

APPENDIX II

U.S. House of Representatives

COMMITTEE ON ETHICS

Washington, DC 20515

January 17, 2017

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics

Susan W. Brooks, Chairwoman *SWB*
Linda T. Sánchez, Ranking Member *LTS*

SUBJECT: The 2017 Outside Earned Income Limit and Salaries Triggering the Financial Disclosure Requirement and Post-Employment Restrictions Applicable to House Officers and Employees

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

This memorandum provides details on the current triggering salary figures for CY 2017 for each of the categories noted above, and summarizes them in a table on page 5 of this Memorandum.

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."¹ The GS-15, step 1, basic pay rate for CY 2017 is \$103,672. The applicable 120% calculation for that rate is therefore **\$124,406**, or a monthly salary above \$10,367. This rate is referred to as the "senior staff rate."

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 required to file FD statements. 5 U.S.C. app. §§ 101(e) and (f).

As a result, House officers and employees whose basic rate of pay is equal to or greater than the senior staff rate (\$124,406) for at least **60 days**² during **2017** must file an FD statement on or before May 15, 2018.³ (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.⁴) 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.⁵ Finally, any staff who are paid at the senior staff rate on January 3, 2017 (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.⁶

Please note that the requirement to file an FD statement covering calendar year 2016 applies to officers and employees whose basic rate of pay for at least 60 days in **2016** was **\$123,175** or more (a monthly salary at or above \$10,265). Annual FD statements covering CY 2016 are due on Monday, May 15, 2017, for those individuals who continue to be Members, officers, or employees of the House on that date.⁷

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.⁸

² 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.

³ 5 U.S.C. app. §§ 101(c) and 109(f).

⁴ See Comm. on Ethics *2008 Ethics Manual* at 283-84, available at http://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 p. 2 (Calendar Year 2015), available at <http://ethics.house.gov/forms/information-and-forms>.

⁵ 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 financial disclosure 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 financial disclosure statements.

⁶ 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 for Members and any staff who are paid at the senior staff rate on the first day of the 2017 pay cycle (January 3, 2017). Staff who are paid at or above the senior staff rate for more than 60 days later in 2017 – 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 2018.

⁷ 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.

⁸ 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 financial disclosure statement. Departing employees who are exempt from filing under these circumstances must notify the Clerk of that fact in writing by letter or through the e-filing system for filing financial disclosure statements.

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 income⁹ attributable to each calendar year.¹⁰ As noted above, the senior staff rate for CY 2017 is **\$124,406**, or a monthly salary above \$10,367.

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, 2017, the rate of basic pay for Executive Level II was \$185,100. Accordingly, the outside earned income limit for House Members, officers, and employees paid at or above the senior staff rate for CY 2017 is **\$27,765**.¹¹ 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.¹² 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.¹³ 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.¹⁴ As noted above, the senior staff rate for CY 2017 is **\$124,406**, or a monthly salary above \$10,367.

⁹ 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).

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

¹¹ 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 \$13,883. *See* 5 U.S.C. app. § 501(a)(2); House Rule 25, cl. 1(b).

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

¹³ House Rule 27, cl. 2; Stop Trading on Congressional Knowledge Act, Pub. L. No. 112-105 (Apr. 4, 2012) (hereinafter STOCK Act) § 17.

¹⁴ House Rule 27, cl. 4; STOCK Act § 17.

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 December 22, 2016, are available on the Committee's Web site (ethics.house.gov) under "Reports/General Advisories," and forms for making the notifications regarding job negotiations or recusal are available under "Forms/Post-Employment."

POST-EMPLOYMENT RESTRICTIONS

House Members and officers, as well as certain other House employees, are subject to post-employment restrictions on lobbying.¹⁵ 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 2017 will remain \$174,000.¹⁶ Therefore, the post-employment threshold for employees who depart from a job in a Member, committee, or leadership office in CY 2017 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. For 2017, that salary has increased to **\$161,900**, or a monthly salary above \$13,492.

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.¹⁷

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¹⁵ 18 U.S.C. § 207.

¹⁶ Section 175 of Division A of Further Continuing and Security Assistance Appropriations Act, 2017, 2017 Pub. L. No. 114-254 (Dec. 10, 2016), prohibited a scheduled cost-of-living pay raise for Members. As a result, Member pay will remain at \$174,000 for 2017.

¹⁷ Most of the post-employment restrictions apply to very senior staff. As discussed in the pink sheet for former staff, one provision that applies to all former staff – regardless of rate of pay – restricts use of confidential information obtained during personal and substantial participation in ongoing trade or treaty agreements.

CALENDAR YEAR 2017

Item	2017 Amount
Outside earned income & outside employment threshold - Outside employment fiduciary restrictions if paid at rate for more than 90 days during 2017	\$124,406 (\$10,367/mo)
Outside earned income limit	\$27,765
Financial Disclosure/PTR threshold - Annual FD required in May 2018 if paid at rate for 60 days or more in CY 2017 - PTRs required during CY 2017 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 2017 (e.g., if get bonus or pay raise during calendar year), subject to PTR requirement for remainder of year	\$124,406 (\$10,367/mo)
Written disclosure of job negotiations and recusals required	\$124,406 (\$10,367/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)	\$161,900 (\$13,492/mo)

Susan W. Brooks, Indiana
Chairwoman
Theodore E. Deutch, Florida
Ranking Member



ONE HUNDRED FIFTEENTH CONGRESS

U.S. House of Representatives

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April 6, 2017

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics
Susan W. Brooks, Chairman
Theodore E. Deutch, Ranking Member

SUBJECT: Upcoming Financial Disclosure Clinics & Training

The Committee on Ethics will offer four Financial Disclosure Clinics in April in advance of the upcoming May 15, 2017, due date for the filing of all annual Public Financial Disclosure Statements (FD Statements). In addition, the Committee will hold two Senior Staff Trainings before the May 15 deadline.¹

In addition to the Clinics and Trainings, the Committee's nonpartisan staff is available to review forms in advance of filing for House Members, Officers, and employees. Employees, however, must submit their forms to the Committee for prescreening no later than Monday, May 1, 2017, to ensure that the prescreening is completed by the filing deadline. You may fax your prescreen request to (202) 225-3713 or e-mail it to financial.disclosure@mail.house.gov.

Financial Disclosure Clinics give filers a chance to work closely with financial disclosure staff to address individual filers' questions. Financial Disclosure Clinics also serve to help filers use the electronic filing system to input and submit Statements and Periodic Transaction Reports.

Senior staff training provides additional ethics guidance to staff who are required to file Statements pursuant to the Ethics in Government Act (EIGA). Attendance at Senior Staff Training will satisfy either the annual ethics training requirement or the requirement that senior staff complete an additional hour of specialized training per Congress. **Please note that participation in the Clinics will not satisfy any House-mandated training requirements.**

The date, time, and location for each Clinic are included below. Committee staff will be available for the entire time for each Clinic, but attendees are welcome to walk in at any time, and may stay for as long as they need. You can find this and additional information about financial disclosure requirements on the Committee's website at <https://ethics.house.gov>.

¹ For 2017, senior staff are House officers and employees whose basic rate of pay is equal to or greater than \$124,406 for at least 60 days during 2017.

Date	Time	Location
Friday, April 7	11:00am – 12:30pm	216 Ford HOB
Tuesday, April 11	11:00am – 12:30pm	B249 Longworth HOB, Room C
Tuesday, April 18	11:00am – 12:30pm	B249 Longworth HOB, Room C
Monday, April 24	11:00am – 12:30pm	B249 Longworth HOB, Room C

Members, officers, and employees are invited to attend these Clinics. We recommend that interested participants pre-register for the Clinics as space is limited.

To register:

1. Visit <https://registerme.house.gov>
2. Click on “Ethics,” then “All Staff”
3. Add desired Financial Disclosure Clinic
4. Select “Register” on the left of the page
5. Login and Submit

In addition to the Clinics, the Committee will offer senior staff training that will satisfy either the annual ethics training requirement or the additional hour of training required for senior staff for the 115th Congress (staff must choose one or the other). This training will cover general information about the requirement to file Financial Disclosure and Periodic Transaction Reports. These trainings will take place on the following dates, at the listed times, and in the listed locations:

Date	Time	Location
Thursday, April 13	2:00pm – 3:00pm	HVC-215, Capitol
Tuesday, April 18	2:00pm – 3:00pm	HVC-215, Capitol

In order to receive credit for this training, senior staff are required to pre-register by following the same directions as above and adding the desired Financial Disclosure Training in step three.

The Committee strongly recommends that filers use the electronic filing system to make all filings, but will provide assistance to both paper filers and electronic filers. Filers (and designated third-party preparers) can log onto the system at <https://fd.house.gov>. You can also download a blank copy of the paper form on the Committee’s website at <https://ethics.house.gov>. If you need to make a filing, but did not receive login information, or if you have lost your temporary password, please contact the Legislative Resource Center at (202) 226-5200 for assistance.

* * *

If you have any questions, please contact the Committee at (202) 225-7103.



Helping the Victims of Hurricane Harvey

Sending Office: Committee on House Administration

Sent By: Alex.Hammond@mail.house.gov

September 2, 2017

Dear Colleague:

Several offices have contacted the Committee on House Administration, the Commission on Congressional Mailing Standards (Franking Commission), and the Committee on Ethics to inquire about the extent to which official resources may be used to help those impacted by Hurricane Harvey. We would like to take this opportunity to provide a review of the applicable rules, regulations, and procedures.

When a state of emergency is declared, Members whose districts are directly affected may provide constituents with information to assist those impacted. This information may include addresses and telephone numbers of entities involved in relief efforts being coordinated by the federal government. In the past, Members have provided contact information for blood drives conducted by the American Red Cross in conjunction with the Federal Emergency Management Agency (FEMA). However, referrals to organizations or links to sites whose primary purpose is the solicitation of goods, funds, or services on behalf of individuals or organizations are not permitted under the rules of the House. **To summarize, for Members directly affected, contact information for government entities, as well as private entities directly involved in relief efforts organized by the federal government, may be sent as a mass communication (emails, advertisements, flyers for handout, and posters) and posted on your official website and social media accounts. Unsolicited mass communications must be reviewed by the Franking Commission prior to distribution.**

The Committee on House Administration recommends use of these government established websites for information on the relief efforts:

www.usa.gov/disasters-and-emergencies

www.fema.gov/

www.ready.gov/

www.nhc.noaa.gov/

www.nws.noaa.gov/om/hurricane/index.shtml

<https://www.whitehouse.gov/blog/2017/08/25/preparing-hurricane-harvey>

Members have asked to what extent they may use their official resources to solicit or collect donations of goods, funds, or services on behalf of charities and other private organizations involved in such efforts. We understand the good intentions of those making such inquiries, but the rules of the House preclude Members from using official resources for any purpose other than in support of the conduct of the Member's official and representational duties on behalf of the district the Member currently represents. This rule has been interpreted to mean that charitable solicitations using official resources are not permitted. Please contact the Committee on Ethics with any questions surrounding this rule. **To summarize, Members and staff may not use official resources to solicit anything for charities.**

While official resources may not be used to solicit contributions for charitable organizations or to imply that such organizations or purposes have been endorsed by the House of Representatives, Members and staff may solicit in their personal capacities on behalf of organizations that are qualified under § 170(c) of the Internal Revenue Code – including, for example, § 501(c)(3) charitable organizations such as the Red Cross or Team Rubicon – without first obtaining Committee on Ethics approval. These personal efforts may not use official resources (including official staff time; office telephones, e-mail, and equipment; and official mailing lists). Other restrictions also apply. Solicitations on behalf of non-qualified entities or individuals are decided on a case-by-case basis through the submission to the Committee on Ethics of a written request for permission to make such solicitations. For example, solicitations of donations directly for individuals suffering as a result of the crisis, as opposed to § 501(c)(3) charities assisting sufferers, would need prior Committee on Ethics approval. For more information about solicitations for § 501(c)(3) or other entities, please review pages 347-49 of the *2008 House Ethics Manual* or contact the Committee on Ethics at 5-7103. **To summarize, Members and staff may solicit for charities in their personal capacities only.**

If you have any questions regarding the use of your:

1. Official resources in general, please contact the Committee on House Administration at [\(202\) 225-8281](tel:(202)225-8281) (majority) or [\(202\) 225-2061](tel:(202)225-2061) (minority);
2. Communications resources, please contact the Franking Commission at [\(202\) 226-0647](tel:(202)226-0647) (majority) or [\(202\) 225-9337](tel:(202)225-9337) (minority); or
3. Personal or campaign resources, or the loan of your name and personal title to private solicitations or initiatives in support of the relief efforts, please contact the Committee on Ethics at [\(202\) 225-7103](tel:(202)225-7103).

