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ONE HUNDRED FOURTEENTH CONGRESS

U.S. House of Representatives

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December 5, 2016

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: **Committee on Ethics**
Charles W. Dent, Chairman
Linda T. Sánchez, Ranking Member

SUBJECT: Holiday Guidance on the Gift Rule

The House gift rule applies to all Members, officers, and employees (Members and staff) at all times, even during the holiday season.[1] This memorandum does not announce new rules or guidance, but is simply 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 staff at (202) 225-7103. In addition to the guidance below, a poetic take on the gift rule, that includes common gift exceptions, is included at the end of this memorandum.

Overview of the Gift Rule and Other Gift Statutes

Members and staff may not accept any gift, except as provided in the gift rule.[2] The rule defines the term "gift" broadly to include "a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value."[3] 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.[4] There are also no restrictions on accepting personal holiday gifts from House co-workers and supervisors.

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[1] House Rule 25, cl. 5. Generally, gifts to a Member or employee's spouse, dependent child, or other family member are not subject to the gift rule unless there is reason to believe they are given because of the official position of the Member or employee and the Member or employee is aware of the gift. Even if a gift to a family member would be attributed to a Member or employee, a gift that falls within one of the specific exceptions to the rule may be accepted.

[2] House Rule 23, cl. 4 and House Rule 25, cl. 5.

[3] House Rule 25, cl. 5(a)(2)(A).

[4] 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. § 109(16).

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

In certain circumstances, Members and staff must seek and receive written permission from the Committee on Ethics before accepting a gift. Members, senior staff, and other staff who are financial disclosure filers must also disclose the value of gifts received on their annual Financial Disclosure Statements in certain circumstances. These circumstances are explained more fully in the final two sections of this memorandum.

Although 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.[7] The statute also prohibits Members and staff from soliciting on behalf of other individuals or entities, other than political solicitations or certain 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 federally registered 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 an individual who is not a federally registered lobbyist invites you to a holiday dinner party and the cost of your meal before tax and tip is less than

[5] 5 U.S.C. § 7351.

[6] *See 2008 House Ethics Manual* at 70.

[7] 5 U.S.C. § 7353.

$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.

- 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 federally registered lobbyist or foreign agent.

  Example: An individual who is not a federally registered lobbyist invites you to a holiday party at her personal residence to celebrate the holiday season. You may accept food and refreshments offered within the home under the **personal hospitality** exception.

- A **reception or open house**, provided that only food and refreshments of nominal value are offered other than as a part of a meal (*e.g.*, light appetizers and beverages, including alcoholic beverages). This exception **does not** include full meals (whether or not you stand to eat or use silverware) or luxury or expensive food items. This exception also assumes that you will not consume what is offered such that it becomes a full meal.

  Example: A firm that is federally registered as a lobbying firm invites you to attend a holiday reception to be held in its offices. It will serve appetizers and drinks at the reception. 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: A 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 employer 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.

- A **"widely attended event"** provided:

  1) The event relates to the Members' or employees' official duties;

  2) The invitation comes from the event sponsor;

  3) The sponsor has a reasonable expectation that at least 25 non-congressional invitees will be in attendance; and

  4) The event is open to the public, or will be attended by a diverse group of individuals interested in a given topic.

  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** valued at less than $375 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.[8] 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 dinner at a local D.C. restaurant to foster inter-country relations. The cost of your meal will be $100. You may accept the dinner 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 federally registered 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.

[8] 5 U.S.C. § 7342.

Example 1: If an individual who is not a federally registered lobbyist gives you a $40 pen set during the holiday season, you may accept the gift under the "less than $50 exception." However, the aggregate value of all gifts you accept from the donor under this exception may not exceed $100 for the year.

Example 2: If an organization that does not employ a federally registered 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. 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 that employs a federally registered lobbyist 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 market value is $250 or less.[9] 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.

[9] You must seek Committee written approval before accepting a gift with a market value 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 $375 per person, per occasion, that are offered as a souvenir or mark of courtesy may be accepted.

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

Handling Unacceptable Gifts

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

- Pay the donor the "fair market value"[10] and keep the gift;
- Return the gift to the donor; or
- For perishable items (*e.g.*, flowers or fresh food), donate the items to charity or destroy them. **You may not donate non-perishable items to charity in lieu of returning or paying for them.**
- If the return of a gift is impossible (*e.g.*, if the identity of the donor is unknown) the recipient may "return" the item by donating it to charity or destroying it, or the recipient may keep the item by paying the fair market value to the U.S. Treasury. Please check with the Ethics Committee if you have any questions about whether return of a particular gift is impossible.

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 available through the venue with a face value for that particular event.

Example: You are invited to sit in the premium box for a concert. 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 available through the venue for that particular concert is $285. You must pay the donor $285 in order to accept the ticket.

Some provisions of the gift rule require knowledge of the identity of the donor to assess whether the gift may be accepted. For example, the exceptions with respect to gifts worth less than $50 and for those authorized by the FGDA require knowledge of the donor's identity before accepting the gift since those provisions permit acceptance of gifts from donors who meet certain criteria. (Other gift rule exceptions, such as those that permit acceptance of nominal value gifts

[10] Items are valued at market/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, cl. 5(a)(3)(A); *2008 House Ethics Manual* at 73.

and informational materials, apply regardless of the identity of the donor, since they are not limited to certain types of donors.)

At times when a Member, officer, or employee is unexpectedly presented with a gift at an event, he or she may be uncertain whether it can be accepted under the gift rule. In that circumstance, the individual may receive the gift and wait until after the event to review the provisions of the gift rule and make a decision on the gift's acceptability.

Prior Written Committee Approval Required

Members and staff must seek and receive written approval from the Committee on Ethics before accepting the following:

- A gift based on personal friendship with a market 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; (3) the history of the recipient's relationship with the donor, including any reciprocal gift giving; (4) a description and the market value of the gift; and (5) whether the donor will be paying for the gift personally and if a tax deduction will be taken.

- 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."[11] Thus, the House gift rule 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 financial disclosure filers[12] must disclose certain gifts valued over $375 from a single source in a calendar year on Schedule G ("Gifts") of their annual Financial

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[11] *See* 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. H9255 (daily ed. Nov. 21, 1989).

[12] 5 U.S.C. app. § 102(a)(2)(B). House staff may be subject to financial disclosure filing requirements for a number of reasons, including 1) they are paid at or above the annual senior staff rate ($123,175 for 2016, subject to change in future calendar years) for 60 days or more during the calendar year, even if on a temporary basis; 2) they are designated as a "principal assistant" for financial disclosure filing purposes by their employing Member; and 3) they are a shared employee of three or more offices, regardless of their rate of pay. Please contact the Committee if you have further questions about financial disclosure.

Disclosure Statements.[13] 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 $150 need not be counted towards the $375 disclosure threshold.

Please note: Gifts from relatives, gifts of personal hospitality, tickets to widely attended events, and certain other gifts do not have to be reported on a Financial Disclosure Statement. 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 $375 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 employment.

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.

[13] 5 U.S.C. app. § 102(a)(2).

