staff person may accept such an offer only if acceptance is allowed under one of the provisions of the rule. Many of the inquiries that the Committee has received concern attendance at events sponsored by a state society or other private organizations. Free attendance at those events is generally permissible under the "widely attended" event provision of the gift rule, provided that the offer was made by the event organizer (not a person or entity that simply bought tickets or donated to the event), the offer is limited to the Member or staff person and one accompanying individual only, the requirements on event size are satisfied,<sup>1</sup> and attendance is connected to the individual's official duties.

In addition, Members and staff are generally free to attend any reception, *i.e.*, an event at which the food served is limited to moderate hors d'oeuvres, beverages, and similar items and does not constitute a meal. The gift rule also allows a Member, officer, or employee to accept a gift, including free attendance at an event, having a value of less than \$50, provided that the source of the gift is not a registered lobbyist, foreign agent, or private entity that retains or employs such individuals. The cumulative value of gifts that may be accepted from any one source in a calendar year under this exception must be less than \$100, and no gifts of cash or cash equivalent are permitted.

Detailed information on the provisions of the gift rule regarding attendance at events is available in chapter 2 of the Committee's *2008 House Ethics Manual*, copies of which are available from the Committee's office, and the text of which is on the Committee's Web site, [ethics.house.gov](http://ethics.house.gov).

\* \* \*

Please note that the Committee's guidance is subject to change if the 113th Congress adopts changes to the ethics rules. Members and staff with questions on the matters addressed above should contact the Committee after the 113th Congress has convened to seek further guidance about any such rule changes.

Any questions on these subjects should be directed to the Committee's Office of Advice and Education at (202) 225-7103.

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<sup>1</sup> The Committee on Ethics has determined that an event is "widely attended" if (a) there is a reasonable expectation that at least 25 persons, other than Members, officers, or employees of Congress, will attend the event, and (b) attendance is open to individuals from throughout a given industry or profession, or those in attendance represent a range of persons interested in a given matter. Individuals who are officials of other branches or levels of government count toward the required minimum of 25, but spouses and others who accompany the congressional Members and staff do not count toward the required minimum. See *2008 House Ethics Manual* at 41-42.

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ONE HUNDRED TWELFTH CONGRESS

## U.S. House of Representatives

COMMITTEE ON ETHICS

December 27, 2012

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### MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

**FROM:** Committee on Ethics *JB*  
Jo Bonner, Chairman  
Linda T. Sánchez, Ranking Member *LTS*

**SUBJECT:** Rules Prohibiting Use of One's Official Position for Personal Gain

The purpose of this memorandum is to summarize the key rules and standards of conduct that apply to prohibit the use of the official position of a Member, officer, or employee<sup>1</sup> for personal benefit. These rules and standards also apply to staff acting for the personal benefit of their employing member.

In 1989, the House Bipartisan Task Force on Ethics articulated a concern that gifts to Members or House employees might create an appearance of impropriety that might undermine the public's faith in government. The Task Force stated:

Regardless of any actual corruption or undue influence upon a Member or employee of Congress, the receipt of gifts or favors from private interests may affect public confidence in the integrity of the individual and in the institution of the Congress.<sup>2</sup>

Both House rules and federal statutes enact similar limitations to address this concern.

#### House Rules on Gifts

House rules define the term "gift" broadly to mean:

a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and

<sup>1</sup> The terms "employee" and "staff" are used interchangeably throughout this memorandum to refer to persons who are employed by a Member, committee, leadership office, or other legislative office of the House.

<sup>2</sup> House Bipartisan Task Force on Ethics, *Report on H.R. 3660*, 101st Cong., 1st Sess. 6 (Comm. Print, Comm. on Rules 1989), *reprinted in Cong. Rec.* 30740, 30742.

meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.<sup>3</sup>

Members, officers, and employees may not accept any gifts, except as specifically permitted by House rules.<sup>4</sup> This limitation applies to any gifts, whether or not the gift is related to the recipient's official position. The House Code of Official Conduct (enacted as House Rule 23) additionally prohibits a House Member, officer, or employee from receiving any benefit "by virtue of influence improperly exerted from" the person's congressional position.<sup>5</sup>

Thus, the House rules limit what gifts may be accepted under any circumstances, and particularly prohibit the acceptance of gifts that may be offered due to the improper use of one's congressional position.

### Federal Gift Statute

In addition to the House rules, gifts to Members and employees of Congress are regulated by federal statute. The statutory gift provision, 5 U.S.C. § 7353, restricts Members and staff both in what they may ask for and what gifts they may accept from any source that has interests before the House. The statute provides, in pertinent part:

- (a) Except as permitted by [applicable gift rules or regulations], no Member of Congress or officer or employee of the executive, legislative, or judicial branch *shall solicit or accept* anything of value from a person –
- (1) seeking official action from [or] doing business with the individual's employing agency; or
  - (2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.<sup>6</sup>

The statute restricts both the requesting of gifts and their acceptance in general. The prohibition on solicitation of gifts is very broad, and applies to the solicitation not only of money, but "anything of value." The prohibition on acceptance of gifts means that Members and staff should never accept any gift that is linked to any official action the individual has taken or is being asked to take. Another section of the federal gift statute states more specifically that "[n]o gift may be accepted . . . in return for being influenced in the performance of any official act."<sup>7</sup> Accepting a gift in these circumstances may be deemed a bribe or improper gratuity and constitute a serious violation of criminal law.<sup>8</sup>

<sup>3</sup> House Rule 25, cl. 5(a)(2)(A).

<sup>4</sup> House Rule 23, cl. 4; House Rule 25, cl. 5.

<sup>5</sup> House Rule 23, cl. 3.

<sup>6</sup> 5 U.S.C. § 7353 (emphasis added).

<sup>7</sup> *Id.* § 7353(b)(2)(B).

<sup>8</sup> See 18 U.S.C. § 201.

Prohibition on Use of One's House Position for Personal Gain

It is fundamental that House Members, officers, and employees may not use their official position for personal gain. This prohibition includes any gain that would accrue to the individual in the form of compensation for outside employment activities. A key provision of the House Code of Official Conduct provides that House Members, officers, and employees may not receive compensation or permit compensation to accrue to their personal benefit from any source if the receipt would occur "by virtue of influence improperly exerted from" their position in Congress.<sup>9</sup>

As noted in the debate preceding adoption of this rule, an individual violates this provision if he uses "his political influence, the influence of his position . . . to make pecuniary gains."<sup>10</sup> When considering the applicability of this provision to any activity they are considering undertaking, Members and staff must also bear in mind that a separate provision of the House Code of Official Conduct requires that they adhere to both the spirit and the letter of the rules of the House.<sup>11</sup> In addition, the Code of Ethics for Government Service, which applies to Members, officers, and employees of the House, provides that a federal official should never accept "for himself or his family, favors or benefits under circumstances that might be construed by reasonable persons as influencing the performance of" the person's official duties.<sup>12</sup> Note that this provision prohibits the receipt of a personal benefit not only by the respective House Members or employees, but also by their families. In accordance with these provisions, the Ethics Committee routinely advises Members and staff to avoid situations in which even an inference might be drawn suggesting improper conduct.

In addition to prohibiting receipt of tangible or financial benefits, these same provisions apply to prohibit the use of one's official position for special access or treatment when seeking assistance with their personal business, bills, customer service, or other unofficial endeavors. For example, staff may not call the lobbyist for their cellular telephone service provider to seek assistance with a billing concern for their personal mobile phone. Nor may a Member call the CEO of a bank, whom they know through that CEO's having sought official action or to influence policy or legislation, to request assistance with a personal loan application. Instead, any such contact must be made through the ordinary customer service channels used by the public generally, without special reference to one's official position. For the same reasons, actions which are perfectly appropriate to take on behalf of an office's constituents become improper acts of influence when they are conducted for the personal benefit of the staffer performing the service or their employing Member.