Sincerely,

Chairman Gregg Harper

Ranking Member Robert A. Brady

Committee on House Administration

Committee on House Administration

Chairwoman Susan Brooks

Ranking Member Ted Deutch

Committee on Ethics

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ONE HUNDRED FIFTEENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

December 21, 2017

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Kenny Marchant, Texas
Leonard Lance, New Jersey

Yvette D. Clarke, New York
Jared Polis, Colorado
Anthony Brown, Maryland
Steve Cohen, Tennessee

MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics
Susan W. Brooks, Chairwoman
Theodore E. Deutch, Ranking Member

SUBJECT: Reminder about Annual Ethics Training Requirements for 2017

This memorandum is a reminder to all offices about ethics training requirements. The Committee on Ethics is required to provide annual ethics training to each Member, Delegate, Resident Commissioner, officer, and employee of the House.¹ The Committee offers ethics training both through online video courses and in-person training sessions. For the 115th Congress to date, the Committee has held 66 in-person ethics training sessions and provided in-person ethics training to more than 2,100 Members, officers, and employees. The dates of additional in-person ethics training sessions for 2017 are included later in this memorandum.

Existing Members are not required to take ethics training, but are encouraged to do so. New House Members must complete a training session specifically designated for new Members within 60 days of joining the House. Existing House officers and employees are required to take one hour of general ethics training each calendar year. New House employees must complete a training session specifically designated for new employees within 60 days of commencing House employment.² In addition, the Committee requires all senior staff³ – whether new or existing employees – to take an additional hour of specialized training at least once per Congress.⁴

¹ House Rule 11, clause 3(a)(6)(A). The Committee defines an “officer or employee” as an individual appointed to a position of employment in the U.S. House of Representatives by an authorized employing authority who is receiving a salary disbursed by the Chief Administrative Officer or is on a leave without pay or furlough status.

² House Rule 11, clause 3(a)(6)(B)(i).

³ “Senior staff” for training purposes are employees who are paid at the “senior staff annual salary rate” for at least 60 days in either (or both) calendar years of a Congress. For 2017, the senior staff annual salary rate is \$124,406, or a monthly pay rate at or above \$10,367. Please note that the senior staff annual salary rate is subject to change in 2018.

⁴ The 115th Congress ends on January 3, 2019.

By January 31 of each year, all House employees must certify to the Ethics Committee that they have completed ethics training during the preceding calendar year.⁵ Employees who pre-register for and sign the attendance sheet at a live training *or* fully complete one of the online training options available through HouseConnect will have made their necessary certification to the Committee. The following are the ethics training requirements for 2017 for Members and staff, as well as the details of how to complete the registration and/or certification process for both live and online ethics training programs.

2017 ETHICS TRAINING REQUIREMENTS

Members

Existing Members are not required to take ethics training, but are encouraged to do so, either by attending an ethics training session or requesting a briefing for their office. New House Members must complete a training session specifically designated for new Members within 60 days of joining the House. Before each Congress, the Committee on Ethics provides ethics training for incoming new Members at the New Member Orientation organized by the Committee on House Administration. The Committee also provides training to Members throughout the year.

“New” House Employees

All new Members and new employees must complete ethics training within 60 days of beginning House employment. A “new” Member for the purposes of the 2017 training requirement is an individual who was *first* sworn in on after January 3, 2017. A “new” House employee for purposes of the 2017 training requirement is an individual who first began employment with the House on or after January 3, 2017. Any former House employee who returns to House employment after a gap of more than 90 consecutive calendar days is considered to be a “new” employee. Interns paid by the House for more than 60 days also must comply with this requirement.⁶ New employees, depending on their work location, may satisfy their training requirement in the following manner:

- New employees who work in Capitol Hill offices are required to attend a *live* training session. The schedule of upcoming new employee live ethics training sessions is available on the Committee website, <https://ethics.house.gov>.
- New employees who do not work in Capitol Hill offices may either attend a live training session *or* watch the “2017 New District Staff” training video online through the HouseConnect website. No other video satisfies the training requirement for new employees.

⁵ House Rule 11, clause 3(a)(6)(B)(ii).

⁶ Detailees, fellows, unpaid interns, and any individuals who are employed by the House and paid for fewer than 60 days are not required to attend ethics training in 2017. The Ethics Committee nonetheless encourages these individuals to complete ethics training so they become familiar with the House ethics rules while working in a House office or for a House committee.

New employees will *not* receive credit for attending or watching any training sessions other than those specifically designated “New Employee” or “New District Staff.” New employees in Capitol Hill offices will not receive credit for completing online, rather than live, training. Note that new employees who are senior staff have an additional hour of training to complete, as explained more fully below under “Senior Staff Training.”

Existing House Employees

“Existing” (*i.e.*, not new) House employees must complete one hour of training before the end of the calendar year. For 2017, this means all existing House employees must complete one hour of training by **December 31, 2017**. **There are no extensions to this deadline, for any reason.** In addition, employees who are senior staff may have an additional hour of training to complete, as explained more fully in the next section. Employees are responsible for knowing whether they are considered senior staff.

As a general matter, existing employees will fulfill their general ethics training requirement by completing an online session designated for general ethics training through the HouseConnect website. The Ethics Committee will also offer some live training sessions that fulfill the general ethics training requirement. Note that attending a live training session for *new* employees does not satisfy the annual ethics requirement for *existing* House employees.

Senior Staff Training

All employees who are “senior staff”⁷ are required to take an additional hour of training at least once per Congress on issues primarily of concern to senior staff or supervisors. For the 115th Congress, this means all senior staff must complete one hour of training by **January 3, 2019**. This “senior staff” hour is required *in addition to* the one hour of general ethics training all officers and staff are required to complete annually. Senior staff employees may fulfill the requirement for an additional hour by attending a live senior staff training session or completing an online senior staff training session through the HouseConnect website.

Briefings that satisfy the senior staff training requirement include general sessions on issues of concern to senior staff, sessions on completing financial disclosure (FD) statements or Periodic Transaction Reports (PTRs), or sessions on the post-employment restrictions. However, employees may *not* complete more than one hour of senior staff training in lieu of completing their annual general ethics training requirement.

ONLINE REGISTRATION & CERTIFICATION PROCESS

For live ethics training

Employees who plan to attend any live training session **must** preregister at <https://registerme.house.gov> **and** sign in on the attendance form prior to the start of the training. Even if employees preregister, they must sign in and attend the full hour to fulfill their ethics training requirement. Attendees must arrive within five minutes of the start of the training to be

⁷ See *supra* note 3.

able to sign the attendance sheet. **Any late arrivals who miss the sign-in period will not receive credit.** After their attendance, employees who have signed the attendance sheet and attended the full hour of training will receive email certificates, which they should preserve for their own records. The email certificates are confirmation for employees that they have satisfied the annual training and certification requirement. Any employee who has received this email confirmation statement has made the necessary certification to the Committee that they have completed their ethics training requirement.

The list of upcoming live training sessions for the remainder of 2017 is listed below and also available on the Ethics Committee website: <https://ethics.house.gov>. All scheduled training sessions – whether for new, existing, or senior staff – will be listed on the Committee calendar on an ongoing basis.

<p align="center">Senior Staff Ethics Training</p>	<p>Longworth B249-B and C</p>	<p>December 21, 2017, 10:00am–11:00am</p>
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For online ethics training

Employees who want to complete ethics training online can access the training through the HouseConnect website: <https://houseconnect.house.gov>. Employees must complete the entire online training program to receive credit. You must use a House computer to access the HouseConnect website. Employees who do not have access to a House computer or do not have a House email account should contact the Ethics Committee to make alternate arrangements for completing their training.

After completing an online training program, the system will automatically log the employee as “complete.” This information is automatically transmitted to the Ethics Committee. Thus, once the system labels an employee as “complete,” the employee has satisfied the annual training and certification requirement. Employees will be able to check HouseConnect at any time to verify completion of their own annual ethics training requirement. The Ethics Committee does not have access to this information prior to the end of the calendar year and therefore cannot check your completion status for you with regard to online training.

To access your own record in HouseConnect, you should log in to your own account page in the HouseConnect website: <https://houseconnect.house.gov>. On your account page, the entry in the “Complete” column next to the particular training session read “True” if the session has been completed. (If the session has not been completed, the column will read “False.”) Anyone needing to check whether they have completed an online training session can view and print their own screen for verification. Their name appears in the upper right corner of the screen.

FAILURE TO COMPLY WITH THE TRAINING REQUIREMENTS

Failure to satisfy the annual training requirement is a violation of House rules⁸ and may result in any of the specified disciplinary sanctions for House employees, informing employees’

⁸ See House Rule 11, clause 3(a)(6)(B)(ii).

supervisors of their noncompliance, publication of noncompliant employees' names and employing offices, additional ethics training, or other actions the Committee deems appropriate. If you have any questions regarding this guidance, please feel free to contact the Committee's Office of Advice and Education at (202) 225-7103,

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Susan W. Brooks, Indiana
Chairwoman
Theodore E. Deutch, Florida
Ranking Member

Kenny Marchant, Texas
Leonard Lance, New Jersey
Mimi Walters, California
John Ratcliffe, Texas

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ONE HUNDRED FIFTEENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

December 22, 2017

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MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics
Susan W. Brooks, Chairwoman
Theodore E. Deutch, Ranking Member

SUBJECT: Current Guidance on Sexual Harassment and Employment Discrimination in the
Congressional Workplace

Sexual harassment and employment discrimination violate a guiding principle for Members of the House of Representatives set forth in the Code of Official Conduct: “[a] Member, Delegate, Resident Commissioner, officer, or employee of the House shall behave at all times in a manner that shall reflect creditably on the House.” The Committee takes allegations of sexual harassment and employment discrimination in the workplace very seriously. The purpose of this memorandum is to remind House Members and staff of the *current* federal statutes, House rules, Committee guidance, and available House resources regarding sexual harassment and employment discrimination in the Congressional workplace. Please be advised, this guidance is subject to change. As you are aware, reforms on how Congress handles sexual harassment and employment discrimination matters are currently being considered by the entire Congress.

Any House Member or employee who believes that he or she has witnessed or experienced sexual harassment in the Congressional workplace is encouraged to contact the Committee’s Advice and Education Office to discuss his or her particular circumstance and receive guidance about the options available to them. If you would like to file a complaint involving sexual harassment or employment discrimination, please contact the Committee’s Investigation Office. If you have any questions or would like to meet with Committee staff, please contact the Committee at (202) 225-7103.

HOUSE RULES, LAWS, REGULATIONS, OR OTHER STANDARDS OF CONDUCT

Sexual harassment and employment discrimination are prohibited in the House, both by statute and by House rules.¹ Section 201 of the Congressional Accountability Act (CAA), prohibits harassment and discrimination based on race, color, national origin, sex, religion, age, or

¹ 2 U.S.C. §§ 1311 *et seq.*; House Rule 23, clause 9.

disability.² The law also prohibits actions that cause a “disparate impact” on an employee on the basis of race, color, national origin, sex, or religion, despite appearing neutral in practice.³

Discrimination on the basis of sex includes different treatment or disparate impact due to pregnancy, childbirth, or related medical conditions, as well as sexual harassment.⁴ The Office of Compliance defines sexual harassment as “unwelcome conduct of a sexual nature or based on gender that would offend a reasonable person in the employee’s position and actually offends the victim resulting in an adverse employment action or creates a hostile work environment.”⁵

In addition to federal law, House Rules have long prohibited discriminatory conduct in employment. House rules state that “[a] Member . . . may not discharge and may not refuse to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of the race, color, religion, sex (including marital or parental status), disability, age, or national origin of such individual”⁶

Sexual harassment and employment discrimination also violate House Rule 23, clauses 1 and 2, which state that “[a] Member, Delegate, Resident Commissioner, officer, or employee of the House shall behave at all times in a manner that shall reflect creditably on the House,” and that “[a] Member, Delegate, Resident Commissioner, officer, or employee of the House shall adhere to the spirit and the letter of the Rules of the House.”⁷ As discussed further below, the Committee on Ethics has jurisdiction to investigate violations of House Rules.

REPORTING SEXUAL HARASSMENT IN THE CONGRESSIONAL WORKPLACE TO THE COMMITTEE ON ETHICS

The Committee’s Advice and Education Office is a resource to the entire House community to help Members and staff carry out their duties in compliance with all the ethics rules, laws, and regulations. Committee staff are non-partisan and serve all Members and staff equally. All requests for advice and the Committee’s responses are confidential unless disclosed by the requestor. Further, discussing a matter with Advice and Education staff does not constitute filing a complaint or commence an ethics investigation. Accordingly, any Member or staff who would like to discuss sexual harassment or employment discrimination should contact the Committee’s Advice and Education Office for guidance of options available to them.

² Office of Compliance, “Harassment and Discrimination Prohibited,” *available at* <https://www.compliance.gov/act/under-cao/harassment-and-discrimination-prohibited>; *see generally* 2 U.S.C. §§ 1311 *et seq.*

³ *Id.*

⁴ 2 U.S.C. §§ 1311 *et seq.*

⁵ Office of Compliance, “Compliance @ Work” (March 2017).

⁶ House Rule 23, clause 9.

⁷ House Rule 23, clauses 1 and 2.

The Committee is also authorized to “investigate potential violations of the Code of Official Conduct or of any applicable rules, laws, or regulations, governing the performance of official duties or the discharge of official responsibilities.”⁸ When the Committee finds a violation, it may issue a letter of reproof on its own authority, or take other remedial action. For a violation by a Member, it may also recommend that the full House consider other sanctions, including denial or limitation of any right, power, privilege, or immunity of the Member; reprimand; censure; expulsion; or any other sanction determined by the Committee to be appropriate. For a violation by an officer or employee, the Committee may recommend that the full House consider fine; reprimand; dismissal from employment; or any other sanction determined by the Committee to be appropriate. Individuals who wish to file a sexual harassment or employment discrimination complaint involving a House Member or staff should contact the Committee’s Investigation Office.