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December 22, 2016

MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

FROM: **Committee on Ethics**
Charles W. Dent, Chairman
Linda T. Sánchez, Ranking Member

SUBJECT: Negotiations for Future Employment and Restrictions on Post-Employment for House Members and Officers

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The purpose of this memorandum is to remind you about issues of concern to House Members[1] and officers[2] who are negotiating for future employment or departing from employment with the House of Representatives.[3] The matters discussed here include negotiations for future employment, post-employment restrictions, financial disclosure requirements (Termination Reports), and outside employment and earned income restrictions.[4] Although this memorandum will be of particular interest to departing Members, current Members should also familiarize themselves with these restrictions, particularly the criminal restrictions on post-employment communications. Current Members and staff are reminded that they may not assist in the violation of these restrictions.

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[1] This Memorandum uses the term "Member" to refer to House Members, Delegates, and the Resident Commissioner.

[2] The elected officers of the House are the Clerk, Sergeant-at-Arms, Chaplain, and Chief Administrative Officer. *See* House Rule 2, cl. 1.

[3] The restrictions discussed herein apply uniformly to House Members, Delegates, the Resident Commissioner, and officers, except where noted with regard to the elected House officers.

[4] The Committee has issued a separate memorandum addressing a similar range of issues for departing employees of the House and certain other legislative offices. Employees who are seeking future employment or departing House employment should consult that memorandum, titled "Negotiations for Future Employment and Restrictions on Post-Employment for House Staff," rather than this memorandum, for guidance.

In addition, the Committee would like to take this opportunity to note one statutory provision that applies to **all House Members and staff**. House Members and staff may not use confidential information obtained by means of personal and substantial participation in ongoing trade or treaty negotiations for one year prior to leaving House employment in the course of representing, aiding, or advising anyone other than the United States regarding those ongoing negotiations.[5] As with other provisions of this statute, this prohibition lasts for one year after departure from the House payroll.[6]

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.

The general guidance applicable to any Member who wishes to engage in negotiations for future employment is as follows. First and foremost, it would be improper for a Member to permit the prospect of future employment to influence the official actions of the Member.[7] Some Members 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 relevant statute 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.[8] Those decisions found that the term "negotiation" should be construed broadly.[9] However, these decisions make a distinction between "negotiations," which trigger the rule, and "[p]reliminary or exploratory talks," which do not.[10] The term

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[5] 18 U.S.C. § 207(b). For purposes of this provision, the term "trade negotiation" means "negotiations which the President determines to undertake to enter into a trade agreement pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988, and does not include any action taken before that determination is made" and the term "treaty" means "an international agreement made by the President that requires the advice and consent of the Senate." *Id.* at § 207(b)(2).

[6] *Id.*

[7] *See* House Rule 23, cl. 3; Code of Ethics for Government Service ¶¶ 5, 6, *reprinted in 2008 House Ethics Manual* at 355.

[8] 18 U.S.C. § 208.

[9] *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).

[10] *Schaltenbrand*, 930 F.2d at 1558-59.

"negotiations" connotes "a communication between two parties with a view toward reaching an agreement" and in which there is "active interest on both sides."[11] Thus, merely sending a copy of one's résumé 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.[12] 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.[13] Federal criminal law 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.[14] 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.[15]

In light of these restrictions, Members should be particularly careful in negotiating for future employment, especially when negotiating with anyone who could be substantially affected by the Member's performance of official duties.[16] It may be prudent for the Member 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. Because Members will be subject to the post-employment restrictions, which are addressed later in this memorandum, they 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 Member is subject to post-employment restrictions, which should be briefly outlined.[17] Departing Members who are lawyers should consult their local bar associations concerning the application of rules governing their involvement in matters in which

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[11] *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.

[12] House Rule 23, cl. 3.

[13] Code of Ethics for Government Service ¶ 5, *reprinted in 2008 House Ethics Manual* at 355.

[14] 18 U.S.C. § 201(b)(2)(A).

[15] *Id.* § 201(c)(1)(B).

[16] *See* Code of Ethics for Government Service ¶ 5, *reprinted in 2008 House Ethics Manual* at 355.

[17] *See* 18 U.S.C. § 207. These restrictions are explained in detail later in this memorandum. Briefly, House Members may not contact any Member, officer, or employee of the House or Senate on official business for one year after leaving office, nor may they assist any foreign government or foreign political party in seeking to influence a decision of any federal official during that year. House officers may neither contact the individual's former congressional office on official business for one year after leaving House employment, nor assist any foreign entity, i.e. a foreign government or foreign political party, in seeking to influence a decision of any federal official during that year.

they participated personally and substantially during their time with the House.[18] In addition, as addressed in the next section of this memorandum, Members must disclose employment negotiations in writing to the Ethics Committee.

Provided that Members 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

Members must notify the Committee within three (3) business days after they commence any negotiation or agreement for future employment or compensation with a ***private*** entity.[19] As stated above, the term "negotiation" is not defined in the relevant statute or House rule. 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 to reaching an agreement" and in which there is "discussion and active interest on both sides."[20]

In addition, Members 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.[21] Members who recuse themselves also must, at that time, file their negotiation notification with the Clerk in the Legislative Resource Center (B-135 Cannon House Office Building) for public disclosure.[22]

The Committee has issued forms, available on the Committee Web site (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 officers 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, as explained below.

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[18] A former Member 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 when those services were provided by the firm while the individual was still employed by the government. (OGE Web site at https://www.oge.gov).

[19] House Rule 27, cl. 1; Stop Trading on Congressional Knowledge Act, Pub. L. No. 112-105 (Apr. 4, 2012) (hereinafter STOCK Act) § 17.

[20] *See Hedges*, 912 F.2d at 1403 n.2.

[21] House Rule 27, cl. 4.

[22] *Id.* House Rule 27 does not require House employees to file their notice of negotiation with the Clerk.

There is a separate form for notifying the Committee of recusal, titled the "Statement of Recusal." All Members and officers who recuse themselves from official matters pursuant to House Rule 27 must complete and submit the original recusal form to the Committee. At that time, Members must *also* submit to the Clerk a copy of the completed employment negotiation form regarding that private entity, which they had previously submitted to the Committee. The Clerk will make that form available for public disclosure. As noted above, the requirement to make a simultaneous filing with the Clerk of the corresponding job negotiation form applies only to Members and not to House officers or employees.

The terms "conflict" and "appearance of conflict" are not defined in the rule. The Committee has stated that a "conflict of interest becomes problematic when a Member uses his position to enhance his personal financial interests or his personal financial interests impair his judgment in conducting his public duties."[23] Members should also avoid situations that might be viewed as presenting even a risk that the Member might be improperly influenced by personal financial interests.[24]

Among the "official matters" covered by the recusal provision discussed above is abstention from voting, or affirmatively taking official actions, on matters that would affect an outside party with whom the Member is negotiating, or from whom the Member has accepted employment. This inquiry has traditionally been governed solely by House Rule 3, which states that abstention from voting on the House floor is not warranted unless the Member has "a direct personal or pecuniary interest in" the matter.[25] Longstanding House precedent interpreted this rule to mean that Members may vote on any matter that affects them merely as part of a large class of individuals or entities rather than with particularity.[26] Thus, for example, Members who

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[23] House Comm. on Standards of Official Conduct, *In the Matter of Representative Sam Graves*, H. 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.").

[24] *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 ("A Member . . . shall adhere to the spirit and letter of the Rules of the House . . . .").

[25] House Rule 3, cl. 1.