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This memorandum summarizes some of the key rules and standards that apply to the personal financial transactions of House Members, officers, and employees. It is not an

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<sup>9</sup> House Rule 23, cl. 3.

<sup>10</sup> 114 Cong. Rec. 8807 (Apr. 3, 1968) (statement of Rep. Price).

<sup>11</sup> House Rule 23, cl. 2.

<sup>12</sup> Code of Ethics for Government Service ¶ 5, 72 Stat., Part 2 (1958), *reprinted in 2008 House Ethics Manual* at 355.

exhaustive compilation of all rules and standards that could conceivably apply. In addition, analysis of proposed conduct under these standards must be done on a case-by-case basis. The Committee is available to provide confidential advice to Members, officers, and employees on these and other issues. Any questions on these matters should be directed to the Committee's Office of Advice and Education at (202) 225-7103.

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Linda T. Sánchez, California  
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ONE HUNDRED TWELFTH CONGRESS

## U.S. House of Representatives

COMMITTEE ON ETHICS

### Travel Guidelines and Regulations

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#### MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

**FROM:** Committee on Ethics  
Jo Bonner, Chairman  
Linda T. Sánchez, Ranking Member

**Date:** December 27, 2012

House Rule 25, clause 5 (the House gift rule) imposes specific limitations, including prior Committee approval, on the acceptance of expenses for travel by House Members and employees from a private source for purposes related to their official duties.<sup>1</sup> House Rule 25 charges the Committee with enacting regulations to implement the rule and establish a process for reviewing and approving requests for travel. Rule 25 also requires the Committee to review and revise such regulations, as necessary, on an annual basis.<sup>2</sup> The Committee issued the initial travel regulations in a pair of memoranda dated February 20 and March 14, 2007. After additional review and consideration by the Committee, the Committee is now issuing the following regulations.

*The regulations issued today supersede any prior inconsistent Committee regulations and guidance regarding privately-funded, officially-connected travel, including the 2008 House Ethics Manual. These regulations will be effective for all trips beginning on or after April 1, 2013. This means that new forms for privately sponsored travel will need to be submitted by March 1, 2013, for any trips that begin on April 1 or later. The Committee will conduct training and issue new forms consistent with the revised regulations prior to March 1, 2013. There are a number of changes to the regulations, but the Committee would like to highlight the following substantive changes:*

- Pre-travel Sponsor and Traveler forms will need to be submitted **30 days** prior to the trip, as opposed to the current 14 day rule (*see* § 501.1)
- **Sponsors** will be required to submit a post-travel form to the travelers within **10 days** after the trip (*see* § 603.1)
- New categories of permissible sponsoring organizations are delineated, with specific requirements related to the type of sponsors (*see* part 200)

<sup>1</sup> The term "House Members and employees" in these regulations includes House Members, Delegates, the Resident Commissioner, officers, and employees. *See* § 104(l).

<sup>2</sup> *See* House Rule 25, clause 5(i)(1).

**U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON ETHICS**

**TRAVEL REGULATIONS**

December 2012

Effective for all trips beginning on or after April 1, 2013

**Contents**

**Part 100 – General Provisions and Definitions**

**Part 200 – Trip sponsors**

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**Regulations**

**Part 100 – General Provisions and Definitions**

**§ 101 Purpose.** These regulations govern the circumstances under which House Members and employees may accept travel expenses from a private source to participate in a trip connected to the traveler's official House duties.

**§ 102 General rule.** No House Member or employee may accept the payment of travel expenses, as defined in § 104(bb), from a private source to participate in a trip connected to that traveler's official House duties without prior written authorization from the Committee pursuant to these regulations.

**§ 103 Scope.** These regulations do not apply to House Member and employee acceptance of travel expenses from any of the following sources:

- (a) A federal, state, or local government entity that is paying for travel expenses using government funds or resources pursuant to House Rule 25, clause 5(a)(3)(O);
- (b) A foreign government that is paying for travel expenses pursuant to the Mutual Educational and Cultural Exchange Act (MECEA) at 22 U.S.C. § 2458a, or the Foreign Gifts and Decorations Act (FGDA) at 5 U.S.C. § 7342;

- (c) An entity qualified under section 170(c) of the Internal Revenue Code that is paying for travel expenses in connection with the traveler's attendance at a fundraising event for that entity pursuant to House Rule 25, clause 5(a)(4)(C);
- (d) A political organization, as defined at § 527(e) of the Internal Revenue Code, that is paying for travel expenses in connection with the traveler's attendance at a fundraising or campaign event sponsored by that organization pursuant to House Rule 25, clause 5(a)(3)(G)(iii);
- (e) A personal friend of the traveler who is paying for travel expenses pursuant to House Rule 25, clauses 5(a)(3)(D) and (a)(5);
- (f) Any entity with which the traveler or the traveler's spouse is affiliated or employed that is paying for travel expenses that are unrelated to the traveler's official duties, pursuant to House Rule 25, clause 5(a)(3)(G)(I); and
- (g) A prospective employer of the traveler that is paying for travel expenses in connection with *bona fide* employment negotiations, pursuant to House Rule 25, clause 5(a)(3)(G)(ii).

§ 104 **Definitions.** For purposes of these travel regulations only, the following definitions apply:

- (a) **Agenda.** An hour-by-hour listing of the traveler's individualized schedule, including departure and return times, and all activities, including, but not limited to, meetings, briefings, meals, and receptions, in which the traveler will be participating.
- (b) **Class of Travel.** The quality of accommodation of public transport, such as coach or economy, business, and first class.
- (c) **Committee.** The House Committee on Ethics.
- (d) ***De minimis.*** Negligible or inconsequential.
- (e) **Designated Contributions.** Any funds, goods, services, or in-kind contributions to provide financial or other support for a trip, conference, meal, event, or activity with the knowledge, whether express or implied, that one or more House Members or employees will, or may, participate in or attend the trip, conference, meal, event, or activity.
- (f) **Destination.** The actual location(s) to be visited during a trip at which officially-connected activity will occur. It is the city and state for a domestic trip, and the city and country for an international trip. Cities in which the traveler will merely have a travel layover and will not engage in any officially-connected activity are not destinations of the trip.
- (g) **Federal lobbyist.** An individual registered under the Lobbying Disclosure Act (LDA), 2 U.S.C. §§ 1601 *et seq.*, or any successor statute, to contact Members, officers, employees, committees, caucuses, or working groups of the United States Senate or the United States House of Representatives.

- (h) **Foreign agent.** An individual registered with the United States Department of Justice under the Foreign Agents Registration Act (FARA), 22 U.S.C. §§ 611 *et seq.*, to serve as an agent or representative of any government of a foreign country, political party of a foreign country, non-U.S. citizen residing in a foreign country, or business entity organized under the laws of a foreign country.
- (i) **Grantmaking Sponsor.** A public charity or private foundation (both as defined under section 501(c)(3) of the Internal Revenue Code) that provides a grant of funds to another entity to underwrite, in whole or in part, a trip or an event, meal, or activity that will occur during a trip, or a necessary expense that will be incurred during a trip, with express or implicit knowledge or understanding that one or more House Members or employees may participate or attend that trip or event, or otherwise may be beneficiaries of the gift or donation. A Grantmaking Sponsor must either (1) have a direct role in the organizing, planning, or conducting of a trip or event that its funds will underwrite; or (2) certify that it conducts an audit or review of its grant, gift, or donation to ensure that the funds are spent in accordance with the terms of its grant or donation. A grant that funds a larger overall education program would qualify the granting entity as a Grantmaking Sponsor if the grant was sought or made with the knowledge or understanding that a specific trip or congressional travel generally might be funded with the grant. See also Non-Grantmaking Sponsor at §104(s) and Primary Trip Sponsor at § 104(u).
- (j) **House.** The United States House of Representatives.
- (k) **House invitee.** Any Member, Delegate, Resident Commissioner, officer, or employee of the House invited to participate in a trip.
- (l) **House Members and employees.** House Members, Delegates, the Resident Commissioner, officers, and employees.
- (m) **Lobbying firm.** A business that is registered to lobby under the Lobbying Disclosure Act (LDA), 2 U.S.C. § 1601 *et seq.*, on behalf of entities other than itself.
- (n) **Local travel expenses.** Fees and costs incurred for transportation, food, lodging, conference fees, and miscellaneous fees, within 35 miles of the U.S. Capitol or the Member or employee's district office closest to the trip destination.
- (o) **Media appearance.** The appearance of a House Member or employee on a television or radio program.
- (p) **Miscellaneous expenses.** Expenses that are necessary to accomplish the officially-connected purpose of the trip but that do not fit in to the categories of transportation, lodging, food, or conference materials. Some permissible miscellaneous expenses are enumerated in § 309 of these regulations.
- (q) **Mode of travel.** Means of conveyance for the trip, or any part thereof, such as commercial airline, chartered air service, private aircraft, rail, car, bus, boat, or other means.
- (r) **Necessary expenses.** Expenses for transportation, food, lodging, and conference fees and materials, incurred due to participation in a trip and necessary to accomplish the official purpose of the trip. Transportation expenses include the

