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ONE HUNDRED SIXTEENTH CONGRESS

U.S. House of Representatives

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MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: **Committee on Ethics**
Theodore E. Deutch, Chairman
Kenny Marchant, Ranking Member

SUBJECT: The 2019 Outside Earned Income Limit and Salaries Triggering the Financial Disclosure Requirement and Post-Employment Restrictions Applicable to House Officers and Employees

This memorandum supersedes the Committee's February 8, 2019 Memorandum to include updated information based on Public Law 116-6 and guidance on how to calculate outside earned income. All Members of the House are subject to certain public disclosure requirements and employment restrictions both during and after their service in the House, including:

1. Financial disclosure filing requirements, including both annual financial disclosure (FD) statements and Periodic Transaction Reports (PTRs);
2. Restrictions on outside employment;
3. Notification requirements for disclosure of negotiations for private employment and related recusals; and
4. Post-employment restrictions.

House employees may also be subject to these requirements and restrictions, depending on their salary level. This memorandum provides details on the current triggering salary figures for Calendar Year (CY) 2019 for each of the categories noted above, and summarizes them in a table on page 8 of this Memorandum. It is each individual employee's responsibility to know whether their salary level subjects them to these standards of conduct and, if so, to comply with them. Please note that this memorandum is not a comprehensive list of every rule or standard of conduct that applies to House staff, but an overview of key standards that are triggered by salary level. Any Member, officer, or employee who has questions about whether their rate of pay triggers these requirements or restrictions or about the various rules is encouraged to contact the Committee's Office of Advice and Education at extension 5-7103.

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 subject to financial disclosure filing requirements, 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.”¹ The GS-15, step 1, basic pay rate for CY 2019 is \$106,595.² The applicable 120% calculation for that rate is therefore **\$127,914**, or a monthly salary above \$10,659. 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 (\$127,914) for at least **60 days**³ during **2019** must file an FD statement on or before May 15, 2020.⁴ (Temporary increases in an employee’s basic rate of pay – such as to pay out a bonus – count toward this threshold, but “lump sum” payments do not.⁵) In addition, any new employee paid at or above the senior staff rate must file a “new employee” FD statement within 30 days of assuming employment with the House.⁶ A new employee may request an extension of the new employee FD filing deadline of up to 90 days, but the request must be received by the Committee or on before the original filing deadline.⁷ Finally, any staff who are paid at or above the senior staff rate on January 3, 2019 (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.⁸ PTRs are not annual filings, but must be filed within 30 days of a purchase, sale, or exchange of more than \$1,000 in stocks, bonds, and other securities.⁹

¹ Ethics in Government Act (EIGA) §§ 109(13) and 101(d), 5 U.S.C. app. §§ 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 subject to financial disclosure filing requirements. 5 U.S.C. app. §§ 101(d) and (f).

² Exec. Order No. 13,866, 84 Fed. Reg. 12853 (March 28, 2019). The new senior staff rate is retroactive to January 1, 2019.

³ The House payroll department operates on a 30-day payroll cycle, meaning that each monthly pay period, regardless of its actual length, is counted as 30 days. Thus, a change to an employee’s base rate of pay in any two months during the calendar year (even non-consecutive months) may trigger the requirement to file an FD. This is true even if the pay change affects only part of a month.

⁴ 5 U.S.C. app. §§ 101(d) and (f).

⁵ See Comm. on Ethics *2008 House Ethics Manual* at 283-84, available at https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf; Comm. on Ethics, *Instruction Guide, Financial Disclosure Statements and Periodic Transaction Reports*, at 2 (Calendar Year 2017), <https://ethics.house.gov/forms/information-and-forms>.

⁶ See 5 U.S.C. app. § 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 FD statement. Individuals who are exempt from filing under these circumstances must notify the Clerk of the House of that fact in writing by letter or through the e-filing system for filing FD statements.

⁷ A request for an extension must be made using either a form available on the Committee’s web site or through the electronic financial disclosure filing system.