[26] *See* 5 Asher C. Hinds, *Hinds' Precedents of the House of Representatives* § 5952 at 503-04 (1907) (hereinafter *Hinds' Precedents*); *see also* Thomas J. Wickham, Jr., Parliamentarian, *Constitution, Jefferson's Manual, and Rules of the House of Representatives, One Hundred Fourteenth Congress*, H. Doc. 113-181, 113th Cong., 2d Sess. (2015), § 673 (hereinafter *House Rules and Manual*).

were veterans were permitted to vote on military pay and pensions, which affected them only as members of a class of thousands of individuals who held or had held similar positions.[27] Historical practice has established that, with regard to House Rule 3, there is no authority to force a House Member to abstain from voting, and the decision on whether abstention from voting was necessary has been left for individual Members to determine for themselves under the circumstances.[28]

However, as described above, a House rule now also imposes a requirement that Members who are negotiating for future employment "shall recuse" themselves "from any matter in which there is a conflict of interest or an appearance of a conflict for that Member."[29] At a minimum, Members faced with a vote on a matter that directly impacts a private entity with which they are negotiating would have difficulty balancing the duty they owe to their constituents with the recusal provisions of House Rule 27. Members are strongly encouraged to abstain from voting on legislation that provides a benefit targeted to any entity with which the Member is negotiating or from which the Member has accepted future employment. Members likewise are discouraged from sponsoring legislation or earmarks for such an entity. In addition, House Rule 23, clause 17 requires that Members who request an earmark certify to the chairman and ranking member of the committee of jurisdiction that the Member and the Member's spouse have "no financial interest" in the earmark.[30] Any earmark benefitting an entity with which a Member is negotiating or has accepted future employment could be deemed to provide a financial interest to the Member under this provision.

BENEFITS OFFERED BY PROSPECTIVE EMPLOYERS DURING JOB NEGOTIATIONS

Members may accept "[f]ood, refreshments, lodging, transportation, and other benefits . . . customarily provided by a prospective employer in connection with bona fide employment discussions."[31] Thus, subject to the limitations set out in the rule, a Member may accept travel expenses from an entity with which the Member 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 $375 from any one source must be disclosed on Schedule H ("Travel Payments and Reimbursements") of the termination financial disclosure

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[27] *See Hinds' Precedents* § 5952, at 503-04; *see also 2008 House Ethics Manual* at 234-35.

[28] *See Hinds' Precedents* §§ 5950, 5952 at 502-04; *see also House Rules and Manual* § 672.

[29] House Rule 27, cl. 4.

[30] House Rule 23, cl. 17.

[31] House Rule 25, cl. 5(a)(3)(G)(ii).

statement required of departing Members.[32] In addition, any agreement for future employment also must be disclosed on Schedule F ("Agreements") of that statement.[33]

POST-EMPLOYMENT RESTRICTIONS

Since 1989, legislative branch officials, including certain employees, have been subject to restrictions on their post-House employment under the Ethics Reform Act.[34] These limitations are part of the federal criminal code, and they apply to Members and officers of the House,[35] as well as to employees of House Member, committee, and leadership offices who are paid at least 75% of a Member's salary, inclusive of any federal civil service or military annuity.[36] For these covered individuals, the law establishes a one-year "cooling-off period" measured from the date of the individual's departure from the House payroll.[37] For Members who are not re-elected to the House, this date will be January 3 of the year following the election (not the date of adjournment *sine die*),[38] unless the Member resigns prior to that date.

Set out below is a detailed description of prohibited and permitted post-employment activities of former Members 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 Department of Justice (DOJ), rather than by the Ethics Committee, and Committee interpretations of the statute are not binding on DOJ.

Prohibited Activity

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

- ✕ Knowingly **communicate with or appear before any Member, officer, or employee of the House or the Senate,**[39] or current employees of any other legislative office,[40] with the intent to influence, on behalf of any other person, the official actions

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[32] 5 U.S.C. app. § 102(a)(2)(B).

[33] *Id.* § 109(a)(7)(A).

[34] 18 U.S.C. § 207 (e), (f).

[35] *Id.* § 207(e)(1).

[36] *Id.* § 207(e)(7).

[37] *Id.* § 207(e).

[38] *See* U.S. Const. amend. XX, § 2 (establishing the start of the congressional session at noon on January 3).

[39] Unlike former Members, former elected officers of the House are unrestricted in their post-employment interactions with all Senate personnel and may similarly interact with employees of "other legislative offices." *See* 18 U.S.C. § 207(e)(1)(B)(iii). Put another way, during the statutory "cooling-off" period, a former House officer is restricted from contacting only Members, officers, and employees *of the House*.

[40] "[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

or decisions of such Member, officer, or employee.[41] The statute excepts certain representations made on behalf of specific types of entities. These exceptions are described below in the context of "permissible activity."

- ✕ Knowingly **represent a foreign entity, i.e. 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 carrying out his or her official duties.[42]

- ✕ Knowingly **aid or advise a foreign entity, i.e. 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.[43]

- ✕ **Use confidential information obtained by means of personal and substantial participation in ongoing trade or treaty negotiations** within one year preceding their departure from office, in the course of representing, aiding, or advising anyone other than the United States regarding those ongoing negotiations.[44]

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

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Technology Assessment, Congressional Budget Office, and Capitol Police. The term also includes any other House legislative branch office not covered by the other provisions of the statute, such as the Clerk, Parliamentarian, Office of General Counsel, and Chief Administrative Officer. *See* 18 U.S.C. § 207(e)(9)(G).

[41] 18 U.S.C. § 207(e)(1).

[42] *Id.* §§ 207(f)(1)(A) and (i)(1)(B). Section § 207 restricts activities with respect to a "foreign entity," which is defined as either the "government of a foreign country" or a "foreign political party" as those terms are, in turn, defined in the Foreign Agents Registration Act (22 U.S.C. § 611(e), (f)). *See id.* § 207(f)(3). A U.S. Office of Legal Counsel (OLC) opinion of August 13, 2008, concluded that a foreign corporation is to be considered a foreign entity for purposes of 18 U.S.C. § 207(f) if it "exercises sovereign authority or functions de jure (i.e. by formal delegation) or de facto." *See* OLC Memorandum Opinion, *Application of 18 U.S.C. § 207(f) to a Former Senior Employee* (available on the OLC Web site at https://www.justice.gov/sites/default/files/olc/opinions/attachments/2015/06/23/op-olc-v032-p0115.pdf. *See* OLC Memorandum Opinion, *Application of 18 U.S.C. § 207(f) to a Former Senior Employee* (available on the OLC Web site at https://www.justice.gov/sites/default/files/olc/opinions/attachments/2015/06/23/op-olc-v032-p0115.pdf. *See also* U.S. OGE, LA-16-08: *Introduction to the Primary Post-Government Employment Restrictions Applicable to Former Executive Branch Employees,* at 10 (September 23, 2016) (available on the OGE Web site at https://www.oge.gov/web/oge.nsf/All%20Documents/3741DC247191C8B88525803B0052BD7E/$FILE/LA-16-08.pdf?open. Also pertinent to these provisions of the statute is an OLC opinion of June 22, 2004, which concludes that 18 U.S.C. § 207(f) covers representational contacts with Members of Congress. *See* OLC Memorandum Opinion, *Application of 18 U.S.C. § 207(f) to a Former Senior Employee* (available on the OLC Web site at ww.justice.gov/sites/default/files/olc/opinions/2004/06/31/op-olc-v028-p0097_0.pdf).

[43] 18 U.S.C. § 207(f)(1)(B).