costs of local transportation to and from the airport or other transportation facility, and local transportation while at the trip destination(s). Expenses for recreational activity, such as tickets to a sporting event or artistic performance, generally do not constitute necessary expenses.

- (s) **Non-Grantmaking Sponsor.** An individual or entity that provides funds, services, or in-kind donations to another entity to underwrite, in whole or in part, a trip or an event, meal, or activity that will occur during a trip, or a necessary expense that will be incurred during a trip, with express or implicit knowledge or understanding that one or more House Members or employees may participate or attend that trip or event, or otherwise may be beneficiaries of the gift or donation. A Non-Grantmaking Sponsor must either (1) have direct involvement in planning, organizing, conducting, or participating in the trip; or (2) provide contributions in exchange for a tangible benefit, as defined at §104(z) of these regulations.
- (t) **Officially-connected purpose.** Travel that relates to the official duties of the Member, Delegate, Resident Commissioner, officer, or employee who will be participating in the trip, such as attending a meeting or conference, delivering a speech, or engaging in fact-finding. For officers or employees, the officially-connected purpose must relate to the specific issues or assignments that normally fall with the officer or employee's area of responsibility.
- (u) **Primary trip sponsor.** A trip sponsor that: (1) pays for all trip expenses with its own funds; or (2) uses, in whole or in part, funds from grants, donations, in-kind donations, or other gifts from another entity to underwrite, in whole or in part, a trip or an event, meal, or activity that will occur during a trip, or a necessary expense that will be incurred during a trip, based on a request or award that expressly mentioned the participation or attendance, or possible participation or attendance, of House Members or employees. Donors under section (2) are either "Grantmaking Sponsors" or "Non-Grantmaking Sponsors," as defined at § 104(i) and § 104(s), respectively.
- (v) **Private aircraft.** An airplane owned and operated by an individual or private entity other than a commercial airline or air charter service.
- (w) **Private foundation.** An entity with § 501(c)(3) nonprofit status under the Internal Revenue Code that is classified by the Internal Revenue Service as a private foundation.
- (x) **Relative.** An individual of at least 18 years of age who is related to the traveler as spouse, parent, child or stepchild, grandchild, sibling or half-sibling, father-in-law, or mother-in-law. Fiancés/fiancées and unmarried significant others are not "relatives" for purposes of these regulations.
- (y) **Segment of a trip.** During the transportation to or from the city of departure or return and a trip destination. Local transportation to attend events or visit locations at the trip destination itself is not included in this definition.
- (z) **Tangible benefit.** A benefit received in exchange for a contribution that is provided, without regard to congressional participation, for an event or trip. Such

benefits may include booth rental space, advertising at an event, or public designation as a sponsor of an event.

- (aa) **Travel approval.** A written communication from the Committee to an individual House Member or employee granting permission for the individual to participate in a trip. Each House invitee wishing to travel under these regulations must seek and obtain from the Committee travel approval before embarking on a trip for that individual's travel to be permissible under House rules.
- (bb) **Travel expenses.** Fees and costs associated with transportation, lodging, meals, local transportation, and permissible miscellaneous expenses in connection with a trip.
- (cc) **Traveler.** A House Member or employee whose travel has been approved by the Committee and who participates in approved travel.
- (dd) **Trip.** All aspects of the proposal from the trip sponsor, including the transportation to and from the destination; all activities, conferences, and events at the destination(s); meals; local transportation; and lodging.
- (ee) **Trip Sponsor.** A private source, which may be either an individual or private entity, that: (1) pays for, or reimburses a traveler for, all or part of the expenses for a trip with its own funds; or (2) provides funds from grants, monetary donations, in-kind donations, or other gifts to another entity to underwrite, in whole or in part, a trip or an event, meal, or activity that will occur during a trip, or a necessary expense that will be incurred during a trip. Entities that fund an entire trip, or receive (under (2) above) funds from other entities to underwrite, in whole or in part, a trip the first entity is organizing are deemed "Primary Trip Sponsors," as defined at § 104(v). Entities that provide funds or in-kind support under (2) are either "Grantmaking Sponsors," or "Non-Grantmaking Sponsors," as defined at § 104(i) and § 104(s), respectively. Individuals or entities that provide contributions in exchange for a tangible benefit, as defined at §104(z) of these regulations, at an event that would occur without regard to congressional participation are not considered a trip sponsor.
- (ff) **U.S. institution of higher education.** An accredited public or non-profit U.S. college, university, or trade school authorized under § 101 of the Higher Education Act of 1965 (20 U.S.C. §§ 1001 *et seq.*).
- (gg) **With regard to congressional participation.** A trip, event, conference, tour, or similar activity that would not occur without, or is otherwise dependent upon, the attendance of one or more House Members or employees.
- (hh) **Without regard to congressional participation.** A trip, event, conference, tour, or similar activity that would occur even without the attendance of one or more House Members or employees. Such events may include, but are not limited to, an annual meeting of a trade group, a trade show, or a conference that is open to the public.

\* \* \* \*

**Part 200 – Trip sponsors.** This part sets forth the types of private entities that may act as trip sponsors under these regulations, entities that are prohibited from acting as trip sponsors, and the requirements for trip sponsors under these regulations.

**§ 200 Definition of trip sponsor.** As defined at § 104(ee), a trip sponsor is a private source, which may be either an individual or private entity, that: (1) pays for, or reimburses a traveler for, all or part of the expenses for a trip with its own funds; or (2) provides funds from grants, monetary donations, in-kind donations, or other gifts to another entity to underwrite, in whole or in part, a trip or an event, meal, or activity that will occur during a trip, or a necessary expense that will be incurred during a trip. Each trip will have at least one Primary Trip Sponsor, and may have additional Grantmaking or Non-Grantmaking Sponsors, as defined by these regulations.

**§ 200.1 Multiple trip sponsors.** A trip may have multiple trip sponsors if more than one private entity or individual meets the requirements of these regulations with regard to the trip. If one or more of the trip sponsors employs a federal lobbyist or foreign agent, then the restrictions and prohibitions in these regulations regarding trips sponsored by such entities will govern the trip, even if the other trip sponsors would not otherwise be subject to those restrictions.

**§ 201 Permissible and impermissible sponsors.** This section will define who may or may not sponsor travel under these regulations.

**§ 201.1 Permissible sponsors or grantors.** The following may be trip sponsors under these regulations:

- (a) U.S. institutions of higher education, as defined at § 104(ff);
- (b) Private entities and individuals that do not employ or retain a federal lobbyist or foreign agent;
- (c) Private entities and individuals that employ or retain a federal lobbyist or foreign agent, whether outside or in-house; and
- (d) Federal, state, or local government entities that provide financial support to a primary trip sponsor.