⁸ 5 U.S.C. app. § 103(l).

⁹ 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 website (<https://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 for Members and any staff who are paid at the senior staff rate on the first day of the 2019 pay cycle (January 3, 2019). Staff who are paid at or above

Please note that the requirement to file an FD statement covering calendar year 2018 applies to officers and employees whose basic rate of pay for at least 60 days in **2018** was **\$126,148** or more (a monthly salary at or above \$10,512). Annual FD statements covering CY 2018 were due on Wednesday, May 15, 2019, for those individuals who continued to be Members, officers, or employees of the House on that date.¹⁰ A filer may request an extension of the annual FD filing deadline of up to 90 days, but the request must be received by the Committee or on before the original filing deadline.¹¹

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.¹² A filer may request an extension of the termination FD filing deadline of up to 90 days, but the request must be received by the Committee or on before the original filing deadline.¹³

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 income¹⁴ attributable to each calendar year.¹⁵ As noted above, the senior staff rate for CY 2019 is **\$127,914**, or a monthly salary above \$10,659. 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. As of January 1, 2019, the rate of basic pay for Executive Level II was \$189,600.¹⁶

the senior staff rate for more than 60 days later in 2019 – even if on a temporary basis – will also be subject to the PTR requirement for the remainder of the calendar year and will be required to file an annual FD in 2020.

¹⁰ FD statements are due May 15 annually. In the event that May 15 or another filing deadline under the EIGA falls on a weekend or a holiday, the filing deadline shall be on the next business day.

¹¹ *See supra* note 7.

¹² *See* 5 U.S.C. app. § 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 FD statement. Departing employees who are exempt from filing under these circumstances must notify the Clerk of the House of that fact in writing, by sending a letter, completing a form available for that purpose, or filing a notice through the electronic financial disclosure filing system.

¹³ *See supra* note 7.

¹⁴ 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, among other things, 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).

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

¹⁶ Exec. Order No. 13,856, 84 Fed. Reg. 70 (Jan. 8, 2019).

Accordingly, the outside earned income limit for House Members, officers, and employees paid at or above the senior staff rate for CY 2019 is **\$28,440**.¹⁷

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 substantive types of outside employment for which they may receive compensation and must receive prior approval to receive certain types of compensation.¹⁸ These include prohibitions on receiving any compensation for practicing a profession that involves a fiduciary relationship, receiving any compensation for affiliating with a firm that provides professional services involving a fiduciary relationship, or permitting such a firm to use one's name.¹⁹ Receipt of compensation for service as an officer or member of a board of directors is also prohibited.²⁰ Prior written approval from the Committee on Ethics is required to accept compensation for teaching and to receive copyright royalties.²¹ 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 website (<https://ethics.house.gov>).

In addition, the Committee would like to take this opportunity to clarify what income is subject to the annual outside earned income limitation. "Earned" income is compensation for personal services, unlike "unearned" income, which is a return on capital.²² According to long-standing Committee policy, payment for personal services, where the personal services are the only material income-producing factor, is considered "earned" income for the purposes of financial disclosure reporting and the outside earned income limit.²³ Although a Member, officer, or employee paid at the senior staff rate may choose to establish a business entity for liability purposes, any income attributable to the personal services performed by that Member, officer, or employee, whether or not it passes through the business entity, is still considered earned income.²⁴

As a general matter, gross income earned from performing personal services is subject to the outside earned income limit. Thus most expenses, whether reimbursed or unreimbursed, may not be deducted to determine what earned income is subject to the outside earned income limit.²⁵

¹⁷ 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 \$14,220. The outside earned income limit for 2019 will not change even if the General Schedule changes later in 2019 because it is based on the amount as of January 1, 2019. See 5 U.S.C. app. § 501(a)(2); House Rule 25, cl. 1(b).

¹⁸ See 5 U.S.C. app. § 502(a); House Rule 25, cls. 1-4.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² See *2008 House Ethics Manual* at 212. "Unearned" income generally consists of dividends, rents, interest, and capital gains. See Ethics in Government Act, 5 U.S.C. § 102(a)(1)(B).