[44] *Id.* § 207(b).

which the DOJ has defined those terms.[45] A DOJ opinion defines "communication" as "the act of imparting or transmitting information with the intent that the information be attributed to the former official."[46]

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."[47] The provision is broad enough that it precludes a former Member even from, for example, requesting or scheduling, for or on behalf of any other person, a meeting with any current Member, officer, or employee on official business.[48] 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 the one-year "cooling-off period" restrictions set out above, Members should further 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.[49]

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[45] 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.

[46] OLC, *"Communications" under 18 U.S.C. § 207* at 3 (Jan. 19, 2001) (available on the OLC Web site at http://www.justice.gov/sites/default/files/olc/opinions/2001/01/31/op-olc-v025-p0059_0.pdf). 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.*

[47] *Introduction to the Primary Post-Government Employment Restrictions Applicable to Former Executive Branch Employees*, note 42 above, at 3.

[48] 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 DOJ and OGE. However, as noted above, 18 U.S.C. § 207 is a criminal statute, and Committee interpretations of it are not binding on DOJ (*but see* note 73, below).

[49] 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*

Permissible Activity

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

- ✓ **Aid or advise clients** (other than foreign entities, i.e. foreign governments or foreign political parties) **concerning how to lobby Congress**, provided the former Member makes no appearance before or communication to Members or employees of Congress. Such a "background role" would not pose the contemplated risk of improper influence since the current officials would not be aware of the former official's participation.[50] However, any such participation must remain behind-the-scenes; during the one-year "cooling-off" period, former Members must not permit their name to be openly associated with contacts made by other persons.[51]

- ✓ **Contact Executive Branch** officials with the intent to influence official action so long as not representing a foreign entity, i.e. a foreign government or foreign political party.[52]

- ✓ **Contact state government officials** with the intent to influence state government actions or decisions. Former Members should comply with any state laws governing such contacts.

- ✓ **Contact one foreign government on behalf of another** foreign government.[53]

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.

[50] Former Members who are lawyers may have additional restrictions, as explained above in note 16.

[51] 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 (with the exception of the provision that applies to all former employees relating to ongoing trade or treaty negotiations). This construction is consistent with regulations promulgated by 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 OLC opinion that is cited in note 46 above, including with regard to activities that do not constitute permissible "behind-the-scenes" activities.

[52] Former Members 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 Member. *See* 25 U.S.C. § 5323(j) (formerly 25 U.S.C. § 450i(j)); 18 U.S.C. § 207(j)(1)(B).

[53] 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. Members 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 DOJ. *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).

✓ **Contact Members, officers and employees of the House and Senate and other Legislative Branch officials** under any of the following circumstances:

- The former Member is carrying out official duties on behalf of the **federal government** or the District of Columbia;[54]
- The former Member is acting as an **elected official of a state or local government;** [55]
- The former Member 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;[56]
- The former Member is an **employee** of an accredited, degree-granting **institution of higher education** and is acting on behalf of such institution;[57] or
- The former Member is an **employee** of a **charitable hospital or medical research organization** and is acting on behalf of such hospital or organization.[58]

✓ **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. [59] Otherwise, former Members 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. [60] However, if the former Member is employed by a

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[54] 18 U.S.C. § 207(j)(1)(A).

[55] *Id.*

[56] *Id.* § 207(j)(2)(A).

[57] *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).

[58] 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.*

[59] *Id.* § 207(j)(3).

[60] *Id.* § 207(j)(7)(A).

person or entity who represents, aids, or advises only such persons or entities, the communications would prohibited.[61]

✓ **Make statements based upon the "special knowledge"** of the former Member concerning the particular area that is the subject of the statement, if no compensation is received in connection therewith.[62]

✓ **Give testimony under oath**, or make statements required to be made under penalty of perjury.[63]

✓ **Contact staff of the Clerk of the House** regarding the Member's compliance with the disclosure requirements under the Lobbying Disclosure Act.[64]

✓ **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.[65]

✓ **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.[66]

Example 1. Member *A* retires to accept an appointed position in an Executive Branch agency. *A* may immediately contact Congress on behalf of the agency.

Example 2. Member *B* retires to become governor of his state. *B* may immediately contact Congress on behalf of his state.

Example 3. Member *C* retires to become the president of a private university. *C* may immediately contact Congress on behalf of the school.

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[61] *Id.* § 207(j)(7)(B)(ii)(II).

[62] *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 as being "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.

[63] 18 U.S.C. § 207(j)(6).

[64] *Id.* § 207(e)(8).

[65] *See id.* § 207.

[66] *See id.*

Example 4. Member *D* retires and moves back to her home state. *D* may immediately contact state government officials on behalf of any clients.

Example 5. Member *E* retires to become a lobbyist. During her first year out of office, *E* lobbies only Executive Branch personnel, *E* never contacts Members or employees of Congress on behalf of clients, and *E* has no foreign clients. *E* is complying with the law.

Example 6. During his one-year "cooling-off" period, former Member *F* wishes to call a current Member to request that she meet with representatives of one of his clients to discuss legislation of interest to the client. *F* would not be present at the meeting. *F* would violate the statute by requesting the meeting, in that the request would be a communication intended to influence official action.

Example 7. During his first year out of office, former Member *G* wishes to contact a current Member to urge him to support federal funding for a non-profit organization operated by a friend of *G*. The non-profit organization is not a client of *G*, and *G* would receive no compensation for making the contact. *G* would violate the statute by doing so, in that the statute bars such contacts regardless of whether the former official would be compensated for them.

Example 8. During her one-year "cooling-off" period, former Member *H*, who has become a lobbyist, is asked by a current Member about the views of one of her clients on a pending piece of legislation. *H* would violate the statute if she were to state her client's views to the current Member, in that there is no exception in the statute for covered communications that are solicited by a current Member or staff person. However, it may be permissible for *H* to refer the Member to one of her colleagues who is not subject to post-employment restrictions.

Entity Represented by Former Member

Entity Contacted by Former Member

	Congress	Executive Branch	Foreign Entity	State Governments
Private Entity	Must wait 1 year before contacting Congress directly. May advise entity behind scenes immediately	May contact immediately	May contact immediately	May contact immediately
Federal, State, or Local Government	May contact Congress immediately if elected official or employee of the federal, state, or local government	May contact immediately	May contact immediately	May contact immediately
Tribal Government	Must wait 1 year before contacting Congress directly May advise entity behind scenes 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 Member	May contact immediately	May contact immediately
Foreign Entity	Must wait 1 year before contacting Congress 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 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 the 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 classifies the subject matter as one of national interest, former Member may immediately advise international organization and contact Congress directly; otherwise, must wait 1 year to do either	If Secretary of State classifies the subject matter as one of national interest, former Member 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 immediately if an employee of the college or university	May contact immediately	May contact immediately	May contact immediately
Charitable Hospital or Medical Research Organization	May contact immediately if an employee of the hospital or 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 $94,681 for each violation or the value of the compensation received for the act that violated the restrictions, whichever is greater.[67] The statute further authorizes the Attorney General to seek an injunction prohibiting a person from engaging in conduct that violates the act.[68]

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 close attention by DOJ, as reflected in the guilty pleas by former House staff and others to criminal violations of the statute.[69] 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 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.[70]

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."[71] 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."[72]

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[67] 18 U.S.C. § 216. In 2016 the $50,000 penalty established in the statute was adjusted to $94,681 in accordance with the Bipartisan Budget Act of 2015. Civil Monetary Penalties Inflation Adjustment, 81 Fed. Reg. 42,491 (June 30, 2016).