**§ 201.2 Impermissible sponsors or grantors.** Under no circumstances may any of the following entities act as a trip sponsor under these regulations:

- (a) An individual who is registered as a federal lobbyist, as defined at § 104(g);
- (b) An individual who is registered as a foreign agent, as defined at § 104(h);
- (c) A lobbying firm, as defined at § 104(m); or
- (d) An entity that employs individuals who are registered as foreign agents to represent entities other than itself.

**§ 202 Involvement of trip sponsors.** Other than as provided in this subsection, a trip sponsor must have some bona fide role in planning, organizing, conducting, or participating in the trip. Purely monetary sponsors, other than those allowed under § 202.2 and § 202.4(c), are not permitted.

**§ 202.1 Role of Primary Trip Sponsor.** A Primary Trip Sponsor, as defined at § 104(u), must—

- (a) have direct involvement in planning, organizing, conducting, or participating in the trip;
- (b) provide to the traveler or Committee, as required, information about any other individual or entity, whether public or private, that provided to it grants, donations, in-kind support, or other gifts to underwrite, in whole or in part, the costs of a trip or an event, meal, or activity that will occur during a trip, or any other expense that will be incurred by a House Member or employee during or as a result of that individual's participation in a trip. This requirement may be fulfilled by providing to the traveler or Committee one or more of the following, as requested by the Committee or required under these regulations:
  - (1) Complete answers to a Primary Trip Sponsor Form;
  - (2) A completed Secondary/Grantmaking or Non-Grantmaking Trip Sponsor Form from any additional Grantmaking or Non-Grantmaking trip sponsors, as defined in these regulations;
  - (3) Written responses to inquiries from the Committee during its review of a proposed trip or request to travel submitted by a House Member or employee; or
  - (4) Completing post-travel disclosure forms, or providing information to travelers to complete such forms, as required by these regulations.

**§ 202.2 Role of Grantmaking Sponsor.** A Grantmaking Sponsor, as defined at § 104(i), that is a private nonprofit entity must certify that it either —

- (a) has a bona fide direct role in the organizing, planning, or conducting of a trip or event that its funds will underwrite; or
- (b) certify that it conducts an audit or review of its grant, gift, or donation to ensure that the funds are spent in accordance with the terms of its grant or donation.

**§ 202.3 Role of government entity.** A federal, state, or local government entity that provides financial or in-kind support for a trip need not make any direct certification to the Committee or traveler.

**§ 202.4 Role of Non-Grantmaking Sponsor.**

- (a) A Non-Grantmaking Sponsor must either —
  - (1) have direct involvement in planning, organizing, conducting, or participating in the trip; or
  - (2) provide contributions in exchange for a tangible benefit, as defined at § 104(z) of these regulations.

- (b) A Non-Grantmaking Sponsor that has direct involvement in planning, organizing, conducting, or participating in the trip must complete a Non-Grantmaking Trip Sponsor Form.
- (c) A Non-Grantmaking Sponsor that receives a tangible benefit pursuant to paragraph (a)(2) of this subsection and does not have direct involvement in planning, organizing, conducting, or participating in the trip is not considered a Trip Sponsor under these regulations with regard to that trip, and does not need to make or be mentioned on any submission to the Committee with regard to that trip.

**§ 203 Non-profit organizations generally.** Entities organized as non-profit organizations under the Internal Revenue Code or similar state laws may act as trip sponsors, but such organizations are subject to the same requirements that apply to for-profit entities under these regulations.

**§ 203.1 Private foundations.** The following additional rules apply to organizations designated as private foundations under § 501(c)(3) of the Internal Revenue Code:

- (a) A private foundation may not be a Primary Trip Sponsor for travel by House Members or employees outside of the fifty United States and the District of Columbia.
- (b) A private foundation may act as a Grantmaking Trip Sponsor or Non-Grantmaking Trip Sponsor for a trip outside of the fifty United States or the District of Columbia if—
  - (1) At least one other permissible trip sponsor is the Primary Trip Sponsor of the trip; and
  - (2) The private foundation has no role in selecting the trip participants.
- (c) The requirements of subsection (b) apply to travel to a territory or possession of the United States.
- (d) A House Member or employee who accepts travel expenses in violation of this section may be subject to personal tax penalties under the Internal Revenue Code, in addition to any disciplinary action that may be imposed by the Committee or the House.

**§ 204 Prohibition on involvement by federal lobbyists and foreign agents in planning trips sponsored by entities and individuals that do not employ or retain a federal lobbyist or foreign agent.** Any private entity or individual that does not employ or retain a federal lobbyist or foreign agent and that is acting as a trip sponsor pursuant to § 201.1(b) is prohibited from having any federal lobbyist or foreign agent involved in the planning, organizing, requesting, or arranging of the trip. The restriction contained in this section does not apply to a board member of the sponsoring organization who is a registered lobbyist or foreign agent for other entities but who does not lobby for the sponsor or any related entity or on issues related to the officially-connected purpose of the trip.

**§ 204.1 Restrictions on involvement by federal lobbyists and foreign agents in planning trips sponsored by entities and individuals that employ or retain a federal lobbyist or foreign agent.** When a private entity or individual that employs or retains a federal lobbyist or foreign agent is acting as a trip sponsor pursuant to § 201.1(c), the involvement of a federal lobbyist or foreign agent in planning, organizing, requesting, or arranging a trip must be no more than *de minimis*, or negligible.

- a) Activities that are considered *de minimis* involvement by a federal lobbyist or foreign agent in planning, organizing, requesting, or arranging a trip include:
  - (1) Responding to a trip sponsor's request for the names of House Members or employees who are interested in a particular issue;
  - (2) Sitting on the board of an organization that is a trip sponsor, provided the federal lobbyist or foreign agent does not have any involvement in planning the trip; or
  - (3) Such other activity as the Committee may deem permissible.
- b) Activities that are considered to be more than *de minimis* involvement by a federal lobbyist or foreign agent in planning, organizing, requesting, or arranging a trip include, but are not limited to:
  - (1) Determining, or suggesting without request, the actual list of House Members or employees to be invited on a trip;
  - (2) Extending or following up on an invitation to House Members or employees;
  - (3) Signing the Trip Sponsor Form provided to invitees;
  - (4) Being mentioned in or on an invitation extended by another entity or individual;
  - (5) Setting or recommending without request any part of the agenda for the trip; and
  - (6) Making travel arrangements for House Members or employees.
- c) If a federal lobbyist or foreign agent has more than *de minimis* involvement, the trip is not permissible under these regulations.

**§ 204.2 Prohibition on federal lobbyist or foreign agent accompaniment.** A federal lobbyist or foreign agent is prohibited from accompanying House Members or employees on any segment of a trip as defined in § 104(v).

**§ 204.3 Exception for U.S. institutions of higher education.** Any U.S. institution of higher education acting as a trip sponsor pursuant to § 201.1(a) is not subject to the prohibitions and restrictions on federal lobbyist and foreign agent participation in this section.

**§ 205 Direct payment or reimbursement permitted.** A trip sponsor may pay travel expenses directly or may reimburse the traveler for permissible travel expenses that were initially paid by the traveler. All travel expenses and other expenses in connection with the trip that are paid by the trip sponsor, whether paid before or after the trip, and whether paid directly by the trip sponsor or reimbursed to the traveler by the trip sponsor, must be disclosed pursuant to these regulations.

**§ 206 Misrepresentations to Committee are subject to criminal penalty.** Any individual, acting on behalf of a prospective or past trip sponsor, who makes materially false or misleading statements to the Committee concerning a trip sponsor or any trip that is being, or was, offered pursuant to these regulations may be subject to criminal penalties under the False Statements Act (18 U.S.C. § 1001).

\* \* \* \*

**Part 300 – Trips.** This part sets forth the requirements for acceptable activities, locations, accommodations, expenses, and similar aspects of trips subject to these regulations.