SEXUAL HARASSMENT AND EMPLOYMENT DISCRIMINATION TRAINING REQUIREMENT FOR HOUSE MEMBERS AND EMPLOYEES

On November 29, 2017, the House passed a resolution requiring House Members, officers, and employees to complete training in “the workplace rights and responsibilities applicable to offices and employees of the House ... including anti-discrimination and anti-harassment training” during each session of Congress.⁹ As discussed further below, all Members, officers, and employees will also be required to certify that they have completed this training. House employees for purposes of this resolution include an individual serving in an office of the House of Representatives as an intern (including an unpaid intern), a participant in a fellowship program, or a detailee from another office of the federal government. The resolution directed the Committee on House Administration (CHA) to issue regulations implementing this new requirement and to consider additional mechanisms to ensure compliance with the training requirement. On December 19, 2017, CHA issued regulations, but intends to provide more detailed guidance on the mandatory training. Until the mandatory training is available, there are several offices within the House that offer training on workplace rights and responsibilities, including anti-discrimination and anti-harassment training. More information on these training options is below.

New House Members and Employees

All new employees must complete sexual harassment and employment discrimination training within 90 days of beginning House employment.¹⁰ A “new” House Member and employee for purposes of this training requirement is an individual who begins employment with the House after the session of Congress begins.

⁸ House Rule 11, clause 3(b).

⁹ H. Res. 630, 115th Cong., 1st Sess. (2017).

¹⁰ H. Res. 630, Sec. 1(b)(1)(B).

Existing House Members and Employees

Existing House Members and employees must complete the sexual harassment and employment discrimination training no later than 90 days after the session of Congress begins.¹¹ An “existing” House Member and employee is an individual who is serving as a Member, officer, or employee of the House as of the first day of a session of Congress.¹²

Special Rule for the One Hundred and Fifteenth Congress

Existing House Members and employees must complete mandatory sexual harassment and employment discrimination training **no later than July 2, 2018**.¹³

HOUSE RESOURCES FOR TRAINING AND GUIDANCE ON SEXUAL HARASSMENT IN THE CONGRESSIONAL WORKPLACE

Employing Offices. In addition to mandating training for all Members, officers, and employees in workplace rights and responsibilities, H. Res. 630 directs CHA to issue regulations requiring each employing office in the House to post in a prominent place a statement of the rights and protections provided to House employees under the CAA.¹⁴ CHA issued such regulations on December 19, 2017. These notices must include information about the procedures available to House employees under the CAA for responding to and adjudicating allegations of violations of such rights and protections.

Office of Compliance (OOC). The OOC is the forum created by the CAA for resolving claims of harassment and discrimination by legislative branch employees. The OOC has published a guide to the CAA, which is available on its website <https://www.compliance.gov>. In addition to the mandatory sexual harassment training, the OOC is also available to provide training and workshops for House Members and officers through their Education and Outreach program. If you have questions about OOC’s Education and Outreach program, please contact OOC at (202) 724-9250.

Office of House Employment Counsel (OHEC). OHEC is available to provide advice and guidance to House Members and employing authorities on employment matters and on the establishment of office policies consistent with House rules and federal law. In addition, OHEC provides sexual harassment awareness training for Members and Chiefs of Staff, as well as sensitivity awareness training for all House Members and staff. If you have questions about OHEC’s training program, please contact OHEC at (202) 225-7075.

¹¹ H. Res. 630, Sec. 1(b)(1)(A).

¹² *Id.*

¹³ H. Res. 630, Sec. 1(b)(2).

¹⁴ H. Res. 630, Sec. 2.

The Office of the Chief Administrative Officer (CAO). In consultation with OHEC, the CAO offers the following online training on workplace sexual harassment.

For employees: <https://houseconnect.house.gov/p5dwac0y1ma/>

For supervisors: <https://houseconnect.house.gov/p73xg82lgc4/>

Committee on House Administration. CHA has published a *Model Employee Handbook*, available on its website at <https://cha.house.gov>. In addition, H. Res. 630 directs CHA to issue regulations to provide that each employing office of the House must post in a prominent location in each of their offices a statement of the rights and protections provided to House employees under the CAA, including the procedures and protections available to House employees for responding to and adjudicating allegations of violations of the CAA.¹⁵ CHA issued such regulations on December 19, 2017.

If you have any questions regarding this guidance, please feel free to contact the Committee's Advice and Education Office at (202) 225-7103.

* * * * *

¹⁵ H. Res. 630, Sec. 2.

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Yvette D. Clarke, New York
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ONE HUNDRED FIFTEENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

January 5, 2018

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MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics
Susan W. Brooks, Chairwoman
Theodore E. Deutch, Ranking Member

SUBJECT: The 2018 Outside Earned Income Limit and Salaries Triggering the Financial Disclosure Requirement and Post-Employment Restrictions Applicable to House Officers and Employees

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

This memorandum provides details on the current triggering salary figures for Calendar Year (CY) 2018 for each of the categories noted above, and summarizes them in a table on page 5 of this Memorandum.

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."¹ The GS-15, step 1, basic pay rate for CY 2018 is \$105,123. The applicable 120% calculation for that rate is therefore **\$126,148**, or a monthly salary above \$10,512. This rate is referred to as the "senior staff rate."

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 required to file FD statements. 5 U.S.C. app. §§ 101(d) and (f).

As a result, House officers and employees whose basic rate of pay is equal to or greater than the senior staff rate (\$126,148) for at least **60 days**² during **2018** must file an FD statement on or before May 15, 2019.³ (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.⁴) 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.⁵ Finally, any staff who are paid at the senior staff rate on January 3, 2018 (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.⁶

Please note that the requirement to file an FD statement covering calendar year 2017 applies to officers and employees whose basic rate of pay for at least 60 days in **2017** was **\$124,406** or more (a monthly salary at or above \$10,367). Annual FD statements covering CY 2017 are due on Tuesday, May 15, 2018, for those individuals who continue to be Members, officers, or employees of the House on that date.⁷

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.⁸

² 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.

³ 5 U.S.C. app. §§ 101(d) and (f).

⁴ See Comm. on Ethics *2008 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 p. 2 (Calendar Year 2016), available at <https://ethics.house.gov/forms/information-and-forms>.

⁵ 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.

⁶ 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 2018 pay cycle (January 3, 2018). Staff who are paid at or above the senior staff rate for more than 60 days later in 2018 – 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 2019.

⁷ 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.

⁸ 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 letter or through the e-filing system for filing FD statements.

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 income⁹ attributable to each calendar year.¹⁰ As noted above, the senior staff rate for CY 2018 is **\$126,148**, or a monthly salary above \$10,512.

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, 2018, the rate of basic pay for Executive Level II was \$187,000. Accordingly, the outside earned income limit for House Members, officers, and employees paid at or above the senior staff rate for CY 2018 is **\$28,050**.¹¹ 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.¹² 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>). 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.¹³ 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.¹⁴ As noted above, the senior staff rate for CY 2018 is **\$126,148**, or a monthly salary above \$10,512.

⁹ 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).

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

¹¹ 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 \$14,025. *See* 5 U.S.C. app. § 501(a)(2); House Rule 25, cl. 1(b).

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

¹³ House Rule 27, cl. 2; Stop Trading on Congressional Knowledge Act, Pub. L. No. 112-105 (Apr. 4, 2012) (hereinafter STOCK Act) § 17.

¹⁴ House Rule 27, cl. 4; STOCK Act § 17.

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 December 22, 2016, 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."

POST-EMPLOYMENT RESTRICTIONS

House Members and officers, as well as certain other House employees, are subject to post-employment restrictions on lobbying.¹⁵ 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 2018 will remain \$174,000.¹⁶ Therefore, the post-employment threshold for employees who depart from a job in a Member, committee, or leadership office in CY 2018 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.¹⁷ For 2018, that salary has increased to **\$164,200**, or a monthly salary above \$13,683.

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.¹⁸

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¹⁵ 18 U.S.C. § 207.

¹⁶ See Section 101(a)(9) of Division D of Continuing Appropriations Act, 2018 and Supplemental Appropriations for Disaster Relief Requirements Act, 2017, Pub. L. No. 115-56 (Sep. 8, 2017), as amended by An Act to amend the Homeland Security Act of 2002 to require the Secretary of Homeland Security to issue Department of Homeland Security-wide guidance and develop training programs as part of the Department of Homeland Security Blue Campaign, and for other purposes, Pub. L. No. 115-96 (Dec. 22, 2017), prohibiting a scheduled cost-of-living pay raise for Members. As a result, Member pay will remain at \$174,000 for 2018.

¹⁷ "[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).

¹⁸ Most of the post-employment restrictions apply to very senior staff. As discussed in the pink sheet for former staff; however, one provision applies to all former 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 2018

Item	2018 Amount
Outside earned income & outside employment threshold - Outside employment fiduciary restrictions if paid at rate for more than 90 days during 2018	\$126,148 (\$10,512/mo)
Outside earned income limit	\$28,050
Financial Disclosure/PTR threshold - Annual FD required in May 2019 if paid at rate for 60 days or more in CY 2018 - PTRs required during CY 2018 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 2018 (e.g., if get bonus or pay raise during calendar year), subject to PTR requirement for remainder of year	\$126,148 (\$10,512/mo)
Written disclosure of job negotiations and recusals required	\$126,148 (\$10,512/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)	\$164,200 (\$13,683/mo)

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COMMITTEE ON ETHICS

January 19, 2018

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MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

FROM: **Committee on Ethics**
Susan W. Brooks, Chairwoman
Theodore E. Deutch, Ranking Member

SUBJECT: Ethics Guidance Related to Operations During a Lapse in Appropriations

As House offices consider the implications of a possible lapse in appropriations the Committee wishes to reiterate prior related guidance concerning furloughed staff. As noted in the guidance issued by the Committee on House Administration, a furloughed (non-essential) employee may not perform official duties or provide services during the furlough period. For further discussion, please see pages 12 to 13 of the *Members' Congressional Handbook* and the guidance titled *Legislative Operations During a Lapse in Appropriations* issued by the Committee on House Administration.¹

We remind all House Members and employees, during a lapse in appropriations you remain subject to all ethics rules and regulations. Accordingly, Members and employees may not accept any gift, except as provided in the House gift rule.² Members and employees who have received Committee approval to participate in privately-sponsored, officially-connected travel or plan to participate in a Mutual Educational and Cultural Exchange Act (MECEA) trip, please contact the Committee for further guidance as to whether you may participate in such travel during a lapse in appropriations.

In addition, there are significant limitations on the use of volunteer services in place of paid services. For instance, unpaid interns, fellows, or detailees may be able to work during a lapse in funding, but they may not supplant the duties of a paid House employee. Executive branch employees detailed to a House committee should consult their agency to determine if they are deemed essential. For additional guidance, please see page 5 of the *Members' Congressional Handbook* and pages 284 to 292 of the *Ethics Manual*. All standard guidance and limitations should be followed.

While there are permissible uses of campaign funds to support official activities, House Rule 24 does not permit offices to use campaign funds to compensate employees for services. Therefore, non-essential staff may not be paid with campaign funds to perform official duties. While staff may of course work or volunteer for a campaign during a furlough period, campaign work may not be performed on House property. Consequently, while on furlough, such employees should not return to the office or communicate about official matters with the office (with the exception of scheduling coordination).

¹ Comm. on House Admin., *Legislative Operations During a Lapse in Appropriations* (Jan. 2018), available at <https://cha.house.gov/lapse-in-appropriations-guidance>.

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

As always, House employees must never be required or coerced to perform campaign duties and past or future campaign service may not be a factor in determining which employees will be deemed essential or non-essential.

Finally, any House staff who wish to undertake non-congressional employment while on furlough are reminded that they remain House employees and, therefore, all rules regarding outside employment remain in effect. Such rules include fiduciary prohibitions and the outside earned income limit for senior staff, and the prohibitions on using House resources or performing work that overlaps or conflicts with one's House duties for all staff.³

While questions regarding pay status and employment procedures should be addressed to the Committee on House Administration or the office of Chief Administrative Officer, as appropriate, the Committee is available to assist offices in considering the implications of the ethics rules, laws, or standards of conduct on your efforts to address the financial needs of your office.

Committee staff will be available during any lapse in appropriations to provide advice to House Members and employees. Please direct questions to the Committee's Advice and Education staff at (202) 225-7103.

³ For additional information, see the chapter "Outside Employment and Income" in the Ethics Manual, at pages 185 to 246.

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COMMITTEE ON ETHICS

June 7, 2018

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MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics
Susan W. Brooks, Chairwoman
Theodore E. Deutch, Ranking Member

SUBJECT: Campaign Activity Guidance

We would like to take this opportunity to remind House Members, officers, and employees of the rules that apply to participating in campaign activity. A wide range of standards affect whether, how, when, and where Members, officers, and employees of the House may engage in campaign activities. Those standards include House Rules; rules promulgated by the Committee on House Administration, the Franking Commission, and the Building Commission; federal statutes; and federal regulations. This pink sheet does not announce any new standards or interpretations of existing standards, but instead provides an overview of key issues related to campaign activity and commonly encountered campaign issues.