[68] *Id.* § 216(c).

[69] *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"). Also note, in September 2012, a former Senate staffer, Doug Hampton, was sentenced to one year probation for violating the post-employment restriction ("Hampton action").

[70] *See, e.g., Abramoff* and *Ney* actions, note 67 above.

[71] 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").

[72] 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, note 69 above, vol. I. *See also*, Senate Select Comm. on Ethics, *Report of the Preliminary Inquiry into the Matter of Senator John E. Ensign* (May 10, 2011) *available at* http://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=676ADD17-2C7F-40F7-A4D9-B35526E4DA97.

A Member (or former Member) 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 DOJ, those interpretations are based on the Committee's analysis of the terms and purposes of the statute, as well as any applicable opinions or guidance of DOJ or OGE of which the Committee is aware.[73]

FLOOR PRIVILEGES OF A FORMER MEMBER

The type of work that a Member does after leaving office may limit the Member's future floor privileges. While former Members generally are entitled to admission to the Hall of the House, this privilege is not extended to those who: (1) are registered lobbyists or agents of a foreign principal; (2) have any direct personal or pecuniary interest in any pending legislation; ***or*** (3) work for or represent anyone "for the purpose of influencing, directly or indirectly, the passage, defeat, or amendment of any legislative proposal."[74] In short, a Member may not take advantage of his or her status as a former Member to lobby current Members on the House floor (that is, those areas restricted to the public). Unlike the post-employment restrictions, this rule has no time limit.[75]

In addition, a resolution adopted at the start of the 114th Congress provides that former Member and officers, as well as their spouses, who are registered federal lobbyists or agents of a foreign principal are also prohibited from access "to any exercise facility which is made available exclusively to Members and former Members, officers and former officers" during the 114th Congress.[76]

FINANCIAL DISCLOSURE REQUIREMENTS FOLLOWING DEPARTURE FROM HOUSE EMPLOYMENT

A departing Member of Congress must file a final Financial Disclosure Statement, called a "Termination Report," within 30 days of leaving office.[77] Extensions of up to 90 days are available upon written request to the Committee when made prior to the original due date.[78]

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[73] 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.

[74] House Rule 4, cl. 4(a).

[75] Departing Members may also wish to review a memorandum issued by the Congressional Research Service, *Selected Privileges and Courtesies Extended to Former Members of Congress,* Report No. R41121 (Dec. 5, 2014).

[76] H. Res. 5 § 3(k) (adopted Jan. 6, 2015). Although this restriction applies only during the 114th Congress, departing Members should note that similar language has been adopted in previous Congresses.

[77] 5 U.S.C. app. § 101(e).

[78] *Id.* § 101(g); Comm. on Ethics, *2015 Instruction Guide for Completing Financial Disclosure Statements and Periodic Transaction Reports (2015 FD and PTR Instructions)* at 7.

The Termination Report, filed on the same form as the annual report, covers all financial activity through the end of the Member's term.[79] Schedule F ("Agreements") of the report requires disclosure of any agreement entered into by the filer, oral or written, with respect to future employment.[80] Thus, if a Member accepts a future position while still on the House payroll, the Member will have to disclose the agreement on the Member'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.[81] The Member will also have to disclose, on Schedule H ("Travel Payments and Reimbursements") of the Termination Report, any travel reimbursements exceeding $375 received from any source in connection with job-search activity.[82]

However, a departing Member who, prior to thirty days after leaving office, has accepted another federal position requiring the filing of a *public* financial disclosure statement need not file a Termination Report.[83] Any departing Member who is not required to file a Termination Report for this reason must notify the Clerk *in writing* of that fact.[84]

USE OF EXCESS CAMPAIGN FUNDS

Members are prohibited by House rules from converting campaign funds to personal use.[85] Federal election law, as implemented by a set of regulations issued by the Federal Election Commission (FEC), bans the use of excess campaign funds for personal purposes by anyone, incumbents and non-incumbents alike.[86] All campaign resources (including equipment, furniture, and vehicles) are subject to the same restrictions.[87] A Member may not keep campaign property upon retirement from Congress unless he or she pays the campaign fair market value.[88] In valuing the property, the Member may take into account the fact that it has been used.[89]

> ***Example 9.*** Member *J* would like to keep the car owned by his campaign when he retires. If he pays the campaign the car's fair market value, *J* may do so.

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[79] *Id.* § 101(e). For Members who serve out their full term, this date will be January 3; Members who retire earlier than the end of the term will have different end date.

[80] *Id.* § 102(a)(7).

[81] *See id.*; *see also 2015 FD and PTR Instructions* at 32.

[82] 5 U.S.C. app. § 102(a)(2)(B). Such travel must be disclosed on the Member's Financial Disclosure Statement even if the Member ultimately remains in Congress rather than accepting private employment.

[83] *Id.* § 101(e).

[84] *See 2015 FD and PTR Instructions* at 5. A form for this purpose is available on the Committee's Web site, at http://ethics.house.gov/sites/ethics.house.gov/files/FD_TerminationExemption.pdf.

[85] House Rule 23, cl. 8.

[86] 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.2(e).

[87] *See generally* 52 U.S.C. § 30114(b)(1); 11 C.F.R. § 113.1.

[88] 11 C.F.R. §§ 113.1(g)(3) and 113.2(e).

[89] 11 C.F.R. § 113.1(g)(3).

As to excess campaign funds, among the permissible uses under statutory law are donation to charities described in § 170(c) of the Internal Revenue Code,[90] and contribution to any national, state, or local committee of a political party.[91] A former Member may use campaign funds to defray the costs of winding down his or her congressional office for a period of up to six months after leaving office.[92] In addition, both the FEC and the Ethics Committee have ruled that a retiring Member may use campaign funds to pay the expenses of moving both congressional office furnishings and personal household furnishings and effects back to the Member's home state.[93] A retiring Member should consult with FEC staff on the specifics of statutory law and FEC rules on the use or disposition of excess campaign funds, including with regard to maintaining those funds for use in a future campaign, or making donations to other candidates.

OUTSIDE EMPLOYMENT AND EARNED INCOME RESTRICTIONS

All departing Members remain subject to all House rules, including the gift rule and the limitations on outside employment and earned income,[94] even after adjournment *sine die*, until the end of their term, unless they elect to resign earlier. These rules are particularly important to bear in mind for a departing Member whose prospective employer suggests that the Member start work prior to leaving office. In calendar year 2016, a Member may not receive outside earned income (including, for example, a signing bonus) in excess of $27,495, 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.[95] Regardless of whether compensation is received, a Member may not allow his or her name to be used by an organization that provides fiduciary services. In addition, a Member may not receive any honoraria (*i.e.*, a payment for a speech, article, or appearance),[96] although he or she may receive compensation for teaching, if the Member first secures specific prior permission from this Committee.[97]

> ***Example 10.*** Member *K* plans to join a law firm when she leaves office. Since this is a firm providing professional services of a fiduciary nature, *K* may not commence employment with the firm until the new Congress is sworn in, unless she resigns early.

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[90] 52 U.S.C. § 30114(a)(3); 11 C.F.R. § 113.2(b); *see also* 11 C.F.R. § 113.1(g)(2).

[91] 52 U.S.C. § 30114(a)(4); 11 C.F.R. § 113.2(c).

[92] 11 C.F.R. § 113.2(a)(2).