**§ 301 Purpose of the trip must be officially-connected.** The purpose of the trip must relate to the official duties of the House Member or employee who will be participating in the trip, and participation in the trip should not create the appearance that the traveler would be using public office for private gain.

- (a) Examples of permissible officially-connected purposes are:
  - (1) Attending or participating in a meeting or conference related to the official duties of the traveler;
  - (2) Delivering a speech or accepting an award in the traveler’s official capacity;  
or
  - (3) Engaging in fact-finding (such as a facility tour) on a subject on which the traveler works as part of their normal area of responsibility.
- (b) Examples of impermissible official purposes are:
  - (1) Performing a core function of one’s official duties, such as photographing one’s Member for use in official newsletters;
  - (2) Staffing a Member for anything other than a speech, when no other officially-related purpose exists for employee’s attendance;
  - (3) Travel to Washington, D.C., during a congressional session or to attend a House function; and
  - (4) Facilitation of office-run or House-run meetings.
- (c) Examples of impermissible purposes that are not officially-connected are:

- (1) Activities that are substantially recreational in nature;
- (2) Travel for personal or recreational purposes; or
- (3) Travel to attend or speak at an event whose purpose is to raise funds to benefit a nonprofit entity or organization or a political entity or organization.

**§ 301.1 Determination of officially-connected purpose.** The determination of whether a trip is connected to the traveler's individual duties or presents an appearance that the traveler would be using public office for private gain shall be made, subject to the review of the Committee, in a reasonable manner —

- (a) For travel by a Member, by that Member;
- (b) For travel by an employee of a personal or leadership office, by the employee's supervising Member;
- (c) For travel by an employee on the majority staff of a House committee (including a subcommittee), by the Chair of the full committee for which the individual works;
- (d) For travel by an employee on the minority staff of a House committee (including a subcommittee), by either the Chair or Ranking Member of the full committee for which the individual works;
- (e) For travel by employees of a nonpartisan House committee, by the Chair of the full committee for which the individual works;
- (f) For travel by employees of a joint committee, by the highest-ranking House Member on the committee; and
- (g) For travel by an employee of an office that is not supervised by a Member of the House (other than a joint committee), by the House officer under whom the employee works, or if the individual is not supervised by a House officer, by the most senior employee in the office.

**§ 301.2 Standards for determining officially-connected purpose.** A determination made under this section shall not be deemed reasonable when it has not been made in compliance with House rules, these regulations, or any other applicable law, rule, or regulation. Such determination will remain subject to review and approval by the Committee.

**§ 302 Destination.** Travel governed by these regulations is permitted to more than one destination during the course of a single trip, subject to the following;

- (a) For travel in the Washington, D.C. area., the destination for a trip must be more than 35 miles from the U.S. Capitol building;
- (b) For travel in a Member's or employee's own district, the destination must be at least 35 miles from the Member's district office nearest to the destination; or

- (c) A House Member or employee may accept an invitation to join a trip in the Member's district that is less than 35 miles from the Member's nearest district office if Members or employees from at least two other districts will be participating in the trip.

**§ 302.1 Destination for trips organized with regard to congressional participation.** For a trip planned with regard to congressional participation, as defined in § 104(gg), there must be a direct connection between the officially-connected purpose of the trip and the destination(s) of the trip.

**§ 302.2 Destination for trips organized without regard to congressional participation.** For a trip planned without regard to congressional participation, as defined in § 104(hh), the destination may be any location and the sponsor is not required to state a justification for selecting the destination.

**§ 303 Duration of trip.** Travel expenses will be approved for only the minimum number of hours and/or days that are reasonably necessary to accomplish the officially-connected purpose of the trip. The maximum allowable length of a trip is determined based upon the type of trip sponsor under § 201.1.

**§ 303.1 Maximum duration of trip for U.S. institutions of higher education and trip sponsors that do not employ or retain federal lobbyists or foreign agents.** When all sponsors are either U.S. institutions of higher education under § 201.1(a) or entities or individuals that do not employ or retain a federal lobbyist or foreign agent under § 201.1(b), the maximum permissible trip length is:

- (a) Four (4) days for trips in the continental United States, including travel time to and from the destination; and
- (b) Seven (7) days, excluding any day on which the traveler will spend some portion of the day traveling to, or returning from, the destination for trips outside of the continental United States (including to Alaska, Hawaii, and the possessions of the United States).

**§ 303.2 Maximum duration of trip for trip sponsors that employ or retain a federal lobbyist or foreign agent.** When any trip sponsor employs or retains a lobbyist or foreign agent under § 201.1(c) the following restrictions apply:

- (a) The maximum permissible trip length is one (1) day;
- (b) All officially-connected activity must occur on a single calendar day (*i.e.*, from 12:01 a.m. until 11:59 p.m.); and
- (c) Except as provided in (d) of this section, the traveler may accept from the trip sponsor only one night's lodging. The night of lodging may be either before or after the day of officially-connected activity.

- (d) The Committee may approve a second night's lodging from the trip sponsor on a case-by-case basis, if:
  - (1) The trip sponsor made an unsolicited offer to pay for a second night's lodging;
  - (2) The trip sponsor provides a written statement to the Committee justifying why the second night's stay is warranted; and
  - (3) The second night's lodging is practically required to accomplish the officially-connected purpose of the trip, considering the following factors:
    - (A) The distance to be traveled;
    - (B) The availability of transportation to or from trip destination;
    - (C) Whether the traveler will be participating in a full day's worth of activities prior to the second night; and
    - (D) Any other factors or circumstances the Committee deems relevant.

**§ 303.3 Permissible agenda and scheduled activities.** A permissible agenda must demonstrate that the officially-connected activity is the primary purpose of each day of the trip. There is no minimum number of hours of officially-connected activity required each day for Committee approval. Instead, the Committee will assess whether the proposed trip length complies with the requirements of this section by examining:

- (a) Whether a substantial amount of officially-connected activity is scheduled on each day of the trip;
- (b) The amount of officially-connected activity proposed during the entirety of the trip; and
- (c) Whether any portion of a day is spent in travel to or from a trip destination.

**§ 304 Acceptable expenses in connection with the trip.** House Members and employees may accept the trip sponsor's payment of reasonable expenses for transportation, lodging, food, conference fees and expenses, and miscellaneous expenses (as defined at § 104(p)) necessary to accomplish the officially-connected purpose of the trip. Any other expenses or items accepted during a trip must be permitted under a provision of House Rule 25, clause 5.

**§ 305 Basic transportation expenses are permissible.** House Members and employees may accept expenses for travel by car, bus, or coach class or business class of commercial air carriers or trains.

**§ 305.1 Transportation expenses for higher class of travel.** Approval for first class or charter air or train travel paid by the trip sponsor must be sought in writing and approved by the

Committee prior to the trip. The Committee will only grant permission for first class or charter expenses if –

- (a) The trip sponsor demonstrates that the cost of such travel does not exceed the cost of available business-class transportation. If an air carrier offers only two classes of travel on the route (*e.g.*, if only economy and first class seats are offered), then first class travel is not permitted, except as otherwise provided in this section or § 305.2;
- (b) Such travel is necessary to accommodate a disability or other special need. The Committee may require the traveler to provide substantiation in writing by a competent medical authority of any such condition;
- (c) Genuine security circumstances require such travel;
- (d) The scheduled travel time, including airport layovers and change of planes, is in excess of 14 hours from takeoff to landing at the trip destination;
- (e) The flight begins before midnight and lands after 5 a.m. the following day; or
- (f) The Committee determines that exceptional circumstances justify such travel. Exceptional circumstances do not include:
  - (1) The unavailability of seats in a class other than first class; or
  - (2) The fact that only first class or charter travel can accommodate the traveler's schedule for events other than the trip for which approval is being sought.