This document is organized into two parts. The first part is a list of “Top Ten Things to Remember about Campaign Activity,” which contains a concise statement of ten important reminders governing House Members, officers, and employees’ participation in campaign activities. The second part is a more in-depth discussion, in question and answer format, tied to each of the ten reminders. The Committee on Ethics (“Committee”) encourages congressional offices to post the “Top Ten Things to Remember about Campaign Activity” in common areas as a reminder of the rules governing campaign activity, and to disseminate this information to staff widely. Members may also wish to share this pink sheet with their campaign staff.

This pink sheet is a high-level summary of the rules which House Members, officers, and employees ask Committee counsel most frequently. Although this document contains a great deal of information, it is not comprehensive and it does not address every situation House Members, officers, and employees face when engaging in campaign activities. The Committee is always happy to schedule office briefings as well.

As with many issues, there are permutations and exceptions, which is why *the list contains an important reminder*: **Consult with the Committee if you have questions about participation in campaign activities.**

Top Ten Things to Remember about Campaign Activity

1. You may not conduct campaign activities in official buildings or use official resources. This restriction applies to campaign activity at all levels and is not limited to fundraising activities.
2. Principal campaign committee funds may be used for official purposes in some circumstances. Members may not, however, use campaign resources for certain official purposes—communications, salary for performing official duties, office space, office furniture, office equipment, or related information technology services (excluding handheld communications devices).
3. Members, as well as their communications and press staffers, may answer some campaign related inquiries in the official office so long as it is not the primary purpose of an interview or inquiry.
4. In many cases, House officers and employees may volunteer for or be paid by a political campaign.
5. House officers and staff who are paid at the “senior staff rate” by the House for their official duties may be paid for campaign work. Senior staffers are subject to a limit on the type of work for and amount of money they may be paid by the campaign, and must report their campaign income on their annual financial disclosure statement.
6. A federal statute prohibits House officers and employees from contributing to their employing Member’s campaign. This includes making “outlays,” or payments for goods and services that will be reimbursed by the campaign. However, there is a limited exception for your own campaign-related travel expenses.
7. Although the general rule is complete separation between official and campaign resources, there are a few, very limited, and very specific exceptions that permit the use of official resources for campaign purposes.
8. The official scheduler is permitted to use official resources to have limited communications with the Member’s campaign in order to coordinate the Member’s official and campaign activities. However, there are specific rules for how and what you may coordinate for your employing Member’s schedule.
9. The campaign may only use material created with official resources after its official use has been exhausted.
10. Consult with the Committee on Ethics if you have questions about participation in campaign activities by calling (202) 225-7103.

USE OF OFFICIAL RESOURCES

1. You may not conduct campaign activities in official buildings, using official resources, or on House time.

Q. Do these rules apply to my participation in any federal, state, or local campaign?

A. The rules for campaign activity apply to **all** campaign activity, whether for a local, state, or federal office. The rules are the same for Members, officers, and employees, with some limited exceptions.

TIP: Remember that while you are an employee of the House, you are subject to all House rules and legal authorities concerning your involvement in **any** political campaign.

Q. How do I determine what is “campaign activity,” as opposed to official activity?

A. Members are in the best position to determine whether an activity is campaign or official in nature. In making this determination, Members may consider the purpose of the activity, who is hosting the activity (if not the Member), and the subject matter. Once an event is designated as campaign or official, only the appropriate resources may be used for that event. You may not combine funds for an activity unless you are specifically permitted to use campaign funds for an official activity (see number 4, below).

TIP: A “best practice” is to designate an event as either campaign or official at the beginning stages so that everyone knows what resources may be used to plan and/or staff an event. Please note, this applies to more than just campaign fundraisers for a Member’s individual campaign.

Q. What do you mean by official buildings?

A. Official buildings (also called official office space) encompass any federal building; House office buildings, including Members’ personal offices, and all other House facilities; district office space; any Senate office building; the Capitol; the Library of Congress, and any federal building.

TIP: If you need to send an email or make a phone call to the campaign on your own time using your own device or a device paid for by the campaign, you may do so from campaign headquarters, at home, at a political party office, from a Member’s home, or any other non-official location (for example, the coffee shop down the street from your office).

Q. What is an official resource?

A. An official resource is anything paid for with official funds appropriated to a personal office, a committee, or other office. Official resources include tangible things like computers, printers, letterhead, desks, and telephones. Official resources can also be services paid for with official funds and work product created for a congressional office, such as, a constituent database. While on the official payroll or doing official work, officers and employees are also considered to be an official resource (see below for further guidance concerning when your time can be considered your own). Finally, unpaid interns and

fellows are an official resource while they are performing official tasks for a congressional office.

TIP: Although not required, a “best practice” is to use different vendors for campaign and official services so that staff can easily determine whether a particular vendor or service is considered an official resource or a campaign resource. Although the campaign may use certain official resources in some limited instances (see number 9, below), work product, such as a constituent database, is always considered an official resource and may not be used by the campaign.

Q. If my time can be considered an official House resource, do I have my own time?

A. Yes. What constitutes a staff member’s “own time” is determined by the personnel policies that are in place in the employing office. Time that is available to a staff member under those policies to engage in personal or other outside activities may instead be used to do campaign work, if the individual so chooses. This free time may include, for example, a lunch period, time after the end of the business day, and annual leave. Please note, this does not include the use of sick time.

TIP: If you work for the House and for a campaign, keep a log of when you participate in campaign activities on your own time (e.g. nights, weekends, annual leave). This way, if you are ever challenged about whether you did campaign work on House time, you have a document ready to show that you did not.

Q. When I am not on House time, do I have to tell my employing Member what I am doing or for which campaign I plan to work?

A. There is no specific ethics rule that requires you to inform your employing Member about what you do on your own time, campaign or otherwise. However, your employing office may have a more restrictive policy. Further, the Committee strongly recommends that you keep the lines of communication concerning your outside activities open with your employing Member. Keep in mind that your outside activities could create an actual or perceived conflict of interest for your office, so you should consult with your supervisor and the Committee before engaging in outside activity. Specific to campaign activity, it is important for your employing Member to know for whom you intend to work so he or she can anticipate potential issues.

TIP: Before you engage in any outside activity, have a discussion with your supervisor about how your outside activities might impact your official duties and the official office.

2. Although the general rule is complete separation between official and campaign resources, there are a few, very limited, and very specific exceptions that permit the use of official resources for campaign purposes.

Q. I am a scheduler for a very busy Member of Congress. Can I use my phone, email address, and time while on the official clock to coordinate my Member's official *and* campaign schedules?

A. Yes, as the official scheduler, you may use any House resource necessary to coordinate with the campaign. The purpose of this exception is to ensure that your employing Member is not scheduled to be in two places at once. However, there are specific rules for how and what you coordinate for your employing Member's schedule (see number 8, below, or consult with the Committee).

TIP: For those offices that have a scheduler both in Washington, D.C., and in the district, designating one person as the main point of contact for the campaign may help avoid potential miscommunications.

Q. Can Members, or press secretaries or communications directors, talk about campaign activities as part of an official interview?

A. Yes, though it should not be the primary purpose of the interview. A Member or the press secretary in the congressional office may answer occasional questions on political matters, and may also respond to such questions that are merely incidental to an interview focused on the Member's official activities. However, while in the congressional office, a Member or press secretary should not give an interview that is substantially devoted to the campaign, or initiate any communication, such as a press call or email, that is campaign-related. A Member or press secretary who wishes to do either of those things should do so outside of the congressional office and on his or her own time.

Q. What do I do if people call, email, stop in, or write to the congressional office about campaign activities?

A. The congressional office may refer to the campaign office letters and other communications and inquiries that it receives concerning the campaign. Likewise, the campaign office may refer to the congressional office any officially-related matters that it receives. A "best practice" is to use the least amount of official resources to get the person contacting your office for a campaign purpose where they need to go. For example, if the campaign-related communication is conducted orally (*e.g.*, a phone call or walk-in), you may in that phone call or during that oral conversation provide the campaign's phone number or email address. For communications received in writing (*e.g.*, a letter received in the official office or an email), you may forward the communication to the campaign and let the sender know that you have forwarded it. For letters, send them to the campaign using campaign-provided envelopes and postage. For emails, forward the email on to the campaign's email address.

Q. Because we get so many campaign inquiries through the congressional office, can we just include a link to the campaign in our communications, on our website, on social/new media, and other official sites? What about the reverse—can the campaign post a link to official sites?

A. You may not provide campaign contact information except as discussed above. You may not include a link to the campaign in congressional communications, on official websites, or on official social/new media. The campaign, however, may redirect constituents who contact the campaign for an official purpose to the official sites only in specific instances, and only using approved language. For more information about when and how the campaign may redirect constituents, please review the Committee's March 12, 2012, Advisory, titled "Changes in Rules Regarding Providing a Hyperlink from Campaign Internet Sites to Official Internet Sites," which is available on the Committee's website.

TIP: Ensure that campaign staff know exactly how and when the campaign may link from a campaign site to an official site by providing the Committee's advisory to campaign staff.

Q. May I use my personal phone to post to a campaign's social media page while inside a House building or the Capitol?

A. No, even if you are using a personal device, you may not engage in any campaign-related activities while in House buildings or the Capitol.

Q. What do I do with an unsolicited campaign contribution that someone brings to the office or to an official event?

A. You must either return the contribution to the donor or forward checks to the campaign. If you mail the contribution to the campaign, federal law requires that you send the contribution within seven days. Moreover, you may **never** accept a campaign contribution that is accompanied by a request or a "thank you" for taking official action. Finally, a federal statute prohibits Members from personally receiving even unsolicited campaign contributions in their office or at an official event, with a very limited exception for Member to Member contributions, discussed below.

TIP: Designate one person in the office to log all unsolicited contributions and how the office disposed of them—by sending it back to the donor or by forwarding it to the campaign. The log should include dates to ensure offices can demonstrate sending the donation to the campaign within seven days, if that is the chosen remedy.

Q. Can Members, officers, or employees solicit for campaign contributions in official buildings?

A. Generally, no. House officers and employees are absolutely barred from soliciting campaign contributions in official buildings. However, Members may solicit **other Members only** for campaign contributions, but may **never** solicit other Members on the House Floor, or in any of the rooms immediately adjacent to the House Floor.

Q. If the campaign asks, can I give them official materials like issue statements or other things that are available on our official sites?

A. Yes, you can provide **one** copy of any **public** document the campaign requests. Further, you may not use official resources to create material specifically to provide a copy to the campaign. The campaign can use the substance in these documents to create its own material. You may not provide the campaign with internal or confidential materials.

TIP: Treat the campaign as if it were a constituent. If you would not provide something to a constituent because it is confidential or internal, you may not provide that material to the campaign.

USE OF CAMPAIGN RESOURCES

3. Principal campaign committee funds may be used for official purposes in certain circumstances.

Q. What campaign funds may be used for official purposes?

A. Where permitted, Members may use funds from their principal campaign committee for their House position for an official purpose, including activities for House committees. This exception does not extend to the use of leadership PAC funds, nor does it extend to any campaign funds that the Member may control for races other than re-election for the House of Representatives.

TIP: Occasionally Members wish to supply food or refreshments for a caucus or other official meeting. This may be paid for only with principal campaign funds or the Members' personal funds.

Q. Can the campaign pay for a smartphone or tablet that I can use for both official and campaign purposes?

A. Yes. Members may use principal campaign committee funds for a smartphone or tablet for themselves and their staff to be used for both official and campaign purposes. However, use of a smartphone or tablet for either purpose must be done in the appropriate place, at the appropriate time, and using the appropriate resources. As discussed more fully in number 4, this provision does not extend to laptop or desktop computers.

TIP: You may wish to designate a regular time outside of official time when you will not be in an official building to check campaign email and voice mail.

Q. Can a Member use principal campaign committee funds for a car that he or she uses for both campaign and official purposes?

A. Yes. Members may use principal campaign committee funds to pay for a leased car that is used for transportation to and from both campaign and official activities.

TIP: Remember, just because the car may be used for both campaign and official activities, the Member or staffer driving the Member to and from an activity must be consistent with the type of

activity. Campaign staff may drive the Member to a campaign event in the dual-use car, but may not drive the Member to an official event in the dual-use car. The same is true for official staff – yes to an official event, no to a campaign event (unless they are volunteering on their own time). Please note, the Committee on House Administration (CHA) issues regulation and guidance regarding mileage reimbursements from the Members Representational Allowance (MRA). Please contact CHA for questions regarding the appropriate use of the MRA at (202) 225-8281 (majority) or (202) 225-2061 (minority).

Q. Can a Member use principal campaign committee funds to pay for refreshments at his or her official town hall meeting?

A. Yes. Members may use principal campaign committee funds to pay for expenses related to an official constituent event including, but not limited to, providing refreshments. Remember, however, that there are certain categories for which use of campaign funds is expressly prohibited. (See Top Ten Things to Remember.)

TIP: Generally, you should only use principal campaign committee funds for an official event where at least one constituent is in attendance. If you would like to use principal campaign committee funds for other events, please contact the congressional liaisons at the Federal Election Commission (FEC) at (202) 694-1006.