[93] FEC Advisory Opinion 1996-14 (available on the FEC Web site, www.fec.gov); *2008 House Ethics Manual* at 162.

[94] House Rule 25, cls. 1-5. The outside employment and earned income limitations are also codified at 5 U.S.C. app. §§ 501-502.

[95] House Rule 25, cls. 1-4; *see also* 5 U.S.C. app. §§ 501-502.

[96] House Rule 23, cl. 5; House Rule 25, cl. 1(a)(2).

[97] House Rule 25, cl. 2(e).

ACCEPTANCE OF OFFICIALLY CONNECTED TRAVEL FUNDED BY A PRIVATE SOURCE

Several rules may affect a departing Member's travel decisions. House rules prohibit the use of committee funds and local currencies owned by the United States to pay for travel by a Member: (1) after the date of a general election in which he or she was not elected to the succeeding Congress; or (2) in the case of a Member who is not a candidate in a general election, after the **earlier** of the date of the general election or adjournment *sine die* of Congress.[98]

With regard to privately funded travel that is fact-finding in nature, because the gift rule requires that such travel be related to official duties,[99] it is questionable whether a departing Member may accept an invitation for a such travel that would take place after the adjournment *sine die* of the House. As of that time, the official responsibilities that may justify acceptance of travel expenses for such a purpose will practically have come to an end. However, this consideration does not limit the ability of a departing Member to accept travel expenses from a private source for the purpose of enabling the Member 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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[98] House Rule 24, cl. 10.

[99] House Rule 25, cl. 5(b)(1)(A); *see also* House Rule 25, cl. 5(b)(3)(G).

Charles W. Dent, Pennsylvania
Chairman
Linda T. Sánchez, California
Ranking Member

Patrick Meehan, Pennsylvania
Trey Gowdy, South Carolina
Susan W. Brooks, Indiana
Kenny Marchant, Texas

Michael E. Capuano, Massachusetts
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ONE HUNDRED FOURTEENTH CONGRESS

U.S. House of Representatives

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December 22, 2016

MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

FROM: **Committee on Ethics**
Charles W. Dent, Chairman
Linda T. Sánchez, Ranking Member

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

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The purpose of this memorandum is to remind you about issues of concern to staff members[1] who are negotiating for future employment or departing from employment with the House of Representatives or one of the legislative branch offices.[2] 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.[3] Current Members and staff are reminded that they may not assist in the violation of these restrictions.

In addition, the Committee would like to take this opportunity to note one statutory provision that applies to **all House Members and staff**. House Members and staff may not use

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[1] 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 offices (*see* note 2, below). Relevant distinctions among these categories of employees are noted as necessary.

[2] "[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 General Counsel, and Chief Administrative Officer. *See* 18 U.S.C. § 207(e)(9)(G).

[3] 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." This 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.

confidential information obtained by means of personal and substantial participation in ongoing trade or treaty negotiations for one year prior to leaving House employment in the course of representing, aiding, or advising anyone other than the United States regarding those ongoing negotiations.[4] As with other provisions of this statute, this prohibition lasts for one year after departure from the House payroll.[5]

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.

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.[6] 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 relevant statute 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.[7] Those decisions found that the term "negotiation" should be construed broadly.[8] However, these decisions make a distinction between "negotiations," which trigger the rule, and "[p]reliminary or exploratory talks," which do not.[9] The term "negotiations" connotes "a communication between two parties with a view toward reaching an agreement" and

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[4] 18 U.S.C. § 207(b). For purposes of this provision, the term "trade negotiation" means "negotiations which the President determines to undertake to enter into a trade agreement pursuant to section 1102 of the Omnibus Trade and Competitiveness Act of 1988, and does not include any action taken before that determination is made" and the term "treaty" means "an international agreement made by the President that requires the advice and consent of the Senate." *Id.* at § 207(b)(2).

[5] *Id.*

[6] *See* House Rule 23, cl. 3; Code of Ethics for Government Service ¶¶ 5, 6, *reprinted in 2008 House Ethics Manual* at 355.

[7] 18 U.S.C. § 208.

[8] *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).

[9] *See Schaltenbrand*, 930 F.2d at 1558-59.

in which there is "active interest on both sides."[10] Thus, merely sending a copy of one's résumé 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.[11] 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.[12] Federal criminal law 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.[13] 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.[14]

In light of these restrictions, all 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.[15] 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.[16] Departing employees who are lawyers should consult their local bar associations concerning the application of rules governing their involvement in matters in which they participated personally and substantially during their time with the House.[17] In addition, as addressed in the next section of this memorandum, senior staff must disclose employment negotiations in writing to the Ethics Committee.

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[10] *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.

[11] House Rule 23, cl. 3.

[12] Code of Ethics for Government Service ¶ 5, *reprinted in 2008 House Ethics Manual* at 355.

[13] 18 U.S.C. § 201(b)(2)(A).

[14] *Id.* § 201(c)(1)(B).

[15] *See* Code of Ethics for Government Service ¶ 5, *reprinted in 2008 House Ethics Manual* at 355.

[16] *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 entity, i.e. a foreign government or foreign political party, in seeking to influence a decision of any federal official during that year.

[17] 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. (OGE Web site at https://www.oge.gov).

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*** entity.[18] Staff subject to this disclosure requirement are those employees of the House who are paid at or above an annual rate of $123,175 ($10,265 per month) for any two months in a calendar year, including any federal civil service or military annuities.[19] Please note that the aforementioned annual pay rate is subject to change in 2017, and that staff paid at this rate are referred to as "senior staff."

The term "negotiation" is not defined in the relevant statute or House rule. 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 to reaching an agreement" and in which there is "discussion and active interest on both sides."[20] 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.[21]

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."[22] Employees should also avoid situations that

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[18] 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.

[19] 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." In 2016, that rate is $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.

[20] *See Hedges*, 921 F.2d at 1403 n.2.

[21] House Rule 27, cl. 4.

[22] House Comm. on Standards of Official Conduct, *In the Matter of Representative Sam Graves*, H. 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

might be viewed as presenting even a risk that the individual might be improperly influenced by personal financial interests."[23]

The Committee has issued forms, available on the Committee Web site (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."[24] The original, completed form must be submitted to the Committee. All filers should keep a copy of their submission for their records. There is a separate form for notifying the Committee of recusal, titled the "Statement of Recusal." Senior staff who recuse themselves from official matters pursuant to House Rule 27 and/or the STOCK Act must complete and submit the original recusal form to the Committee.[25]

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."[26] 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 $375 from any one source must be disclosed on Schedule H ("Travel Payments and Reimbursements") of the Termination Report required of departing senior employees.[27] In addition, any agreement for future employment also must be disclosed on Schedule F ("Agreements") of that statement.[28]

(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.").

[23] *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 . . . .").

[24] House Rule 27, cls. 1-3.

[25] *Id.*, cl. 4. Clause 4 does not require staff to file their notice of negotiation with the Clerk, as is required of House Members.

[26] House Rule 25, cl. 5(a)(3)(G)(ii).

[27] 5 U.S.C. app. § 102(a)(2)(B). 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.

[28] *Id.* § 102(a)(7)(A).