²³ See House Select Comm. On Ethics, Advisory Opinion No. 13 (October 1978), reprinted in *2008 House Ethics Manual* at 366.

²⁴ *Id.* at 368-369. Regardless of how payment may be characterized, the real facts control. *Id.* at 365.

²⁵ The Committee may consider written agreements addressing reimbursements for expenses entered into before personal services are provided as an exception to this guidance. Any request to consider something other than gross income for the purposes of the outside earned income limit must be submitted in writing. If, however, the reimbursements are for expenses paid for a campaign, the candidate and the employee should seek guidance from the Federal Election Commission's congressional liaisons at (202) 694-1006.

However, expenses for a Member, officer, or employee's own travel are not considered compensation.²⁶ Therefore expenses for a Member, officer, or employee's own travel, whether reimbursed or unreimbursed, are not included in the calculation of earned income.

Nothing in this guidance changes the Committee's guidance concerning family businesses. In general, if a Member, officer, or employee engages in the "general oversight and management or protection of his or her investment [in a business], such services would not be deemed to generate significant income."²⁷ However, if the Member, officer, or employee performs services for the business that "actually generate any significant income for the business," then some part of the payments the Member, officer, or employee receives from the business may be deemed earned income.²⁸ As a reminder, participation in advertising is not "general oversight and management," and it is not "protection of his or her investment."²⁹ Advertising, by definition, is a driver of revenue for a company.³⁰

Finally, federal statutes and regulations prohibit staff from making campaign contributions to their employing Members.³¹ Outlays are contributions, even if reimbursed.³² Reimbursements for an employee's own personal travel expenses are permitted.³³ For further questions regarding reimbursements for personal campaign travel, please contact the Federal Election Commission (FEC) congressional liaisons at (202) 694-1006.

EXAMPLES

1. A senior staffer is an employee of a Member's campaign and receives a W-2 at the end of the year listing the staffer's salary. All of the salary listed on the W-2 is reportable on Schedule C ("Earned Income") on the staffer's financial disclosure statement for that year and subject to the outside earned income limit. The staffer must also report the position on Schedule E ("Positions")
2. A senior staffer establishes a single-member LLC through which to run salary earned from a Member's campaign. Even though a business entity was formed, LLCs and S-Corporations are pass-through entities. Therefore, all income the staffer earned from providing personal services to the Member's campaign is reportable on Schedule C

²⁶ See, e.g., House Rule 25, cl. 5(a)(3)(G)(i) (gifts of travel resulting from outside employment are permissible so long as not offered or enhanced because of the Member, officer, or employee's House position); *2008 House Ethics Manual* at 222 (reimbursement of travel expenses for a Member or senior staffer's board service is permitted, although compensation for that board service is not permitted). Travel related to outside activities that exceeds the reporting threshold must be disclosed on Schedule H ("Travel Payments and Reimbursements") of the annual financial disclosure statement. 5 U.S.C. § 102(a)(2)(B).

²⁷ See House Select Comm. On Ethics, Advisory Opinion No. 13 (October 1978), reprinted in *2008 House Ethics Manual* at 364.

²⁸ *Id.*

²⁹ Comm. on Ethics, *Guidance on Personal Endorsement or Promotion by Members of the House of Representatives* at 2 (Aug. 24, 2018).

³⁰ *Id.*

³¹ See 18 U.S.C. § 603.

³² See 52 U.S.C. § 30101(8)(A)(i).

³³ See *id.* at (8)(B)(iv).