Q. Can a Member use principal campaign committee funds to pay for travel expenses for a speaker to appear at a hearing?

A. Yes. Members can use principal campaign committee funds to pay for a speaker to travel to an event the Member or Member's committee is sponsoring.

TIP: The class of travel paid for with principal campaign committee funds for this purpose is not limited by House Rules. However, you should check with the FEC congressional liaisons to see if it places a limitation on the type of travel a Member may provide to a speaker using his or her principal campaign committee funds.

Q. Can a Member use principal campaign committee funds to pay for official travel? What about for officially-connected travel?

A. Yes. Members may use principal campaign committee funds to pay for travel for themselves and their staff, so long as the travel is either official or officially-connected.

TIP: The class of travel paid for with principal campaign committee funds for this purpose is not limited by House Rules. However, you should check with the FEC to see if it places a limitation on the type of travel a Member may pay for when the travel is for the Member or the Member's staff.

Q. Can my employing Member purchase gifts using principal campaign committee funds from the House gift shop for foreign dignitaries he or she will be meeting next week?

A. Yes. Regardless of where a Member chooses to purchase such gifts, he or she may use principal campaign committee funds when those gifts are intended to be given to foreign dignitaries.

TIP: Find out what types of items your employing Member likes to give to foreign dignitaries and use a credit card provided by the campaign to purchase several of the same items for the Member's various encounters with foreign dignitaries over the year.

Q. Can a Member use principal campaign committee funds to pay for personal expenses?

A. No. Members may **never** use principal campaign committee funds for personal expenses. Personal expenses generally arise due to activities that are unrelated to a Member being a federal candidate or officeholder, whereas official expenses often arise **solely** as a result of a Member being an officeholder.

TIP: If you are unsure whether an expense is personal in nature, consult with the Committee and the FEC for additional guidance.

4. Members may not use campaign resources for certain official purposes—communications, salary for performing official duties, office space, office furniture, office equipment, or related information technology services (excluding handheld communications devices).

Q. Can we use campaign funds to send out an official newsletter?

A. No, you **may not** use campaign funds to pay for **any** official communication, regardless of the medium. This prohibition is very broad, and encompasses everything from a relatively straightforward communication, like a letter, to items that you might not think of as a communication, such as a coin with the Member's name and district on it. The same prohibition applies equally to traditional and social/new media. As an example, the campaign cannot use any method to promote or advertise a Member's official event.

TIP: Because "communication" is interpreted very broadly, if there are words on something paid for by the campaign, it likely may not be used for an official purpose.

Q. Can we use campaign funds to pay for an additional staff person or to pay for an intern's services in the congressional office?

A. No, you may not use campaign funds to pay for official staff salary, whether the staff would otherwise be paid or unpaid.

TIP: Ensure that anyone paid by the campaign does not perform official work while they are on "campaign time."

Q. Can we use campaign funds to pay for a satellite office or a mobile district office?

A. No, you may not use campaign funds to pay for any type of office space for an official purpose, regardless of the size or type.

TIP: Plan ahead so that you use your official funds in the most efficient manner to maximize office space.

TIP: Seek out government owned meeting space (such as a City Hall) for satellite office hours to manage expenses.

Q. Can we use campaign funds to purchase chairs or computers for our office?

A. No, you may not use campaign funds to pay for any furniture or office equipment (except a smartphone or tablet), regardless of type (chairs, desks, printers, etc.).

TIP: Make an inventory of official furniture and office equipment at the beginning of every Congress and plan your workspaces accordingly.

Q. Can we use campaign funds to pay for official database management services or a mailing list?

A. No, you may not use campaign funds to pay for any services for an official purpose, nor for expenses related to official mail or communications.

TIP: To avoid confusion, you may wish to use different vendors for official and campaign services.

CAMPAIGN OR POLITICAL ACTIVITY BY HOUSE OFFICERS AND EMPLOYEES

5. In many cases, officers and employees may volunteer for or be paid by a political campaign.

Q. I feel like I have to work on the campaign or I will lose my House job. Can I be forced to work on the campaign?

A. **Absolutely not.** If you wish to work for your employing Member's campaign, you certainly may do so as long as you do it voluntarily, without using official resources, not on official grounds, and on your own time. Work on your employing Member's campaign may not be coercive, and it may not impact or inform congressional employment decisions. **Your position in the congressional office may not be threatened or influenced if you choose not to work on any campaign.** If you feel pressured to do campaign work to keep or improve your congressional employment, you should immediately address the matter with a supervisor or contact the Committee. The Committee takes allegations of coerced campaign work very seriously and the House has disciplined Members for such actions.

TIP: Especially if you are in a supervisory position, be certain to emphasize whether a staff member wants to or does work on a political campaign, that activity is entirely separate from their official work. Discussions between supervisory and subordinate staff may be interpreted as

directives because of the nature of the supervisor/subordinate relationship. As a result, supervisors should be clear when communicating with staff about opportunities to volunteer for the employing Member's campaign (or any other campaign) that official work and positions will not be impacted by an employee's decision about volunteering or working for a political campaign.

Q. Can my employing Member prohibit me from working on a campaign?

A. Although a Member may not fire or refuse to hire an employee on the basis of race, color, religion, sex (including marital or parental status), disability, age, or national origin, Members may take domicile, political affiliation, and political compatibility with the employing office into consideration when making employment decisions.

Q. Am I allowed to be paid by the campaign?

A. Yes, if offered, you may accept compensation for working on a political campaign. However, your pay must be commensurate with the work you are doing for the campaign and may not be over-inflated to make up for the salary your employing Member wishes he or she could give you in the congressional office. In addition, if you are paid at the senior staff rate there may be restrictions on the kind of work you can do and the amount of income you can accept from the campaign (see number 9, below).

TIP: If you are paid by the campaign, ask how much other people who have had the same position were compensated to ensure your compensation falls within a reasonable range for the work you do.

Q. I am considering running for office myself. Is that permissible?

A. Yes, you may run for state or local office. However, a staff member considering running for or serving in a state or local office should first consult his or her employing Member on the matter, and should refrain from doing so if the Member objects. Further, if your employing Member is leaving office and you decide to run for his or her seat, you must terminate your current employment before you commence campaigning for election to your employing Member's seat.

TIP: Before you decide whether you want to run for office, you should tell your employing Member, and you should consult with the Committee.

Q. I ran for state or local office and won. Can I both hold my new elected position and continue to serve as a House employee?

A. Although it may be possible, you are strongly encouraged to contact the Committee for further guidance before beginning service in the elected position. There may be limits on the work you can do in your new elected position, and there may be limits on your ability to be compensated for that office. The Committee also encourages you to discuss your new elected position with your employing Member to ensure that your new duties will not conflict with your duties for your House position. Whenever possible, the Committee encourages you to seek guidance before running for state or local elected office.

Also, please keep in mind that the other elected body may be subject to its own laws, rules, or other standards of conduct that may affect whether and how you may serve in both roles.

6. House officers and staff who are paid at the “senior staff rate” by the House for their official duties may be paid for campaign work, but are subject to a limit on the amount of money they may be paid by the campaign, and must report their campaign income on their annual financial disclosure.

Q. I am paid at the senior staff rate. What additional restrictions apply to my being paid by the campaign?

A. House officers and employees who are paid at the senior staff rate for 60 days or more in a calendar year must file an annual financial disclosure statement. For 2018, the senior staff rate is \$126,148, or a monthly salary at or above \$10,512. An officer or employee who is paid by a campaign and files a financial disclosure statement must report their income from the campaign on their statement. In addition, House officers and employees who are paid at the senior staff rate for more than 90 days in a calendar year are subject to a limit on the amount of outside earned income they may receive in a calendar year and the types of work for which they may be paid. For 2018, the annual outside earned income limit is \$28,050. In addition, senior staff may not be paid to perform work that involves a fiduciary duty. For example, a House employee paid at the senior staff rate for more than 90 days in a calendar year could not be paid to act as a campaign’s treasurer, although he or she could volunteer to do that work without compensation.

7. As a general rule, House officers and employees may not contribute to their employing Member’s campaign. This includes making “outlays,” or payments for goods and services that will be reimbursed by the campaign. However, there is a limited exception for your own travel expenses for campaign activity.

Q. I want to support my employing Member. Can I contribute to his or her campaign?

A. No. Federal law prohibits you from making any contribution or outlay, whether monetary or in-kind, to your employing Member. Purchasing tickets for a fundraiser for your Member’s campaign, or hosting a fundraiser for your employing Member in your home are prohibited by this law. This prohibition extends to any outlay, regardless of whether or not the outlay will be reimbursed.

TIP: If an individual with whom you share an account – such as your spouse – expresses interest in making a contribution to your employing Member, ensure that he or she makes the contribution using their own individual funds. Please recognize that some things may not be separable, such as your personal residence. Please contact the FEC for further guidance regarding shared assets.

Q. You said in the previous answer that I cannot make an outlay to my employing Member. What is an outlay?

A. An outlay is using your own funds to pay for something for the campaign, and the campaign reimburses you for your expenses (for example, buying pizza for the campaign office or gas for the Member’s car). This also extends to making in-kind contributions.

The prohibition on making campaign contributions to your employing Member's campaign applies to outlays as well, as they are considered contributions until reimbursed. However, you are permitted to make an outlay to your employing Member's campaign for your **own** campaign travel so long as the campaign reimburses you for your travel expenses within the appropriate timeframe, as specified by the FEC. If you wish to drive your employing Member to and from campaign events in your personal vehicle, please contact the FEC congressional liaison office at (202) 694-1006 prior to providing such transportation.

TIP: If you intend to work for your employing Member's campaign, ask for a campaign-issued credit card whenever you anticipate expenses to avoid even the possibility of making an outlay to your employing Member.

Q. As a House employee, may I solicit campaign contributions for my employing Member?

A. Yes. Your ability to solicit campaign contributions for your employing Member may be limited by federal or state law. However, in general, you are permitted to solicit campaign contributions for your employing Member from your friends and family, as examples.

Q. May the campaign solicit donations from federal employees? What about from the Member's staff?

A. No. A federal campaign may not knowingly solicit for donations from any federal employee, including the Member's own staff.

TIP: Before the campaign sends out a solicitation, it should, at a minimum, ensure that the Member's own staff are not on the list.

8. The official scheduler is permitted to use official resources to have limited communications with the Member's campaign in order to coordinate the Member's official and campaign activities. However, there are specific rules for how and what you coordinate for your employing Member's schedule.

Q. What can the official scheduler share with the campaign?

A. The official scheduler may share information about the Member's availability for any given time and may share details of the Member's official activities that are available to the general public, *e.g.* the Member hosting a town hall event. However, **the official scheduler may not use official resources to actually schedule campaign events.** The official scheduler may not confirm attendance at campaign events or schedule travel or other logistics for a Member's attendance at a campaign event.

TIP: Treat the campaign like any other constituent. If you would not share the details of the activity with a constituent, then you should not share that information with the campaign. Maintain one point of contact for the official schedule and one point of contact for the campaign schedule to avoid miscommunications. Forward all campaign-related scheduling requests to the campaign point of contact. Consider keeping a log of all referrals to document compliance with this requirement.

Q. May the official scheduler maintain a “master calendar” for the Member?

A. Yes, the official scheduler may maintain a master calendar for the Member, with details of both official and campaign related activities. Staff in the congressional office may know that the Member is unavailable for a campaign event, but do not need to know the details of that event, including participants. The same restriction applies for campaign staff and the details of official events.

TIP: Depending on the calendar program you use, consider managing the levels of user permissions to ensure that the campaign and congressional staff only receive the information they should receive regarding particular events.

Q. If I serve as the scheduler in a Member’s congressional office, can I also be the scheduler for my employing Member’s campaign?

A. Yes. If you choose to work for your employing Member’s campaign, whether in a voluntary or paid capacity, you may also serve as the scheduler for your employing Member’s campaign. You are required to maintain the same separation of calendars as described above and are prohibited from engaging in campaign scheduling in official House office space, using official resources, or on House time.

TIP: If your employing Member has provided you a smartphone, tablet, or other handheld communications device for you to use for official and campaign activity, leave the House premises to schedule campaign activities for your employing Member using that device on your own time. This will help to ensure that you are not engaging in campaign activity while you are in official House office space or on House time.

9. The campaign may only use material created with official resources, if at all, after its official use has been exhausted.

Q. When has something’s official use been “exhausted?” Once something is in the public domain, is its official use exhausted?

A. Generally, an item’s official use has been exhausted when the official material has been released to the media or public, **and** the congressional office is no longer using it. The standard **is not** whether something is in the public domain. Depending on the subject matter, relevance, and where the materials appear, each official product may exhaust its official use at different times. The standard applies to all type of media, including, but not limited to, documents, recordings, and social/new media posts. The key in each case is that the item in question must no longer appear anywhere on an official site or be used for an official purpose. One exception is official press releases (see Q&A, below).

TIP: Consider cataloging the life cycle and location of all materials prepared for a congressional office so you can track when an item is internal/confidential, when it is being used for an official purpose, and when its official use has been exhausted. Keep in mind, however, that once something is used as a campaign resource after it has exhausted its official use, **it can never go back to being an official resource.** Accordingly, you should make decisions concerning exhaustion of an official resource with caution.

Q. If I previously created a memo for the Member and now that memo has relevance for a campaign event, may I share that previously created memo if I don't do anything to update it?

