U.S. House of Representatives

COMMITTEE ON ETHICS

Washington, DC 20515

January 24, 2013

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: **Committee on Ethics**
K. Michael Conaway, Chairman
Linda T. Sánchez, Ranking Member

SUBJECT: The 2013 Outside Earned Income Limit and Salaries Triggering the Financial Disclosure Requirement and Post-Employment Restrictions Applicable to House Officers and Employees

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

1. Requirement to file financial disclosure (FD) statements, including Periodic Transaction Reports (PTRs);[1]
2. Restrictions on outside employment;
3. Disclosure of negotiations for private employment and recusal requirements; and
4. Post-employment restrictions.

Due to the federal pay freeze enacted in 2011,[2] most of the triggering salaries and limits initially will not change from those in effect during calendar year (CY) 2012. However, new pay rates may go into effect after the first quarter of CY 2013, and some of the triggering salaries may change at that time. The Committee will issue updated guidance should any of the numbers change during the year. This memorandum provides details on the current triggering salary figures for CY 2013 for each of the categories noted above, and summarizes them in a table on page 5 of this Memorandum.

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[1] For detail on the PTR requirement, see the Committee's August 17, 2012, advisory memorandum "Periodic Reporting of Personal Financial Transactions Pursuant to the STOCK Act, as amended," which is available on the Committee Web site (ethics.house.gov), under the links for Reports/General Advisories. Note that the STOCK Act may require the filing of PTRs as often as once per month.

[2] *See* Continuing Appropriations Act, 2011, Pub. L. 111-242, § 147, as amended by Continuing Appropriations and Surface Transportation Extensions Act, 2011, Pub. L. 111-322, § 1(b)(1).

FINANCIAL DISCLOSURE

House officers and employees whose "rate of basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule" for at least 60 days at any time during a calendar year are required to file FD statements, provided that the officer or employee "performs the duties of his [or her] position or office for a period in excess of sixty days in that calendar year."[3] The GS-15, step 1, basic pay rate for CY 2013 remains $99,628. The applicable 120% calculation for that rate for therefore remains **$119,553.60**, or a monthly salary at or above $9,962.80. This rate is referred to as the "senior staff rate."

As a result, House officers and employees whose basic rate of pay is equal to or greater than the senior staff rate ($119,553.60) for at least **60 days**[4] during **2013** must file an FD statement on or before May 15, 2014.[5] In addition, any new employee paid at the senior staff rate must file a "new employee" FD statement within 30 days of assuming employment with the House.[6] Finally, any staff who are paid at the senior staff rate on January 3, 2013 (or their first day of employment, if later in the year) must file reports (PTRs) on an ongoing basis throughout the year regarding certain financial transactions. See footnote 1 of this Memorandum for more information on the PTR requirement.

Please note that the requirement to file an FD statement covering calendar year 2012 applies to officers and employees whose basic rate of pay for at least 60 days in **2012** was also **$119,553.60** or more. Annual FD statements covering CY 2012 are due on Wednesday, May 15, 2013, for those individuals who continue to be Members, officers, or employees of the House on that date.

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

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

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

[5] 5 U.S.C. app. 4 §§ 101(c) and 109(f).

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

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

THE OUTSIDE EARNED INCOME LIMIT AND OUTSIDE EMPLOYMENT RESTRICTIONS

House officers and employees whose rate of basic pay is equal to or greater than the senior staff rate for **more than 90 days** are subject to limits on the amount of outside earned income[8] attributable to each calendar year.[9] As noted above, the senior staff rate for CY 2013 is **$119,553.60**, or a monthly salary of $9,962.80 or more.

The limit on outside earned income attributable to a calendar year is 15% of the rate of basic pay for Executive Schedule Level II in effect on January 1 of the year. Because any new pay rates will not go into effect later in 2013, the rate of basic pay for Executive Level II on January 1, 2013, remains $179,700. Accordingly, the outside earned income limit for House Members, officers, and employees paid at or above the senior staff rate for CY 2013 remains **$26,955**.[10] This limit will not change, even if federal pay rates change later in the year.

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

DISCLOSURE OF EMPLOYMENT NEGOTIATIONS AND RECUSALS

House Members, officers, and employees paid at the senior staff rate must notify the Committee within three (3) business days after they commence any negotiation or agreement for future employment with a private entity.[12] In addition, House Members, officers, and 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. As noted above, the senior staff rate for CY 2013 is **$119,553.60**, or a monthly salary of $9,962.80 or more.

Information on the disclosure and recusal requirements related to seeking private employment applicable to Members, officers, and senior staff is available in two Committee advisory memoranda, one for Members and officers and one for staff. Copies of both

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

[9] 5 U.S.C. app. 4 § 501(a)(1); House Rule 25, cls. 1(a)(1) and 4(a)(1).

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

[11] *See* 5 U.S.C. app. 4 § 502(a); House Rule 25, cls. 1-4.

[12] House Rule 27, cl. 2; Stop Trading on Congressional Knowledge Act, Pub. L. No. 112-105 (Apr. 4, 2012) § 17.

memoranda, which are dated November 26, 2012, are available on the Committee's Web site (ethics.house.gov) under "Reports/General Advisories."

POST-EMPLOYMENT RESTRICTIONS

House Members and officers, as well as certain other House employees, are subject to post-employment restrictions on lobbying.[13] A former employee of a Member, committee, or leadership office is subject to the restrictions if, for at least **60 days** during the one-year period preceding termination of House employment, the employee was paid at a rate equal to or greater than 75% of the basic rate of pay for Members at the time of termination. This amount is referred to as the "very senior staff rate."

The basic rate of pay for Members in 2013 will remain $174,000.[14] Therefore, the post-employment threshold for employees who depart from a job in a Member, committee, or leadership office in CY 2013 remains **$130,500**, or a monthly salary of $10,875 or more. However, the triggering salary for employees of other House or legislative branch offices (such as the CBO, GAO, GPO, Capitol Police, Library of Congress, Clerk, Parliamentarian, Office of Legal Counsel, and Chief Administrative Officer) is Executive Schedule Level IV. At present, that salary remains $155,500, or a monthly salary of $12,958.33 or more. However, it is possible that rate will rise later in the year.

Information on the post-employment restrictions applicable to Members, officers, and very senior staff is available in the two Committee advisory memoranda referenced in the previous section.

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See page 5 for a table summarizing the information contained in this memorandum.

[13] 18 U.S.C. § 207.

[14] The President issued an Executive Order on December 27, 2012, that increased pay for certain federal employees, including a cost-of-living raise for Members of Congress to $174,900, to take effect on April 7, 2013. However, subsequent passage of the American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, § 802 (Jan. 2, 2013), continued the pay freeze for Members of Congress. As a result, Member pay will remain at $174,000 for 2013.

CALENDAR YEAR 2013

Item	2013 Amount
Outside earned income & outside employment threshold - Outside employment fiduciary restrictions if paid at rate for more than 90 days	**$119,553.60** ($9,962.80/mo)
Outside earned income limit	**$26,955**
Financial Disclosure/PTR threshold - Annual FD required in May 2014 if paid at rate for 60 days or more in CY 2013 - PTRs required during CY 2013 if paid at rate on first day of House employment *or* after 60 days of employment at the rate in CY 2013	**$119,553.60** ($9,962.80/mo)
Written disclosure of job negotiations and recusals required	**$119,553.60** ($9,962.80/mo)
Post-Employment threshold for employees of Member, committee, or leadership offices	**$130,500** ($10,875/mo)
Post-Employment threshold for employees of "other legislative offices" (see p. 4)	**$155,500** ($12,958.33/mo)