POST-EMPLOYMENT RESTRICTIONS

Since 1989, legislative branch officials, including certain employees, have been subject to restrictions on their post-House employment under the Ethics Reform Act.[29] 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, inclusive of any federal civil service or military annuity.[30] The basic rate of pay for Members in calendar year 2016 is $174,000, and thus the post-employment threshold for individuals who terminate their employment with a Member, committee, or leadership office in 2016 is ***$130,500***. The threshold rate for other years is available from the Ethics Committee. For employees of "other legislative offices,"[31] the basic rate of pay triggering the restrictions is level IV of the Executive Schedule, which for 2016 is ***$160,300***.[32] Please note that this rate of pay is subject to change in 2017.

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.[33] 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 by adjusting the employee's basic rate of pay in two or more months, even if the adjustment is intended to be temporary.[34] 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 begins from the date of the individual's departure from the House payroll.[35] When an office continues an individual on the payroll for the purpose of paying for accrued leave after the 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. In general, House employees whose pay is **below** the threshold are **not** subject to the post-employment restrictions set out in the statute, with the exception of the provision described earlier in this memorandum regarding participation in trade and treaty negotiations, 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

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[29] *See* 18 U.S.C. § 207(e), (f).

[30] *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.

[31] For the definition of "other legislative offices," see note 2, above.

[32] 18 U.S.C. § 207(e)(7)(B).

[33] *Id.* § 207(e)(7).

[34] The Committee has determined that lump sum payments, when properly used by an employing office, do not constitute part of the recipient's "basic rate of pay." See *2008 House Ethics Manual* at 240, n.112.

[35] *Id.* § 207(e)(3)-(7).

that briefly summarizes the statutory restrictions. Please note that the statute, as part of the criminal code, is enforced by the Department of Justice (DOJ), rather than by the Ethics Committee, and Committee interpretations of the statute are not binding on DOJ.

Prohibited Activity

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

- X 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.[36] 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**[37] of a Member may not seek official action, on behalf of other persons, from that Member or from any of the Member's employees.[38]

  - Covered former **committee staff**[39] 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.[40] 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.[41]

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[36] *Id.*

[37] *Id.* § 207(e)(9)(E).

[38] *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).

[39] *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).

[40] *Id.* § 207(e)(4).

[41] *Id.* (barring communication or appearances on "any matter" on which the former employee seeks action).

- Covered former employees on the **leadership staff** [42] may not seek official action, on behalf of other persons, from current Members of the leadership[43] or any current staff of those Members.[44]

- Covered former employees of any **other legislative office**[45] may not seek official action, on behalf of other persons, from current officers and employees of that legislative office.[46]

X Knowingly **represent a foreign entity, i.e. 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.[47]

X Knowingly **aid or advise a foreign entity, i.e. 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.[48]

X **Use confidential information obtained by means of personal and substantial participation in ongoing trade or treaty negotiations** within one year preceding the

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[42] *Id.* § 207(e)(9)(H).

[43] 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).

[44] *See id.* §§ 207(e)(5)(B) and (e)(9)(H).

[45] [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. The term also includes any other House legislative branch office not covered by the other provisions of the statute, such as the Clerk, Parliamentarian, Office of General Counsel, and Chief Administrative Officer. *See* 18 U.S.C. § 207(e)(9)(G).

[46] 18 U.S.C. §§ 207(e)(6) and (e)(9)(G).

[47] Id. §§ 207(f)(1)(A) and (i)(1)(B). Section § 207 restricts activities with respect to a "foreign entity," which is defined as either the "government of a foreign country" or a "foreign political party" as those terms are, in turn, defined in the Foreign Agents Registration Act (22 U.S.C. § 611(e), (f)). *See id.* § 207(f)(3). A U.S. Office of Legal Counsel (OLC) opinion of August 13, 2008, concluded that a foreign corporation is to be considered a foreign entity for purposes of 18 U.S.C. § 207(f) if it "exercises sovereign authority or functions de jure (i.e. by formal delegation) or de facto." *See* OLC Memorandum Opinion, *Application of 18 U.S.C. § 207(f) to a Former Senior Employee* (available on the OLC Web site at https://www.justice.gov/sites/default/files/olc/opinions/attachments/2015/06/23/op-olc-v032-p0115.pdf. *See also* U.S. OGE, LA-16-08: *Introduction to the Primary Post-Government Employment Restrictions Applicable to Former Executive Branch Employees,* at 10 (September 23, 2016) (available on the OGE Web site at https://www.oge.gov/web/oge.nsf/All%20Documents/3741DC247191C8B88525803B0052BD7E/$FILE/LA-16-08.pdf?open. Also pertinent to these provisions of the statute is an OLC opinion of June 22, 2004, which concludes that 18 U.S.C. § 207(f) covers representational contacts with Members of Congress. *See* OLC Memorandum Opinion, *Application of 18 U.S.C. § 207(f) to a Former Senior Employee* (available on the OLC Web site at https://www.justice.gov/sites/default/files/olc/opinions/2004/06/31/op-olc-v028-p0097_0.pdf).

[48] 18 U.S.C. § 207(f)(1)(B).

employee's departure from the House payroll, in the course of representing, aiding, or advising anyone other than the United States regarding those ongoing negotiations.[49]

As to the prohibition against making any "communication to or appearance before" anyone in the legislative branch, covered former employees should be aware of the broad manner in which DOJ has defined those terms.[50] A DOJ opinion defines "communication" as "the act of imparting or transmitting information with the intent that the information be attributed to the former official."[51]

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."[52] 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.[53] 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.[54]

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[49] *Id.* § 207(b).

[50] 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.

[51] OLC, *"Communications" under 18 U.S.C. § 207* at 3 (Jan. 19, 2001) (available on the OLC Web site at http://www.justice.gov/sites/default/files/olc/opinions/2001/01/31/op-olc-v025-p0059_0.pdf). 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.*

[52] *Introduction to the Primary Post-Government Employment Restrictions Applicable to Former Executive Branch Employees*, note 47 above, at 3.

[53] 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 DOJ 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 78, below).

[54] 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

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

- ✓ **Aid or advise clients** (other than foreign entities, i.e. 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.[55] However, 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.[56]

- ✓ **Contact Executive Branch** officials with the intent to influence official action so long as not representing a foreign entity, i.e. a foreign government or foreign political party.[57]

- ✓ **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.[58]

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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.

[55] Former employees who are lawyers may have additional restrictions, as explained above in note 17 of this Memorandum.

[56] As noted above, the major restrictions set forth in 18 U.S.C. § 207(e) focus on communications and appearances. By contrast, if a covered former employee 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 (with the exception of the provision that applies to all former employees relating to ongoing trade or treaty negotiations). This construction is consistent with regulations promulgated by 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 OLC opinion that is cited in note 51 above, including with regard to activities that do not constitute permissible "behind-the-scenes" activities.

[57] 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. § 5323(j) (formerly 25 U.S.C. § 450i(j)); 18 U.S.C. § 207(j)(1)(B).

- ✓ **Contact any Members, officers, and employees of the House and Senate and other Legislative Branch officials** on official business under any of the following circumstances:

  - The former employee is carrying out official duties on behalf of the **federal government** or the District of Columbia;[59]

  - The former employee is acting as an **elected official of a state or local government**;[60]

  - 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;[61]

  - The former employee is an **employee** of an accredited, degree-granting **institution of higher education** and is acting on behalf of such institution;[62] 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.[63]

- ✓ **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.[64] 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

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[58] 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).

[59] 18 U.S.C. § 207(j)(1)(A).

[60] *Id.*

[61] *Id.* (j)(2)(A).

[62] *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).