A. The memo may be shared with the campaign if you would share it with anyone else who asks. Unless the Member has absolutely no plans to ever use it again, the memo's official use has not been exhausted.

Q. Can the congressional office draft a document and immediately exhaust its official use so the campaign can use it?

A. No. Official resources may only be used for official purposes. Congressional staff may not create something and immediately exhaust its official use simply to provide source material for the campaign. Doing so could be interpreted as using official resources to prepare a campaign document, which is a prohibited use of official resources.

TIP: Remind staff that they may only use official resources for official purposes. The fact that the campaign needs content is not an appropriate official purpose for which congressional offices can use official resources, including staff time to create official materials.

Q. When does an official press release exhaust its official use?

A. Generally, an official press release has exhausted its official use 72 hours after its release. If the press release announces an event, the press release exhausts its official use after the event occurs, or 72 hours after the press release is issued, whichever is later. Once a press release has exhausted its official use, the campaign may use it word-for-word, but must remove any official indicia (e.g., logo/letterhead) or contact information from the press release. The congressional office and campaign can simultaneously release their own press releases where appropriate, but the congressional office must use its own resources and intellectual property to create the official press release. The campaign must similarly use its own resources and intellectual property to create the campaign press release. Unlike other official materials, a press release may remain on the official website after it has exhausted its official use for purposes of this rule.

TIP: If the official office has a listserv or other similar distribution list that is open to the public, the campaign may sign up for that list as any other member of the public.

Q. Do social media posts follow the press release rule?

A. No, social media posts follow the standard exhaustion rule and not the 72 hour rule for press releases. Therefore, a social media account of the campaign may not share, like, retweet, etc., a post from an official social media account because that post's official use has not been exhausted if it is still active on the official social media account.

Q. When does an official photograph exhaust its official use?

A. An official photograph exhausts its official use when the congressional office is no longer using it for any purpose, and it comes down from any site where it may have been posted, including the official website and official social/new media sites.

TIP: Because an official photograph has not exhausted its official use until it comes down from all official sites and there is no plan to use it in the future, you may need to remove materials from your website that contain the photograph in question. For example, if you use a photograph in a newsletter, and the newsletter is on your website, the photograph has not yet exhausted its official use.

Q. If the campaign does not have a good picture for something and there are no official photographs that have exhausted their official use, can the campaign take photographs at official events to use in campaign materials?

A. Yes, if the event is held outside of official House space and is open to other constituents, the campaign may attend just like any other constituent. However, the campaign staff must not engage in overt campaign or political activity while at an official event.

Q. Can a Member conduct an interview in his or her campaign capacity and discuss an official meeting that was not open to the public?

A. Yes, as long as the Member does not use any official resources to prepare for that campaign-related appearance. For example, if official House staff prepared talking points for the official meeting, the Member and his or her campaign staff may not rely on those talking points to prepare for the campaign-related appearance, unless the Member is willing to share those talking points with anyone who asks for them and the official office has otherwise exhausted their use.

TIP: Although Members have some flexibility to determine whether their appearances are officially-related or campaign-related, always take into consideration what other resources the Member used in connection with those appearances. The use of official office staff on House time would make an appearance an official one.

Q. Can the campaign ever use footage of House Floor activities or committee proceedings? Does the same “exhaust its official use” standard apply?

A. No. House rules specifically prohibit the use of footage of House Floor activities and committee proceedings for any partisan political purpose. The “exhaust its official use” standard does not apply to footage of House Floor activities or committee proceedings. If such footage is embedded in a third party article or news clip, the campaign may use the article or clip if otherwise appropriate, but must first remove the prohibited footage.

TIP: Educate campaign staff about the prohibition on the use of footage of committee proceedings and House Floor activities to avoid any inadvertent impermissible use.

10. Consult with the Committee on Ethics if you have questions about participation in campaign activities.

Q. How do I contact the Ethics Committee?

A. Call (202) 225-7103 and ask to speak to an attorney. If you have a relationship with a particular attorney, you can email or call him or her directly. Advice and Education attorneys are available Monday through Friday, from 9 AM until 6 PM, Eastern time. In addition, the Committee routinely makes attorneys available to conduct in-person training sessions for individual offices.

TIP: Your conversations with Committee counsel are confidential. The benefit of asking for advice before taking an action is that you can often avoid even the appearance of an inappropriate action. Ask as many questions as you have, ask as often as you like, and always ask before acting if you have any doubt about the permissibility of your proposed campaign activity.

Q. How can I stay up to date on the latest guidance issued by the Ethics Committee?

A. From time to time the Committee issues general advisory memoranda (or pink sheets) like this one, whether to provide reminders or updates to the House community about existing rules or to issue guidance about new standards. Those memoranda are distributed in hard copy to Member and committee offices and posted on the Committee's website, <https://ethics.house.gov/>. You can also sign up to receive e-Dear Colleagues from the Committee at <https://e-dearcolleague.house.gov/>.

Susan W. Brooks, Indiana
Chairwoman
Theodore E. Deutch, Florida
Ranking Member

Kenny Marchant, Texas
Leonard Lance, New Jersey
Mimi Walters, California
John Ratcliffe, Texas

Yvette D. Clarke, New York
Jared Polis, Colorado
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ONE HUNDRED FIFTEENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

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June 18, 2018

MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics

Susan W. Brooks, Chairwoman
Theodore E. Deutch, Ranking Member

**SUBJECT: Cryptocurrencies: Financial Disclosure Requirements and Other Ethics
Ramifications**

As you may be aware, cryptocurrencies (*e.g.*, Bitcoin, Ethereum, Ripple, Litecoin, etc.) are changing and expanding traditional financial markets.¹ Bitcoin was first issued in 2009; today, there are more than 1,500 cryptocurrencies.² Relevant committees of jurisdiction in Congress have been reviewing cryptocurrencies, their role in financial markets, and the authorities and responsibilities of regulatory agencies.³ The Committee on Ethics (Committee) has also been reviewing cryptocurrencies to determine potential financial disclosure reporting ramifications for House filers, as well as the possible ramifications for other ethics rules or standards. The purpose of this memorandum is to provide guidance on these ethics issues based on our current understanding of cryptocurrencies. In particular, the Committee has determined that with respect to financial disclosure, cryptocurrencies will be treated as an “other forms of securities” and are therefore subject to reporting both on a financial disclosure filer’s annual Financial Disclosure Statement (FD Statements or Statements) and on Periodic Transaction Reports (PTRs) throughout the year. Due to the evolving nature of cryptocurrencies, the Committee recommends that anyone with questions about cryptocurrencies call the Committee for guidance.

¹ The terms “cryptocurrency” and “virtual currency” are sometimes used interchangeably. Because the term “virtual currency” “can also refer to a broader class of electronic money” than cryptocurrency, this memorandum uses the term “cryptocurrency.” Cong. Res. Serv., “Introduction to Financial Services: ‘Cryptocurrencies,’” Feb. 7, 2018.

² Cong. Res. Serv., “Bitcoin: Questions, Answers, and Analysis of Legal Issues,” at 1, Dec. 2, 2015; CoinMarketCap, “Cryptocurrency Market Capitalizations,” available at <https://coinmarketcap.com/> (last accessed Mar. 15, 2018).

³ *Examining the Cryptocurrencies and ICO Markets Before the Subcomm. on Capital Markets, Securities, and Investment of the H. Comm. on Financial Services*, 115th Cong., 2d Sess. (Mar. 14, 2018); *Virtual Currencies: The Oversight Role of the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission Before the Sen. Comm. on Banking, Housing, and Urban Affairs*, 115th Cong., 2d Sess. (Feb. 6, 2018).

Cryptocurrencies and Other Regulatory Agencies

Generally speaking, a “cryptocurrency” “acts as money in an electronic payment system in which transactions are validated by a decentralized network of computers rather than a third-party intermediary, such as a bank.”⁴ A number of regulatory agencies have addressed aspects of cryptocurrencies that are within their jurisdiction, or indicated that they are continuing to review them. For example, the U.S. Commodity Futures Trading Commission (CFTC) has determined that it can regulate cryptocurrencies as commodities.⁵ The Securities and Exchange Commission (SEC) has indicated that for certain purposes, cryptocurrencies may be regulated as securities, and that it is continuing to review how existing securities laws and regulations apply to them.⁶ The Internal Revenue Service (IRS) has advised that for federal tax purposes, it will treat cryptocurrencies as property. The Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) has also pursued enforcement actions relating to cryptocurrencies.⁷ The Committee considered the approaches of these agencies as it reviewed the applicability of ethics laws and standards within its jurisdiction to cryptocurrencies.

Financial Disclosure

Title I of the Ethics in Government Act of 1978 (EIGA)⁸ requires Members, officers, certain employees⁹ to file FD Statements. The Committee on Ethics is the supervising ethics office for Members, officers, and employees of the House as well as certain other employees of the legislative branch who are required to file financial disclosure reports under the EIGA.¹⁰ As the supervising ethics office for House filers, the Committee may issue advisory opinions interpreting the EIGA within its jurisdiction.¹¹

⁴ Cong. Res. Serv., “Introduction to Financial Services: ‘Cryptocurrencies,’” Feb. 7, 2018.

⁵ *In re Coinflip, Inc.*, Dkt. No. 15-29 (C.F.T.C. Sept. 17, 2015); *see also C.F.T.C. v. McDonnell*, 1:18-cv-00361mem. op. at 24 (E.D.N.Y., Mar. 6, 2018) (“Virtual currencies can be regulated by CFTC as a commodity.”).

⁶ *See, e.g., SEC*, “SEC Issues Investigative Report Concluding DAO Tokens, a Digital Asset, Were Securities,” July 25, 2017, *available at* <https://www.sec.gov/news/press-release/2017-131>.

⁷ Cong. Res. Serv., “For First Time, FinCEN Imposes Penalty on Foreign-Based Virtual Currency Exchange for Violations of Anti-Money Laundering Laws,” Aug. 17, 2017.

⁸ 5 U.S.C. app. §§ 101-111.

⁹ 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 (\$126,148 for 2018, subject to change in 2019 and beyond) 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.

¹⁰ 5 U.S.C. app. § 109(18)(B).

¹¹ 5 U.S.C. app. § 106(b)(7).

The EIGA requires all financial disclosure filers to file an FD Statement at least once a year to disclose, among other things: (1) assets (real and personal property) held for investment or the production of income valued at more than \$1,000 at the close of the reporting period; (2) unearned income that exceeds \$200 during the reporting period for themselves, spouses, or dependent child; and (3) earned income from a single source that exceeds \$200 in the aggregate in the reporting period.

In addition, the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act) and related subsequent laws amended the EIGA to require Members, officers, and senior staff¹² to report certain transactions twice – once on the filer’s annual FD Statement, as before, and once closer in time to the transaction.¹³ The types of transactions subject to the STOCK Act requirement are any purchase, sale, or exchange by a filer, their spouse, or dependent child of “stocks, bonds, commodities futures, and other forms of securities” if the amount of the transaction exceeds \$1,000. These STOCK Act filings are known as Periodic Transaction Reports and must be filed within 30 days of notice of the transaction, but in no case later than 45 days after the transaction. (Unlike an annual FD Statement, a filer is only required to file a PTR when they have a reportable transaction to disclose; a filer does not need to file a PTR to report no transaction activity.) The test for whether a transaction is subject to PTR reporting in addition to being reported on a filer’s FD Statement is not whether the filer made a profit (or loss) on the transaction, but whether the asset is a stock, bond, commodity future, or other form of security.

After careful review of this issue, the Committee recently determined that it is appropriate to consider cryptocurrencies “other forms of securities” for purposes of the EIGA and financial disclosure with respect to individuals who are subject to financial disclosure requirements and who file their reports with the Clerk of the House.¹⁴ Accordingly, all financial disclosure filers must disclose ownership interests of virtual currency valued at more than \$1,000 on Schedule A (“Assets and Unearned Income”) and purchases, sales, or exchanges valued at more than \$1,000 on Schedule B (“Transactions”) of their annual FD Statement.¹⁵ In addition, Members, officers, and senior staff who are subject to PTR filing must report purchases, sales, or exchanges of cryptocurrencies over \$1,000 on PTRs.¹⁶

Initial Coin Offerings

In addition to creating the periodic reporting requirement discussed above, the STOCK Act prohibited Members, officers, and employees who are subject to financial disclosure reporting requirements from participating in Initial Public Offerings (IPOs) in a manner “other than is

¹² See FN 9, above. Employees who file FD Statements because they are principal assistants or shared employees as defined by the Committee on House Administration **are not** required to file PTRs.

¹³ STOCK Act (Pub. L. 112-105, as amended by Pub. L. 112-173, Pub. L. 112-178 & Pub. L. 113-7).

¹⁴ See Comm. on Ethics, *Instruction Guide for Completing Calendar Year 2017 Financial Disclosure Statements and Periodic Transaction Reports* (Apr. 11, 2018).

¹⁵ *Id.* at 20.