- (“Earned Income”) on the staffer’s financial disclosure statement for that year and subject to the outside earned income limit. If the LLC has a value over \$1,000 or generates income over \$200, the staffer must also report the LLC on Schedule A (“Assets and Unearned Income”).
3. A Member has a side business, where the Member repairs computers and technology equipment. To further the Member’s business, the Member purchased a laptop using the income from the business. Although the Member may be able to deduct the laptop for the Member’s annual taxes, only personal travel expenses may be excluded for the purposes of the outside earned income limit. Therefore, all the income earned is reportable on Schedule C (“Earned Income”) on the financial disclosure statement for that year, and the income is subject to the outside earned income limit. If the side business has a value over \$1,000 or generates income over \$200, the Member must report the business on Schedule A (“Assets and Unearned Income”).
 4. A Member is a stockholder in a C-corporation. The Member receives \$201 in dividends from that C-corporation in a calendar year. The dividends the Member receives are unearned income and should be reported on Schedule A (“Assets and Unearned Income”) of the Member’s financial disclosure statement. If the value of the Member’s shares in the C-corporation exceeds \$1,000 on the last day of the reporting period, the value must also be reported on Schedule A.

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.³⁴ 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.³⁵ As noted above, the senior staff rate for CY 2019 is **\$127,914**, or a monthly salary above \$10,659.

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 memoranda, which are dated January 2, 2019, are available on the Committee’s website (<https://ethics.house.gov>) under “Reports/General Advisories,” and forms for making the notifications regarding job negotiations or recusal are available under “Forms/Post-Employment.”

³⁴ House Rule 27, cl. 2; Stop Trading on Congressional Knowledge Act, Pub. L. No. 112-105 (Apr. 4, 2012) (hereinafter STOCK Act) § 17.

³⁵ House Rule 27, cl. 4; STOCK Act § 17.

POST-EMPLOYMENT RESTRICTIONS

House Members and officers, as well as certain other House employees, are subject to post-employment restrictions on lobbying.³⁶ In general, 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 2019 will remain \$174,000.³⁷ Therefore, the post-employment threshold for employees who depart from a job in a Member, committee, or leadership office in CY 2019 remains **\$130,500**, or a monthly salary of \$10,875 or more. However, the triggering salary for employees of other House offices (such as the Chaplain, Chief Administrative Officer, Clerk, General Counsel, Historian, Inspector General, Law Revision Counsel, Legislative Counsel, Office of Congressional Ethics, Parliamentarian, and Sergeant of Arms) is Executive Schedule Level IV.³⁸ For 2019, that salary is **\$166,500**, or a monthly salary above \$13,875.

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.³⁹

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³⁶ 18 U.S.C. § 207.

³⁷ See Section 212 of Title II of the Energy and Water, Legislative Branch, and Military Construction and Veterans Affairs Appropriations Act, 2019, Pub. L. No. 115-244 Sep. 21, 2018), prohibiting a scheduled cost-of-living pay raise for Members. As a result, Member pay will remain at \$174,000 for 2019.

³⁸ “[O]ther legislative offices” also includes employees of the Architect of the Capitol, United States Botanic Garden, Government Accountability Office, Government Publishing Office, Library of Congress, Congressional Budget Office, and Capitol Police. See 18 U.S.C. § 207(e)(9)(G).

³⁹ Most of the post-employment restrictions apply to very senior staff. As discussed in the general advisory memorandum for former staff, however, one provision applies to all former House staff – regardless of rate of pay – and restricts use of confidential information obtained during personal and substantial participation in ongoing trade or treaty agreements.

CALENDAR YEAR 2019

Item	2019 Amount
Outside earned income & outside employment threshold - Outside employment fiduciary restrictions if paid at rate for more than 90 days during 2019	\$127,914 (\$10,659/mo)
Outside earned income limit	\$28,440
Financial Disclosure/PTR threshold - Annual FD required in May 2020 if paid at rate for 60 days or more in CY 2019 - PTRs required during CY 2019 if: - Paid at rate on first day of calendar year or first day of House employment (if later); <i>or</i> - Paid at rate for any two pay periods during CY 2019 (<i>e.g.</i> , if get bonus or pay raise during calendar year), subject to PTR requirement for remainder of year	\$127,914 (\$10,659/mo)
Written disclosure of job negotiations and recusals required	\$127,914 (\$10,659/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. 7)	\$166,500 (\$13,875/mo)