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MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

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

SUBJECT: **Rules Prohibiting Use of One's Official Position for Personal Gain**

The purpose of this memorandum is to summarize the key rules and standards of conduct that apply to prohibit the use of the official position of a Member, officer, or employee[1] for personal benefit. These rules and standards also apply to staff acting for the personal benefit of their employing member.

In 1989, the House Bipartisan Task Force on Ethics articulated a concern that gifts to Members or House employees might create an appearance of impropriety that might undermine the public's faith in government. The Task Force stated:

> Regardless of any actual corruption or undue influence upon a Member or employee of Congress, the receipt of gifts or favors from private interests may affect public confidence in the integrity of the individual and in the institution of the Congress.[2]

Both House rules and federal statutes enact similar limitations to address this concern.

House Rules on Gifts

House rules define the term "gift" broadly to mean:

> a gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. The term includes gifts of services, training, transportation, lodging, and

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[1] The terms "employee" and "staff" are used interchangeably throughout this memorandum to refer to persons who are employed by a Member, committee, leadership office, or other legislative office of the House.

[2] House Bipartisan Task Force on Ethics, *Report on H.R. 3660*, 101st Cong., 1st Sess. 6 (Comm. Print, Comm. on Rules 1989), *reprinted in* Cong,. Rec. 30740, 30742.

> meals, whether provided in kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.[3]

Members, officers, and employees may not accept any gifts, except as specifically permitted by House rules.[4] This limitation applies to any gifts, whether or not the gift is related to the recipient's official position. The House Code of Official Conduct (enacted as House Rule 23) additionally prohibits a House Member, officer, or employee from receiving any benefit "by virtue of influence improperly exerted from" the person's congressional position.[5]

Thus, the House rules limit what gifts may be accepted under any circumstances, and particularly prohibit the acceptance of gifts that may be offered due to the improper use of one's congressional position.

Federal Gift Statute

In addition to the House rules, gifts to Members and employees of Congress are regulated by federal statute. The statutory gift provision, 5. U.S.C. § 7353, restricts Members and staff both in what they may ask for and what gifts they may accept from any source that has interests before the House. The statute provides, in pertinent part:

> (a) Except as permitted by [applicable gift rules or regulations], no Member of Congress or officer or employee of the executive, legislative, or judicial branch ***shall solicit or accept*** anything of value from a person –
>
> (1) seeking official action from [or] doing business with . . the individual's employing agency; or
>
> (2) whose interests may be substantially affected by the performance or nonperformance of the individual's official duties.[6]

The statute restricts both the requesting of gifts and their acceptance in general. The prohibition on solicitation of gifts is very broad, and applies to the solicitation not only of money, but "anything of value." The prohibition on acceptance of gifts means that Members and staff should never accept any gift that is linked to any official action the individual has taken or is being asked to take. Another section of the federal gift statute states more specifically that "[n]o gift may be accepted . . . in return for being influenced in the performance of any official act."[7] Accepting a gift in these circumstances may be deemed a bribe or improper gratuity and constitute a serious violation of criminal law.[8]

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

[4] House Rule 23, cl. 4; House Rule 25, cl. 5.

[5] House Rule 23, cl. 3.

[6] 5 U.S.C. § 7353 (emphasis added).

[7] *Id.* § 7353(b)(2)(B).

[8] *See* 18 U.S.C. § 201.

Prohibition on Use of One's House Position for Personal Gain

It is fundamental that House Members, officers, and employees may not use their official position for personal gain. This prohibition includes any gain that would accrue to the individual in the form of compensation for outside employment activities. A key provision of the House Code of Official Conduct provides that House Members, officers, and employees may not receive compensation or permit compensation to accrue to their personal benefit from any source if the receipt would occur "by virtue of influence improperly exerted from" their position in Congress.[9]

As noted in the debate preceding adoption of this rule, an individual violates this provision if he uses "his political influence, the influence of his position . . . to make pecuniary gains."[10] When considering the applicability of this provision to any activity they are considering undertaking, Members and staff must also bear in mind that a separate provision of the House Code of Official Conduct requires that they adhere to both the spirit and the letter of the rules of the House.[11] In addition, the Code of Ethics for Government Service, which applies to Members, officers, and employees of the House, provides that a federal official should never accept "for himself or his family, favors or benefits under circumstances that might be construed by reasonable persons as influencing the performance of" the person's official duties.[12] Note that this provision prohibits the receipt of a personal benefit not only by the respective House Members or employees, but also by their families. In accordance with these provisions, the Ethics Committee routinely advises Members and staff to avoid situations in which even an inference might be drawn suggesting improper conduct.

In addition to prohibiting receipt of tangible or financial benefits, these same provisions apply to prohibit the use of one's official position for special access or treatment when seeking assistance with their personal business, bills, customer service, or other unofficial endeavors. For example, staff may not call the lobbyist for their cellular telephone service provider to seek assistance with a billing concern for their personal mobile phone. Nor may a Member call the CEO of a bank, whom they know through that CEO's having sought official action or to influence policy or legislation, to request assistance with a personal loan application. Instead, any such contact must be made through the ordinary customer service channels used by the public generally, without special reference to one's official position. For the same reasons, actions which are perfectly appropriate to take on behalf of an office's constituents become improper acts of influence when they are conducted for the personal benefit of the staffer performing the service or their employing Member.

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This memorandum summarizes some of the key rules and standards that apply to the personal financial transactions of House Members, officers, and employees. It is not an

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[9] House Rule 23, cl. 3.

[10] 114 Cong. Rec. 8807 (Apr. 3, 1968) (statement of Rep. Price).

[11] House Rule 23, cl. 2.

[12] Code of Ethics for Government Service ¶ 5, 72 Stat., Part 2 (1958), *reprinted in 2008 House Ethics Manual* at 355.

exhaustive compilation of all rules and standards that could conceivably apply, In addition, analysis of proposed conduct under these standards must be done on a case-by-case basis. The Committee is available to provide confidential advice to Members, officers, and employees on these and other issues. Any questions on these matters should be directed to the Committee's Office of Advice and Education at (202) 225-7103.