¹⁶ *Id.* at 42.

available to members of the public generally.”¹⁷ This prohibition took effect immediately upon enactment of the STOCK Act on April 4, 2012. The Committee previously provided public guidance to the House community about this prohibition.¹⁸ However, the STOCK Act implemented this prohibition by amending the Securities Exchange Act of 1934, which is under the primary jurisdiction of the SEC.¹⁹

Cryptocurrencies introduced the concept of Initial Coin Offerings (ICOs) to financial markets.²⁰ At this time, the SEC indicated that it is continuing to review ICOs and to assess how existing securities laws and regulations apply to them. The SEC has halted an ICO that it concluded failed to comply with those laws and regulations.²¹ Also, a company recently filed a securities registration for an upcoming ICO.²² At this time, it is unclear which ICOs, if any, may be considered to be “the subject of an initial public offering” for purposes of the IPO prohibition.

Accordingly, any House Member, officer, or employee who is considering participating in an ICO is strongly encouraged to contact the Committee for guidance before doing so.

Insider Trading and Other Rules Regarding Personal Financial Transactions

Following passage of the STOCK Act, the Committee issued public guidance regarding the Act’s provisions regarding insider trading.²³ The Committee noted that the STOCK Act “explicitly affirms that Members and **all** employees are subject to the insider trading prohibitions arising under the securities laws.”²⁴ In general, as with any criminal statutes or Executive Branch regulations, the Committee cannot provide binding interpretations of securities law.²⁵ The SEC

¹⁷ 15 U.S.C. § 78u-1(i).

¹⁸ See, e.g. Comm. on Ethics, “New Ethics Requirements Resulting from the STOCK Act,” Apr. 4, 2012; Comm. on Ethics, “Reminder about the Limitation on Participating in Initial Public Offerings,” Nov. 5, 2013. All advisory memoranda referenced in this memorandum are available on the Committee’s website, at <https://ethics.house.gov>.

¹⁹ 15 U.S.C. § 78u-1(i).

²⁰ Initial Coin Offerings (ICOs) offer opportunities for individual investors to exchange currency such as U.S. dollars or virtual currencies in return for a digital asset labeled as a coin or token. See Statement on Cryptocurrencies and Initial Coin Offerings (Dec. 11, 2017), available at <https://www.sec.gov/news/public-statement/statement-clayton-2017-12-11>.

²¹ SEC, “Company Halts ICO After SEC Raises Registration Concerns,” Dec. 11, 2017, available at <https://www.sec.gov/news/press-release/2017-227>.

²² The Praetorian Group, Registration Statement Under the Securities Exchange Act of 1934 (Form S-1) (Mar. 6, 2018), available at https://www.sec.gov/Archives/edgar/data/1721980/000137647418000045/pr_sl.htm.

²³ Comm. on Ethics, “New Ethics Requirements Resulting from the STOCK Act,” Apr. 4, 2012.

²⁴ *Id.* at 6. (emphasis original).

²⁵ *Id.* at 7.

indicated that it is continuing to review the applicability of insider trading prohibitions to cryptocurrencies.²⁶

However, it is important to note that other standards of conduct within the Committee's jurisdiction could apply to personal financial transactions involving cryptocurrencies, regardless of how the SEC interprets and applies existing or future insider trading prohibitions. The Committee previously stated that, "Whether or not the traditional statutes and regulations governing insider trading apply, Members and employees who engage in trading with the benefit of material nonpublic information gained in congressional service may be investigated for, and may be found in violation of, clause 1 [of the Code of Official Conduct]."²⁷ In addition, House Members, officers, and employees may not receive compensation "by virtue of influence improperly exerted" from a congressional position.²⁸ In general, rules and standards regarding personal financial transactions, including the use of nonpublic information obtained in the course of official duties and conflicts of interest, would apply to cryptocurrencies just as any other type of financial holding.

Cryptocurrency Mining and Outside Earned Income

One way an individual can obtain cryptocurrency is to "mine" it. In this process, users of a cryptocurrency network "known as miners ... gather together blocks of new transactions and compete to verify that the transactions are valid."²⁹ Individuals who use their computers for this service "are rewarded by the network's controlling computer algorithm" by being issued units of the cryptocurrency.³⁰ This practice may implicate the limit on outside earned income.

The EIGA and House Rules subject Members, as well as officers and employees who are paid at the senior staff rate for more than 90 days in a calendar year, to limitations on the types of outside employment they may engage in and an overall limit on the amount of outside earned income they may receive in a year.³¹ For 2018, the outside earned income limit is \$28,050.³²

House Rule 25, clause 4(d)(1), defines "outside earned income" to include "wages, salaries, fees, and other amounts received ... as compensation for personal services." The *Ethics Manual* explains that the limitation "applies only to compensation for personal services (termed 'earned income'), but not to moneys received from ownership or other investments of equity (so-called

²⁶ SEC Chairman Jay Clayton, Remarks at the PLI 49th Annual Institute on Securities Regulation – New York, N.Y. (Nov. 8, 2017), available at <https://www.sec.gov/news/speech/speech-clayton-2017-11-08>.

²⁷ Comm. on Ethics, "Rules Regarding Personal Financial Transactions," at 2-3, Nov. 29, 2011.

²⁸ *Id.* at 2.

²⁹ Cong. Res. Serv., "Bitcoin: Questions, Answers, and Analysis of Legal Issues," at 1-2, Dec. 2, 2015.

³⁰ *Id.*

³¹ Comm. on Ethics, "The 2018 Outside Earned Income Limit and Salaries Triggering the Financial Disclosure Requirement and Post-Employment Restrictions Applicable to House Officers and Employees," Jan. 5, 2018.

³² *Id.*

‘unearned income’).”³³ In determining whether a payment is a “distribution” (return on equity) or compensation for personal services, “the ‘real facts’ of a particular case would control as to whether moneys received would be deemed earned income.”³⁴ Thus, the “label or characterization placed on a ... payment by the parties may be disregarded for purposes of the Rule,” and the payment will be considered earned income if it is “in fact attributable to any significant extent to services rendered by the Member.”³⁵ The Committee also made clear that the outside earned income limit “applies to outside earned income realized in a medium other than money, for example, in property or services or through a bargain purchase or forbearance in consideration of personal services rendered.”³⁶

In general, then, if a Member or employee who is subject to the outside earned income limit receives compensation in the form of cryptocurrency in exchange for their personal services “mining” the cryptocurrency, that compensation would be subject to both the outside earned income limit and disclosure on the individual’s annual FD Statement. Any Member or employee who contemplates engaging in this activity should consult with the Committee beforehand.

Frequently Asked Questions

- 1. I am a Congresswoman and I purchased cryptocurrency years ago for \$1. It is now worth \$10,000. Do I have to report it on my FD Statement now? Did I have to file a PTR at the time of purchase?**

A. Yes, you do have to report your ownership interest in the cryptocurrency on Schedule A (“Assets & Unearned Income”) on every FD Statement where the balance of your interest exceeds \$1,000 at the end of the reporting period. You were not required to file a PTR at the time of the transaction because your purchase amount was less than \$1,000.

- 2. I am paid above the senior staff rate and I am a financial disclosure filer. My spouse purchased \$8,000 worth of a cryptocurrency. Do I have to report it? If so, how?**

A. Yes, you must report the transaction. First, you must report the purchase transaction on a PTR no later than 45 days from the date of the transaction. Then, you have to report your spouse’s ownership interest in the cryptocurrency Schedule A (“Assets & Unearned Income”) on every FD Statement where the balance of your spouse’s interest exceeds \$1,000 at the end of the reporting period. You must also report the purchase transaction on Schedule B (“Transactions”) on the FD Statement covering the calendar year when the purchase took place.

³³ 2008 House Ethics Manual [hereinafter *Ethics Manual*], at 231.

³⁴ *Id.*

³⁵ Comm. on Ethics, *Advisory Op. No. 13* (reprinted in *Ethics Manual*, at 365).

³⁶ *Id.*

Available Assistance

Any Member, officer, or employee who has questions regarding cryptocurrencies and any applicable ethics standard is encouraged to contact the Committee at (202) 225-7103. Any financial disclosure filer who has questions concerning the financial disclosure reporting requirements related to cryptocurrencies or how to complete a FD Statement or PTR is also encouraged to call the Committee. Committee staff is available to review your FD Statement or PTR before filing (pre-screen). To have your FD Statement or PTR pre-screened, please e-mail it to financial.disclosure@mail.house.gov.

Susan W. Brooks, Indiana
Chairwoman
Theodore E. Deutch, Florida
Ranking Member

Kenny Marchant, Texas
Leonard Lance, New Jersey
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John Ratcliffe, Texas

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Jared Polis, Colorado
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ONE HUNDRED FIFTEENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

August 24, 2018

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MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics
Susan W. Brooks, Chairwoman
Theodore E. Deutch, Ranking Member

SUBJECT: Guidance on Personal Endorsement or Promotion by Members¹ of the House of Representatives

The purpose of this memorandum is to clarify and expand upon the Committee's previous guidance on Members' personal participation in the endorsement or promotion of organizations, products, or services where they have a financial interest.² This memorandum is not intended to address every restriction or standard that applies to outside employment or business activities of a Member. The rules governing such activities often require a fact-specific analysis, and Members are encouraged to conduct that analysis with the guidance of the Committee's nonpartisan, professional staff.

The Committee has long advised that "a Member should not undertake any outside employment that would involve the Member personally in the selling or endorsement of any goods or services."³ While there is no specific law, rule, or other standard of conduct that expressly forbids such employment, the Committee has stated that this prohibition arises from the House Rules and the Code of Ethics for Government Service, which prohibit a Member from any use of their office or official position to obtain compensation or other benefits.⁴

The Committee has not previously addressed whether the prohibition on the selling or endorsing of goods or services extends beyond employment to other situations in which the Member has a financial interest. Some of the laws, rules, and other standards of conduct pertaining to outside employment make distinctions between employment and other financial interests.

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

² A Member will be deemed to have a financial interest if his or her spouse and/or dependent children have a financial interest.

³ 2008 *House Ethics Manual* (hereinafter "*Ethics Manual*") at 188.

⁴ *Id.*, (citing House Rule 23, clause 3 and Code of Ethics for Government Service ¶ 5).

However, the relevant rules and other standards of conduct pertaining to commercial endorsements are not so limited. Instead, House Rule 23, clause 3 applies to the receipt or accrual of compensation to the Member's "beneficial interest from any source[.]" The Code of Ethics for Government Service applies to the acceptance by the Member or the Member's family of "favors or benefits[.]"⁵ Thus, there is no reason to believe that the prohibition on the selling or endorsing of goods or services is limited only to employment situations.

Members of the House of Representatives are widely recognizable public servants. Even when they make no explicit mention of their official position, when Members actively engage in commercial sales or endorsements, they may create the perception that they are making use of their official position for commercial gain. Members must at all times avoid even the appearance that they are monetizing their public role for personal gain. Thus, as a general matter, Members should not be actively involved in personally selling or endorsing goods or services in which the Member or the Member's family has a financial interest.

Consistent with House Rules and prior Committee guidance, Members may continue to have a role in a family business. In general, if a Member 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."⁶ However, if the Member performs services for the business that "actually generate any significant income for the business," then some part of the payments the Member receives from the business may be deemed earned income.⁷ Members are advised that the Committee has determined that, going forward, participation in advertising is not "general oversight and management," and it is not "protection of his or her investment." Advertising, by definition, is a driver of revenue for a company.

Before being elected to the House of Representatives, some Members may have participated in endorsement or promotion of commercial activities in which they or their family had a financial interest. Those Members should (1) discontinue such endorsement or promotion upon swearing in, and (2) remove references to the Member in any ongoing promotion or endorsement activities. Members are not required to scour the Internet to take down old videos of advertisements that may feature the Member. However, commercial entities in which the Member or the Member's family have a financial interest can no longer take active steps to promote the Member's endorsement of the entity.

Some newly-elected Members have an ownership interest in a business that bears the Member's name. The limitation on endorsement or promotion of goods or services, on its own, does not require Members to remove their name from an existing company. There are other restrictions that limit the use of a Member's name for certain types of businesses (*e.g.*, businesses that engage in fiduciary professions).⁸ Federal law also prohibits firms that do business with or

⁵ Code of Ethics for Government Service ¶ 5.

⁶ See House Select Comm. On Ethics, Advisory Opinion No. 13 (October 1978), reprinted in *Ethics Manual* at 364.

⁷ *Id.*

⁸ For more detail on the restrictions on outside employment for Members, including the limitations on involvement with entities that provide fiduciary services, please see Chapter 5 of the *Ethics Manual*.

represent clients before federal agencies from using the name of a Member of Congress in advertising the business.⁹ In addition, a Member of Congress choosing to add his or her name to a commercial enterprise after the Member's election to the House might be the kind of active endorsement of a commercial enterprise that would be improper, depending on the circumstances. However, where no other restriction applies, the mere retention of a Member's name on a business does not violate these rules.

Notwithstanding this prohibition, the House has long recognized that Members may receive income from book sales royalties as well as a variety of personal activities related to the Member's artistic, musical, pastoral, or athletic talent.¹⁰ The restrictions on endorsement or promotion of goods or services does not change the Committee's longstanding guidance permitting Members' to participate in the promotion of these kinds of personal activities, so long as the Member does so in their personal capacity and without using any official resources.

The Committee regularly advises Members on how to wind down certain family-owned businesses when they are elected to Congress. That process can take an extended period of time, and the Committee does not punish Members who are not compliant with the applicable House Rules during a transition period, as long as they are making a good-faith effort to follow the Committee's advice.