**§ 305.2 Upgrades to higher class of travel.** Travelers may upgrade themselves from coach or business class to first class, provided such upgrade is made –

- (a) Using the traveler's personal funds;
- (b) Under the rules of a travel promotional awards program sponsored by an airline, train service, credit card issuer, or a similar program available to the public; or
- (c) As permitted by the Federal Election Commission (FEC), using funds from a Member's principal campaign committee for travel by that Member, or for an employee on that Member's personal staff or on the staff of a Committee on which the Member serves.
- (d) Funds from a leadership PAC may not be used to pay for an upgrade for travel governed by these regulations.

**§ 306 Lodging for trips organized with regard to congressional participation.** For trips organized with regard to congressional participation (as defined at § 104(gg)), House Members and employees may accept reasonable expenses for lodging as determined by the Committee.

- (a) The trip sponsor must provide the following information:

- (1) The name and city of each lodging facility in which House Members or employees will be staying;
  - (2) The cost per night of each lodging facility identified pursuant to this subsection; and
  - (3) The reason for selecting each lodging facility identified.
- (b) Reasonable expenses for each identified lodging facility will be evaluated by the Committee based on factors such as:
- (1) The maximum *per diem* rate allowed for lodging expenditures at the destination permitted by the U.S. Department of State for international official travel or by the General Services Administration for domestic official travel;
  - (2) The proximity of the facility to the site(s) being visited;
  - (3) The availability of other facilities that could accommodate the number of participants on the trip or provide adequate conference facilities;
  - (4) Security concerns;
  - (5) The special needs of or accommodations required by any trip invitees; and
  - (6) The recommendations of the United States embassy in a foreign country to be visited on the trip.

**§ 306.1 Lodging for trips organized without regard to congressional participation.** For trips organized without regard to congressional participation (as defined at § 104(hh)), House Members and employees may accept lodging expenses that are commensurate with what is customarily provided or made available to other, non-congressional event attendees.

**§ 307 Acceptable food expenses for trips organized with regard to congressional participation.** For trips organized with regard to congressional participation (as defined at § 104(gg)), House Members and employees may accept only reasonable expenses for food as determined by the Committee.

- (a) The trip sponsor must provide the estimated daily cost of the meals (or actual cost, if known) to be furnished to each traveler.
- (b) Reasonable expenses for meals will be evaluated by the Committee based on factors such as the maximum *per diem* rate allowed for food expenditures at the destination permitted by the U.S. Department of State for international official travel or by the General Services Administration for domestic official travel.

**§ 307.1 Food expenses for trips organized without regard to congressional participation.** For trips organized without regard to congressional participation (as defined at § 104(hh)), House Members and employees may accept meals in connection with the trip that are commensurate with those provided to, or purchased by, other, non-congressional event attendees.

**§ 308 Conference fees and materials.** When a trip involves attendance at a conference, briefing, or a similar officially-connected event, each participating House Member or employee may accept from the trip sponsor:

- (a) The waiver of any admission fee to the event; and
- (b) One set of any informational materials that are provided to other attendees at the event, regardless of whether the materials are in printed or electronic form, such as on a flash drive or DVD. (Members and employees are reminded to consult with House security regarding the acceptance of electronic storage devices from foreign governments or entities.)

**§ 308.1 Disclosure of conference fees and materials.** The actual cost of any expenses or fees paid or waived by a trip sponsor, or materials provided by a trip sponsor under § 308 must be disclosed as “other expenses” on the Trip Sponsor Form and on the Post-Travel Disclosure Form required pursuant to part 600 of these regulations.

**§ 309 Miscellaneous expenses.** Each House Member or employee participating in a trip may accept reasonable miscellaneous expenses from the trip sponsor that are necessary to accomplish the officially-connected purpose of the trip but that do not fit into the categories of transportation, food, lodging, or conference fees and materials.

- (a) Examples of acceptable miscellaneous expenses include, but are not limited to:
  - (1) Interpreting services;
  - (2) Security costs; and
  - (3) Visa fees.
- (b) Permissible miscellaneous expenses do not include any expenses for entertainment or recreational undertakings, such as sightseeing tours unrelated to the official purpose of the trip, concerts, and sporting events, or personal telephone calls.
- (c) Travelers may be reimbursed only the actual dollar value of miscellaneous expenses, and may not receive a set *per diem* amount intended to cover such fees.
- (d) The cost of any miscellaneous expenses provided pursuant to this provision must be itemized in the “other expenses” section of the Trip Sponsor Form and on the Post-Travel Disclosure Form required pursuant to part 600 of these regulations.
- (e) Expenses for any item or service that is not a necessary expense for transportation, food, lodging, conference materials and fees, or permissible miscellaneous expenses

under this section may be accepted only if unsolicited and otherwise permitted by House Rule 25, clause 5 (the gift rule).

**§ 310 Extending a trip at personal expense.** A traveler may add to a trip additional days that are not paid for by the trip sponsor, but instead are paid for at the traveler's personal expense.

- (a) The days at personal expense may precede or follow, or both precede and follow, the officially-connected portion of the trip.
- (b) The traveler's intention to add days at personal expense, and the dates of such travel, must be indicated on the Traveler Form.
- (c) The number of days and nights at personal expense must be fewer than or equal to the number of days and nights at the expense of the sponsor.
- (d) The time spent traveling to or from the destination should be excluded in calculating the time at the sponsor's expense.
- (e) Travelers who want to add at personal expense more than the permitted number of days must pay their own return transportation expense, rather than accepting such transportation from the sponsor.
- (f) Travelers who will be paying their own return transportation should indicate their intention to do so on the Traveler Form.
- (g) The traveler must pay any increase in trip costs caused by extending the trip.

**§ 311 Mixed purpose trips.** For the most part, trips under this section have a single officially-connected purpose. However, it is possible for a trip to have more than one such purpose, including a personal purpose, a political purpose, or an official purpose.

**§ 311.1 Primary purpose of the trip.** The House Member or employee seeking approval of a trip must determine the primary purpose of the trip, subject to the review of the Committee. The determination of the primary purpose of a trip must be made in a reasonable manner, and one relevant factor in making that determination is the number of days to be devoted to each purpose. In general, the primary purpose of a trip is the one to which the greater or greatest number of days is devoted.

**§ 311.2 Payment of travel expenses for mixed purpose trips.** A mixed purpose trip may have multiple sources of funding, such as, a trip sponsor for officially-connected activity, a political committee for campaign activity, the federal government for official business, or the traveler's own funds for personal activities.

- (a) The source associated with the primary purpose of the trip must pay for the airfare (or other long-distance transportation expense), and all other travel expenses incurred in accomplishing that primary purpose.

- (b) Any additional meal, lodging, or other travel expenses that the House Member or employee incurs in serving a secondary or additional purpose must be paid by the source associated with that additional purpose.

**§ 311.3 Mixed purpose trips including use of campaign or official funds.** Any mixed purpose trip that is paid in part with campaign funds or House funds must also comply with the rules and regulations of, respectively, the FEC, or the Committee on House Administration.

\* \* \* \*

**Part 400 – Travelers.** This part sets forth the rules regarding House Members and employees, and accompanying individuals, who may accept travel expenses from trip sponsors.

**§ 400 House Members or employees as travelers.** Any House Member or employee may accept travel expenses from a trip sponsor consistent with the requirements contained in these regulations.

**§ 401 Connection to official duties is required.** The participation of a House Member or employee in a trip must have a direct connection to the official duties of the traveler. Determination of the connection to the traveler’s official duties must have been made in accordance with the requirements of § 301.

**§ 401.1 Statements regarding connection to official duties.** The required form(s) issued by the Committee require that travelers and trip sponsors each state how participation in the trip is related to the traveler’s official duties (as opposed to those of another Member or employee). Specifically:

- (a) Each completed Traveler Form must state why participation in the trip is connected to the official duties of the particular House Member or employee seeking approval to accept trip expenses; and
- (b) Each trip sponsor must state on the Trip Sponsor Form (or attachment thereto) why each House Member or employee was invited on the trip.