[63] 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.*

[64] *Id.* § 207(j)(3).

behalf of that committee or party.[65] 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.[66]

- ✓ **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.[67]

- ✓ **Give testimony under oath,** or make statements required to be made under penalty of perjury.[68]

- ✓ **Contact staff of the Clerk of the House** regarding the individual's compliance with the disclosure requirements under the Lobbying Disclosure Act.[69]

- ✓ **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.[70]

- ✓ **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.[71]

Unless stated otherwise, each of the following examples assumes that the staffer is a covered former employee because their compensation while on House payroll triggered the substantive post-employment restrictions.

> ***Example 1.*** Staff member *A* resigns from her position on Member *B*'s personal staff. She may not contact *B* or anyone on his staff for one year (except on behalf of an exempt organization), but she may contact any other Member or staff member on behalf of anyone other than a foreign entity, i.e. a foreign government or foreign political party, as soon as she leaves the House payroll.

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[65] *Id.* § 207(j)(7)(A).

[66] *Id.* § 207(j)(7)(B)(ii)(II).

[67] *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.

[68] 18 U.S.C. § 207(j)(6).

[69] *Id.* § 207(e)(8).

[70] *See id.* § 207.

[71] *See id.*

Example 2. Staff member *C* resigns from his position on the Ways and Means Committee. He may not contact 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, contact any other Member or staff member on any issue, except on behalf of a foreign entity, i.e. a foreign government or foreign political party.

Example 3. Staff member *D*, who is not a covered employee, 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.

Example 4. Staff member *F* resigns from Member *G*'s staff to accept a position in an Executive Branch agency. *F* may contact *G* immediately on behalf of the agency.

Example 5. Staff member *H* resigns from his congressional position to join the staff of the Governor of his state. As a state employee, *H* may contact anyone in Congress, including his former employing Member, on behalf of the state.

Example 6. Staff member *I* resigns her congressional position and moves back to her home state. *I* may contact state government officials on behalf of any clients.

Example 7. Staff member *J* 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* 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 while in each position. *M* may not contact *N* or the committee on behalf of any non-exempt person or entity for one year following his termination from each employer. Thus, *M* would be barred from contacting *N* until July 1 of the following year and current and former members of the committee and current committee staff until December 31 of the following year.

Example 10. Staff member *M*, from the previous example, was paid less than the triggering rate in the Member's office, then she accepted a promotion to a committee that did pay more than the triggering rate. *M* would not be restricted from contacting the Member office once she ends her employment with the House.

Example 11. 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 because the request would be a communication intended to influence official action.

Example 12. During his first year after leaving House employment, *P* 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 because the statute bars such contacts regardless of whether the former employee would be compensated for them.

Entity Represented by Covered Former Employee

Entity Contacted by Covered Former Employee

	Former Congressional Office/Committee	Executive Branch	Foreign Entity	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 Entity	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 classifies the subject matter as one of national interest, may immediately advise international organization and contact Congress directly; otherwise, must wait 1 year to do either	If Secretary of State classifies the subject matter as one of national interest, 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 immediately if an employee of the college or university	May contact immediately	May contact immediately	May contact immediately
Charitable Hospital or Medical Research Org.	May contact immediately if an employee of the hospital or 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 $94,681 for each violation or the value of the compensation received for the act which violated the restrictions, whichever is greater.[72] The statute further authorizes the Attorney General to seek an injunction prohibiting a person from engaging in conduct that violates the act.[73]

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 close attention by DOJ, as reflected in the guilty pleas by former House staff and others to criminal violations of the statute.[74] 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 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.[75]

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."[76] 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."[77]

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[72] 18 U.S.C. § 216. In 2016 the $50,000 penalty established in the statute was adjusted to $94,681 in accordance with the Bipartisan Budget Act of 2015. Civil Monetary Penalties Inflation Adjustment, 81 Fed. Reg. 42,491 (June 30, 2016).

[73] *Id.* § 216(c).

[74] *See, e.g., United States v. Jack A. Abramoff*, Docket No. 06-CR-001 (D.D.C.) ("*Abramoff* action"). Similarly, 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"). Also note, in September 2012, a former Senate staffer, Doug Hampton, was sentenced to one year probation for violating the post-employment restriction ("*Hampton* action").

[75] *See, e.g., Abramoff* and *Ney* actions, note 71 above.

[76] 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").

[77] 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; *See also*, Senate Select Comm. on Ethics, *Report of the Preliminary Inquiry into the Matter of Senator John E. Ensign* (May 10, 2011) *available at* http://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=676ADD17-2C7F-40F7-A4D9-B35526E4DA97.

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 DOJ, those interpretations are based on the Committee's analysis of the terms and purposes of the statute, as well as any applicable opinions or guidance of DOJ or OGE of which the Committee is aware.[78]

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.[79] 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.[80] Extensions of up to 90 days are available upon written request to the Committee when made prior to the original due date.[81] Please note that the salary threshold for filing disclosure statements is lower than that which triggers the post-employment restrictions discussed above. For 2016, the financial disclosure filing threshold is an annual salary rate of $123,175 (or a monthly salary of $10,265-) for 60 days or more.[82]

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.[83] Schedule F ("Agreements") of the report requires disclosure of any agreement entered into by the filer, oral or written, with respect to future employment.[84] 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 Termination Report. 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.[85] The employee will also have to disclose, on Schedule H ("Travel Payments and Reimbursements") of the

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[78] 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.

[79] 5 U.S.C. app. § 101(e).

[80] *See* Comm. on Ethics, *2015 Instruction Guide for Completing Financial Disclosure Statements and Periodic Transaction Reports (2015 FD and PTR Instructions)* at 5.

[81] 5 U.S.C. app. § 101(g)(1); *see also 2015 FD and PTR Instructions at 7.*

[82] *See* 5 U.S.C. app. § 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 Report.

[83] *Id.* § 101(e).

[84] *Id.* § 102(a)(7).

[85] *See id.*; *see also 2015 FD and PTR Instructions at 32.*

report, any travel reimbursements exceeding $375 received from any source in connection with job-search activity.[86]

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 need not file a Termination Report.[87] Any departing employee who is not required to file a Termination Report for this reason must notify the Clerk *in writing* of that fact.[88]

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,[89] as long as they remain on the House 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.[90] In calendar year 2016, a covered employee may not receive outside earned income (including, for example, a signing bonus) in excess of $27,495, 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.[91] 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),[92] although he or she may receive compensation for teaching, if the employee first secures specific prior permission from this Committee.[93]

> ***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.

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[86] 5 U.S.C. app. § 102(a)(2)(B).

[87] *Id.* § 101(e).

[88] *See 2015 FD and PTR Instructions at 5.* A form for this purpose is available on the Committee's Web site, at http://ethics.house.gov/sites/ethics.house.gov/files/FD_TerminationExemption.pdf.

[89] House Rule 25, cls. 1-5. The outside employment and earned income limitations are also codified at 5 U.S.C. app. §§ 501-502.

[90] 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 2016, the limit is $34,160. 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.*

[91] House Rule 25, cls. 1-4; *see also* 5 U.S.C. app. §§ 501-502.

[92] House Rule 23, cl. 5; House Rule 25, cl. 1(a)(2).

[93] House Rule 25, cl. 2(e).

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 fact-finding in nature. The gift rule requires that such travel be related to official duties,[94] 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.

[94] *Id.*, cl. 5(b)(1)(A).