**§ 402 Employing Member approval is required.** The employing Member of any House employee who has been offered travel expenses must sign the “Advance Authorization of Employee Travel” section of the Traveler Form, in order to certify that the purpose of the trip is connected to the employee’s official duties and that the employee’s participation in the trip will not create the appearance that the employee is using public office for private gain.

**§ 402.1 Employing Member for employees of a personal office.** For employees of a Member’s personal office, the Advance Authorization of Employee Travel must be signed by that Member.

**§ 402.2 Employing Member for employees of a committee.** When the traveler is employed by a House committee, the Advance Authorization of Employee Travel must be signed by:

- (a) For travelers employed by the majority of a House committee (including a subcommittee), the Chair of the full committee for which the individual works;
- (b) For travelers employed by the minority of a House committee (including a subcommittee), either the Chair or Ranking Member of the full committee for which the individual works;
- (c) For travelers employed by a nonpartisan House committee, the Chair of the full committee for which the individual works; or
- (d) For travelers employed by a joint committee, the highest ranking House Member on the committee.

**§ 402.3 Employing Member for employees of other House offices.** For travelers employed in a House office for which a Member is not the employing authority, the Advance Authorization of Employee Travel must be signed by the House officer under whom the employee works, or if the individual is not supervised by a House officer, by the most senior employee in the office.

**§ 403 Accompaniment by a relative is permitted.** A traveler may accept a trip sponsor's unsolicited offer to pay travel expenses for one accompanying relative of the traveler as defined in § 104(x). The trip sponsor may pay for all permissible expenses for the accompanying relative pursuant to the same restrictions applicable to the traveler's expenses under part 300.

**§ 403.1 Seeking approval to be accompanied by non-relative.** A House Member or employee who wishes to accept an unsolicited offer to be accompanied on a trip at the trip sponsor's expense by an individual who is not a relative as defined in § 104(x) must receive express, written permission from the Committee to accept such expenses prior to the individual's participation in the trip.

**§ 403.2 Accompaniment by additional individuals at the traveler's personal expense.** The traveler may bring more than one relative, or an individual who is not considered to be a relative under section § 104(x), on the trip provided:

- (a) The traveler pays all of the expenses related to the additional individual(s)' participation in the trip with personal or, in the case of Members, principal campaign funds as permitted by the FEC. These expenses include, but are not limited to, transportation, food, lodging, local transportation, admission fees to a conference or other event, and entertainment; and
- (b) The trip sponsor approves of the attendance of the additional individual(s) in the trip.

**§ 404 Responsibilities of traveler.** Any traveler seeking Committee approval to accept travel expenses from a trip sponsor must:

- (a) Submit complete and correct Traveler Forms, Trip Sponsor Forms, and accompanying attachments, as required by these regulations;

- (b) Respond to requests for clarification or additional information from the Committee;
- (c) Present amended forms to the Committee when needed based on changes to the information previously submitted by the traveler or trip sponsor;
- (d) Retain a copy of all forms and supporting information provided to the Committee for the period of three subsequent Congresses from the date of travel; and
- (e) File the appropriate Post-Travel Disclosure Forms with the Clerk of the House pursuant to part 600 of these regulations.

**§ 404.1 Misrepresentations to Committee subject to criminal penalty.** Any individual, acting on behalf of a prospective or past traveler, who makes materially false or misleading statements to the Committee concerning a trip that is being offered or was taken pursuant to these regulations may be subject to criminal penalties under the False Statements Act (18 U.S.C. § 1001).

**§ 404.2 Notification to Committee of material changes to trip as approved.** Any traveler whose participation on a trip has been approved by the Committee must notify the Committee as soon as practicable if there appeared to the traveler to be a material change in the actual trip as it occurred compared to the information provided in the forms submitted to the Committee.

**§ 404.3 Cancellation of a trip.** If the trip is cancelled by either the sponsor or the traveler, the traveler has the responsibility of so informing the Committee as soon as practicable. At Committee request, this must be done in writing and may be made by facsimile or electronic mail message to a member of the Committee staff.

\* \* \* \*

**Part 500 – Committee Approval Process.** This part sets forth the process for obtaining, and limitations upon, Committee approval of privately-funded, officially-connected travel.

**§ 501 Submission to Committee.** Each traveler may submit the required forms for approval under § 404(a) to the Committee by hand, facsimile, attachment to an electronic mail message, inside mail, U.S. mail, overnight mail service, or such other means as the Committee may designate.

**§ 501.1 Submission deadline is 30 days before trip.** The documents required under § 404(a) for Committee approval must be submitted to the Committee at least thirty (30) days prior to the date on which the trip starts (*i.e.*, the thirtieth day should be the day before the actual date of departure). Requests for approval that are submitted less than thirty (30) days before the start of a trip will not be granted unless –

- (a) The trip sponsor is a media outlet offering travel in order for the traveler to make a media appearance; or
- (b) The Committee deems that exceptional circumstances exist such that the travel request should be granted.

- (1) Exceptional circumstances may include an invitation for a Member to speak at an event due to the cancellation of the originally-scheduled speaker less than thirty (30) days before the start of the trip.
- (2) Exceptional circumstances do not include the fact that the sponsor failed to extend the invitation more than thirty days (30) before the start of the trip, or the fact that the invited Member or employee failed to submit the request to the Committee fewer than thirty (30) days before the start of a trip.

**§ 501.2 Weekend/Holiday due date extension.** If the 30-day deadline for submission of a travel approval request falls on a Saturday, Sunday, or federal holiday, then the deadline is extended to the next business day.

**§ 502 Traveler Form.** The individual completing the Traveler Form (who may be someone other than the traveler) must sign the form, indicating that the information contained on the form is true and correct to the preparer's knowledge pursuant to § 404.1.

**§ 503 Trip Sponsor Form.** A representative of a trip sponsor must complete and sign the Trip Sponsor Form. The trip sponsor is subject to possible criminal penalties for false statements provided on the Trip Sponsor Form.

- (a) For corporate or other private entities, the signatory on the Trip Sponsor Form must be an officer of the sponsoring entity.
- (b) The signatory on the Trip Sponsor Form may not be a federal lobbyist or foreign agent.
- (c) The trip sponsor must answer every question on the Trip Sponsor Form. Leaving questions blank or providing responses of "none" or "not applicable" are not permitted and will delay or prevent Committee approval.
- (d) The trip sponsor must provide the complete Trip Sponsor Form to all invited House Members and employees, to be included with the traveler's submission to the Committee.
- (e) Trip sponsors may not directly file the Trip Sponsor Form with the Committee for approval.
- (f) For trips with more than one trip sponsor, each trip sponsor must have a representative complete a certification as to the accuracy of the information contained in the Trip Sponsor Form.

**§ 503.1 Supporting documentation.** If not included on the Trip Sponsor Form itself, the trip sponsor must include the following attachments with the completed Trip Sponsor Form provided to all invited House Members and employees:

- (a) A list of all House Members and employees the trip sponsor is inviting to participate in the trip. The list must contain:

- (1) The name of the traveler seeking approval for the trip; and
  - (2) The trip sponsor's reason(s) for inviting each individual.
- (b) A detailed, individualized agenda of the trip in which the House Member or employee is seeking to participate. The agenda must include:
- (1) The actual or estimated departure time of the traveler's outbound and return travel; and
  - (2) An hour-by-hour list and description of the activities in which the traveler will be participating on the trip. The general schedule of a public conference or other event does not satisfy the requirement for a traveler's individualized agenda unless the traveler indicates on it the specific activities in which the traveler will be participating.

**§ 504 Approval by Ethics Committee.** Based on the information provided under these regulations, the Committee will evaluate and approve or deny any request to participate in a trip governed by these regulations.

**§ 505 Retroactive approval.** Absent exceptional circumstances, the Committee will not grant retroactive approval of any trip governed by these regulations for which the traveler failed to seek or receive approval from the Committee prior to the start of the trip.

- (a) Any traveler who participates in a trip without receiving pre-approval from the Committee will be required to repay to the sponsor all expenses incurred due to the traveler's participation in the trip, subject to the rules and limitations of this subsection.
- (b) Official funds (committee funds or a Member's Representational Allowance) may be used for reimbursement only if the expenditure is approved by the Committee on House Administration.
- (c) Members may use their personal funds for a reimbursement required under this regulation.
- (d) Pursuant to House Rule 24, House employees may not use their personal funds to reimburse the expenses of an officially-connected trip.
- (e) Provided such expenditure complies with regulations of the FEC, Members may use funds from their principal campaign committee for a reimbursement required under this section for travel undertaken by –
  - (1) the Member;
  - (2) an employee in the Member's personal office; or
  - (3) an employee of a committee on which the Member serves.

- (f) Members may not use funds from any other campaign account, including a Leadership PAC or non-federal campaign committee, for a reimbursement required under this section.

**§ 506 Denial for previous violations.** The Committee may refuse travel being offered by sponsors who have previously violated these regulations or, in the opinion of the Committee, made false or misleading representations to the Committee.

**§ 507 Limitations on Committee approval.** The following limitations apply to any approval granted by the Committee under these regulations.

- (a) Travel approvals are issued only to the specific traveler seeking Committee approval. That approval cannot be relied upon by any other individual or entity.
- (b) The legal basis for travel approvals is limited to the Committee's application and interpretation of the House rules. No opinion is expressed or implied herein regarding the application of any other federal, state, or local statute, rule, regulation, ordinance, or other law that may be applicable to the proposed travel.
- (c) Travel approvals do not bind or obligate any entity other than the Committee.
- (d) Travel approvals are limited in scope to the specific proposed trip described in the materials submitted for approval and do not apply to any other conduct, including that which appears similar in nature or scope to that described the materials.
- (e) The Committee will take no adverse action against a traveler in regard to any travel undertaken in good faith reliance upon a travel approval, so long as the traveler presented a complete and accurate statement of all material facts relied upon for the travel approval, and the trip in practice conforms with the information provided during the Committee approval process.
- (f) A traveler may not rely on a travel approval if the Committee has not been informed of any and all material changes to the trip by the traveler prior to the trip under § 404.2.
- (g) Changes or other developments in the law (including, but not limited to, the Code of Official Conduct, House rules, Committee guidance, advisory opinions, statutes, regulations or case law) may affect the validity of a travel approval.
- (h) The Committee reserves the right to reconsider the questions and issues raised in a request for Committee approval and to rescind, modify, or terminate a travel approval if not in compliance with applicable law, rule, or regulation.
- (i) The Committee will rescind a travel approval only if relevant and material facts were not completely and accurately disclosed to the Committee at the time the approval was issued.

**Part 600 -- Post-Travel Disclosure.**

**§ 601 General disclosure rule.** Within fifteen (15) days of the return from a trip authorized pursuant to these regulations, the traveler must complete and submit the appropriate Post-Travel Disclosure Form to the Clerk of the House at the Legislative Resource Center.

- a) Members and officers must submit a Member/Officer Post-travel Disclosure Form.
- b) House employees must submit an Employee Post-Travel Disclosure Form.

**§ 601.1 Weekend/Holiday due date extension.** If the 15-day due date for Post-Travel Disclosure falls on a Saturday, Sunday, or federal holiday, then the due date is extended to the next business day.

**§ 602 Supporting documentation.** Each Post-Travel Disclosure Form must include copies of the following:

- c) The Traveler Form submitted to the Committee prior to the trip;
- d) The Trip Sponsor Form and Grantmaking and Non-Grantmaking Sponsor Forms (if applicable) submitted to the Committee prior to the trip;
- e) The list of House Members and employees who were invited, or, in the alternative, the list of House Members and employees who actually participated in the trip;
- f) The actual agenda and description of activities in which the traveler participated during the trip;
- g) A copy of the approval letter or other written communication from the Committee authorizing the traveler's participation in the trip; and
- h) A copy of the Sponsor Post-Travel Disclosure Form, certifying the actual costs incurred by the traveler.

**§ 603 Certification of expenses.** Each Member/Officer- or Employee Post-Travel Disclosure Form must include a Sponsor Post-Travel Disclosure Form that indicates the actual dollar value of all expenses paid or reimbursed by the trip sponsor for the traveler.

- (a) If actual dollar amounts are not available within fifteen (15) days of the traveler's return from a trip, the trip sponsor may use good faith estimates of the trip expenses, and should indicate on the form that the provided amounts are estimates rather than actual dollar amounts.
- (b) When good faith estimates are used on a Sponsor Post-Travel Disclosure Form, the traveler must file an amended Post-Travel Disclosure Form attaching a Sponsor Post-Travel Disclosure Form that lists the actual dollar value of expenses as soon as practicable once it is received from the trip sponsor.

**§ 603.1 Sponsor Post-Travel Disclosure Form.** Within ten (10) days of the return of a House Member or employee from a trip, the trip sponsor must provide to that Member or employee a Sponsor Post-Travel Disclosure Form, as appropriate, providing, and certifying as to the accuracy of the information required on that form, including the actual expenses paid on behalf of the traveler.

**§ 603.2 Member/Officer Post-Travel Disclosure Form.** The Member/Officer Post-Travel Disclosure Form must –

- (a) be signed by the Member or officer who participated in the trip, certifying that the purpose of the trip was connected to traveler's official duties and that participation in the trip will not create the appearance that the traveler used public office for private gain; and
- (b) attach a completed Sponsor Post-Travel Form that includes the actual costs paid, reimbursed, or otherwise incurred by the trip sponsor in connection with the participation of the traveler, and any accompanying relative of the traveler, in the trip. If the trip sponsor fails to complete a Sponsor Post-Travel Form, or if actual costs are unavailable, prior to the date the form must be filed pursuant to these regulations, the trip sponsor or traveler may use good faith estimates of the costs, provided that, as soon as practicable, the traveler files an amended, completed Post-Travel Disclosure Form, as required by § 603(b).

**§ 603.3 House Employee Post-Travel Disclosure Form.** The Employee Post-Travel Disclosure Form must –

- a) be signed by the employee's employing Member, as defined in § 402, certifying that the travel was authorized in advance, that all the expenses listed are necessary, that the travel was in connection with the employee's official duties and will not create the appearance that the traveler used public office for private gain; and
- b) attach a completed Sponsor Post-Travel Form that includes the actual costs paid, reimbursed, or otherwise incurred by the trip sponsor in connection the participation of the traveler, and any accompanying relative of the traveler, in the trip. If the trip sponsor fails to complete a Sponsor Post-Travel Form, or if actual costs are unavailable prior to the date the form must be filed pursuant to these regulations, the trip sponsor or traveler may use good faith estimates of the costs, provided that, as soon as practicable, the traveler files an amended, completed Post-Travel Disclosure Form, as required by § 603(b).

**§ 604 Differences from prior submissions.** Any differences in fact from the Traveler and Trip Sponsor Forms submitted prior to Committee approval must be explained in detail on the Member/Officer or Employee Post-Travel Disclosure Form submitted in reference to the trip. Such differences may include, but are not limited to, changes in transportation arrangements such as changes in class or mode of transportation, the agenda, or the duration of the trip.

**§ 605 Financial Disclosure Statement.** All Members and any House employee who is required to file a financial disclosure statement pursuant to the Ethics in Government Act (EIGA)

(5 U.S.C. app. 4 §§ 101 *et seq.*) must disclose on Schedule VII any trip authorized under these regulations for which the Member or employee accepted more than \$350 of trip expenses, cumulatively, for travel by themselves or any accompanying individual.

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The Committee reviews the regulations on an ongoing basis and welcomes feedback from the House community. If you have any questions or comments about the revised regulations, please contact the Committee's Advice and Education staff at (202) 225-7103.