To further illustrate the bounds of these restrictions, the Committee has provided the following examples of impermissible and permissible activity. **Remember: When in doubt, consult with the Committee if you have questions about participation in endorsement or promotion activities at (202) 225-7103.**

Examples of Impermissible Endorsement or Promotion Activities

Example 1: Member A's family owns and operates a bakery. Member A's family asks Member A to appear in radio and social media advertisements for the bakery. Member A may not participate in radio or social media advertisements for the bakery.

Example 2: Member E owns a lawn care service, "Good Lawn Service." Before Member E's election to Congress, Member E was actively involved in promoting Good Lawn Service, including appearing in several social media and television advertisements for Good Lawn Service. Upon swearing in, Member E must (1) discontinue participation in any form of advertisements for the lawn care business, and (2) have the lawn care business remove all references to Member E in any existing advertisements.

Example 3: Before being elected, Member N was a named partner for an accounting firm. Because accounting is a fiduciary profession, Member N must remove his name from the accounting firm upon swearing in. This includes removing Member N from letterhead, brochures, the firm's online presence (*i.e.*, website or social media), and the firm's physical location, if the building itself contains Member N's name.

⁹ 5 U.S.C. § 501.

¹⁰ *Ethics Manual* at 192.

Example 4: Member S's family owns and operates a spa and wellness company, "S Aestheticians." Member S's parents founded the business. Before Member S's election to Congress, Member S hosted a weekly radio show about wellness issues that was paid for by S Aestheticians and frequently mentioned S Aestheticians' services. Upon swearing in, Member S must (1) discontinue participation in the weekly radio show, and (2) have S Aestheticians remove all references to Member S in any existing advertisements for S Aestheticians. However, S Aestheticians does not have to change its name.

Example 5: As an outside position, Member Y works for a floral distributor. Before his election to the House, his duties included selling distribution services to local florists. Now that he is a Member of the House, he should not engage in selling, endorsing, or promoting the distribution services for the floral distributor or have any outside employment that involves his personally selling or endorsing any products or services. However, Member Y may be able to engage in other work duties for the floral distributor that do not include selling products or services. Further, Member Y may only accept compensation up to the relevant outside earned income limit for the calendar year for Member Y's outside employment.

Examples of Limited Permissible Endorsement or Promotion Activities

Example 6: Member I writes and publishes poetry, short stories, and song lyrics. Member I has sought and received prior written approval from the Committee on Ethics of each contract to receive copyright royalties for Member I's works. As part of her contracts, Member I must appear at book signings, poetry readings, and industry events to promote Member I's works. Member I may promote the poetry, short stories, and lyrics in Member I's personal capacity, but must do so without using House resources, and not on House grounds. Member I is also prohibited from receiving any advance payment on copyright royalties.

Example 7: Author B writes a book about covered bridges and their importance in local historical societies. Author B asks Member C to write a short note to be featured on Author B's book's jacket. Since the requested action does not implicate Member C's personal financial interests, Member C may write a short note including Member C's positive critique of Author B's book for use on the book jacket. However, Member C may not refer to her official position or activities in the short note for the book jacket. Further, such endorsements should not be linked or posted on Member C's official social media accounts or websites.

Example 8: Organization S, a 501(c)(3) charitable organization, is having its annual gala and asks Member T to headline its event, and serve as "the face" of this year's fundraising campaign. Member T may assist in Organization S' fundraising campaign, subject to several restrictions.¹¹

Example 9: Member O has been asked to appear in a documentary film about elected officials of Moroccan descent. Member O has no other affiliation with the film company or production team. Member O may appear in promotional materials for the film because Member O is featured in the documentary.

Example 10: Next month is Lyme Disease Awareness month. The Ad Council has approached Member L to appear in a public service announcement (PSA) about the importance of wearing bug

¹¹ *Ethics Manual* at 348-349.

spray and checking children and pets for ticks. Member L may appear in the PSA produced by the Ad Council. Member L would also be permitted to appear in the PSA if it were produced by a federal, state, or local government.

###

Important Information Relating to Hurricane Florence



Sending Office: Committee on House Administration
Sent By: SaraCatherine.Joseph@mail.house.gov

September 12, 2018

Important Information Relating to Hurricane Florence

Dear Colleague:

Several offices have contacted the Committee on House Administration, the Commission on Congressional Mailing Standards (Franking Commission), and the Committee on Ethics to inquire about the extent to which official resources may be used to help those impacted by Hurricane Florence. We would like to take this opportunity to provide a review of the applicable rules, regulations, and procedures.

When a state of emergency is declared, Members whose districts are directly affected may provide constituents with information to assist those impacted. This information may include addresses and telephone numbers of entities involved in relief efforts being coordinated by the federal government. In the past, Members have provided contact information for blood drives conducted by the American Red Cross in conjunction with the Federal Emergency Management Agency (FEMA). However, referrals to organizations or links to sites whose primary purpose is the solicitation of goods, funds, or services on behalf of individuals or organizations are not permitted under the rules of the House. **To summarize, for Members directly affected, contact information for government entities, as well as private entities directly involved in relief efforts organized by the federal government, may be sent as a mass communication (emails, advertisements, flyers for handout, and posters) and posted on your official website and social media accounts. However, any such unsolicited mass communications must be reviewed by the Franking Commission prior to distribution.**

The Committee on House Administration recommends use of these government established websites for information on the relief efforts:

www.usa.gov/disasters-and-emergencies

www.fema.gov/

www.ready.gov/

www.nhc.noaa.gov/

www.nws.noaa.gov/om/hurricane/index.shtml

<https://www.opm.gov/policy-data-oversight/snow-dismissal-procedures/hurricane-guidance/>

Members have asked to what extent they may use their official resources to solicit or collect donations of goods, funds, or services on behalf of charities and other private organizations involved in such efforts. We understand the good intentions of those making such inquiries, but the rules of the House preclude Members from using official resources for any purpose other than in support of the conduct of the Member's official and representational duties on behalf of the district the Member currently represents. This rule has been interpreted to mean that charitable solicitations using official resources are not

permitted. Please contact the Committee on Ethics with any questions surrounding this rule. **To summarize, Members and staff may not use official resources to solicit anything for charities.**

While official resources may not be used to solicit contributions for charitable organizations or to imply that such organizations or purposes have been endorsed by the House of Representatives, Members and staff may solicit in their personal capacities on behalf of organizations that are qualified under § 170(c) of the Internal Revenue Code – including, for example, § 501(c)(3) charitable organizations such as the Red Cross or Team Rubicon – without first obtaining Committee on Ethics approval. These personal efforts may not use official resources (including official staff time; office telephones, e-mail, and equipment; and official mailing lists). Other restrictions also apply. Solicitations on behalf of non-qualified entities or individuals are decided on a case-by-case basis through the submission to the Committee on Ethics of a written request for permission to make such solicitations. For example, solicitations of donations directly for individuals suffering as a result of the crisis, as opposed to § 501(c)(3) charities assisting sufferers, would need prior Committee on Ethics approval. For more information about solicitations for § 501(c)(3) or other entities, please review pages 347-49 of the *2008 House Ethics Manual* or contact the Committee on Ethics at 5-7103. **To summarize, Members and staff may solicit for charities in their personal capacities only.**

If you have any questions regarding the use of your:

1. Official resources in general, please contact the Committee on House Administration at (202) 225-8281 (majority) or (202) 225-2061 (minority);
2. Communications resources, please contact the Franking Commission at (202) 226-0647 (majority) or (202) 225-9337 (minority); or
3. Personal or campaign resources, or the loan of your name and personal title to private solicitations or initiatives in support of the relief efforts, please contact the Committee on Ethics at (202) 225-7103.

Sincerely,

Chairman Gregg Harper
Committee on House Administration

Ranking Member Robert A. Brady
Committee on House Administration

Chairwoman Susan Brooks
Committee on Ethics

Ranking Member Ted Deutch
Committee on Ethics

Susan W. Brooks, Indiana
Chairwoman
Theodore E. Deutch, Florida
Ranking Member



ONE HUNDRED FIFTEENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

November 29, 2018

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MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics
Susan W. Brooks, Chairwoman
Theodore E. Deutch, 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.

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.

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 \$50,

⁵ 5 U.S.C. § 7351.

⁶ See *2008 House Ethics Manual* at 70.

⁷ 5 U.S.C. § 7353.

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 \$390 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 \$390 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 filers¹² must disclose certain gifts valued over \$375 from a single source in a calendar year on Schedule G ("Gifts") of their annual Financial Disclosure Statements.¹³ This disclosure must include the source of such gifts and a brief description of the gifts.

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 (\$126,148 for 2018, 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.

¹³ 5 U.S.C. app. § 102(a)(2).

Any gift with a market value of less than \$156 need not be counted towards the \$390 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 \$390 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.

December 20, 2018

MEMORANDUM FOR ALL MEMBERS, MEMBERS-ELECT, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics
Susan W. Brooks, Chairmanwoman
Theodore E. Deutch, Ranking Member

SUBJECT: Member Swearing-in Receptions

This memorandum summarizes the ethics rules relating to the receptions that Members may wish to hold or attend in connection with their swearing-in. The major rules that apply in these areas are briefly summarized below, and guidance addressed to specific circumstances is available by calling or writing to the Committee at (202) 225-7103 or ethicscommittee@mail.house.gov.

Member Swearing-in Receptions. Members, especially Members elected to the House for the first time, may wish to host a reception or similar event for their constituents in connection with their swearing-in. The Committee has long advised that Members may use their campaign funds to pay the costs of such a reception, and this is so even if the reception is held in the Member's office or another House room.¹ However, such events should not be campaign or political in nature, such as limiting the invitee list to include only campaign contributors. It is the Committee's understanding that the Members' Representational Allowance may not be used for receptions that are purely social activities or social events, including swearing-in receptions.²

It is generally *not* permissible for a lobbying firm or other private entity to pay the costs of a reception or other event hosted by a Member in connection with the Member's swearing-in. Such arrangements are *not* permissible, as the payment of the costs of the Member's event would constitute an impermissible gift to the Member under the House gift rule.³ However, as discussed further below, a private entity may host its own event in honor of a Member or group of Members, subject to certain limitations.

¹ See *2008 House Ethics Manual* at 127, 160.

² Please contact the Committee on House Administration for any additional questions about the use of official House funds.

³ House Rule 25, cl. 5.

Attendance at Privately-Sponsored Events. Offers of free attendance at swearing-in related events sponsored by private entities are fully subject to the House gift rule. Thus, a Member or staff person may accept such an offer only if acceptance is allowed under one of the provisions of the rule. For example, a state society or other private organization may sponsor events to honor a congressional delegation. Free attendance at those events is generally permissible under the “widely attended” event provision of the gift rule, provided that the offer was made by the event organizer (not a person or entity that simply bought tickets or donated to the event), the offer is limited to the Member or staff person and one accompanying individual only, the requirements on event size are satisfied,⁴ and attendance is connected to the individual’s official duties. In deciding whether attendance at an event would be appropriate to the individual’s official duties, one must also bear in mind the legislative history of the gift rule, which states that an event may not be merely for the personal pleasure or entertainment of the Member or staff person. For example, a Member who represents State A (or a House employee who works for such a Member) may determine that attendance at an event hosted by a state society associated with State A is connected to his or her official duties, but not an event hosted by a similar state society associated with State B.

In addition, Members and staff are generally free to attend any reception, *i.e.*, an event at which the food and refreshments served are of “nominal value,” such as moderate hors d’oeuvres, beverages, and similar items, and does not constitute a meal.⁵ Another provision of the gift rule allows a Member, officer, or employee to accept a gift, including free attendance at an event, having a value of less than \$50, provided that the source of the gift is not a registered federal lobbyist, foreign agent, or private entity that retains or employs such individuals.⁶ The cumulative value of gifts that may be accepted from any one source in a calendar year under this exception must be less than \$100, and no gifts of cash or cash equivalent are permitted.

A third-party may wish to sponsor a swearing-in reception in honor of a Member. As long as the identity of the sponsor is made clear to all participants (*e.g.*, on the invitations), an event nominally “in honor of” a Member or group of Members is not generally considered a gift in itself to the honoree(s).⁷ However, the Members being recognized should not identify themselves as hosts or receive any particular benefit from the event. Furthermore, it would *not* be permissible for a Member, officer, or employee to solicit another individual or group to hold a reception or event in his or her honor, or to solicit support for such an event. Members and staff may have no involvement in the organizing, planning, or conducting the event, including providing the sponsor with a guest list. As stated above, whether Members and staff may attend such a reception will depend on if their attendance is permissible under the House gift rule.

⁴ The Committee on Ethics has determined that an event is “widely attended” if (a) there is a reasonable expectation that at least 25 persons, other than Members, officers, or employees of Congress, will attend the event, and (b) attendance is open to individuals from throughout a given industry or profession, or those in attendance represent a range of persons interested in a given matter. Individuals who are officials of other branches or levels of government count toward the required minimum of 25, but spouses and others who accompany the congressional Members and staff do not count toward the required minimum. *See 2008 House Ethics Manual at 41-42.*

⁵ House Rule 25, cl. 5(a)(3)(U).

⁶ House Rule 25, cl. 5(a)(1)(B)(i).

⁷ *See 2008 House Ethics Manual at 76-77.*

Detailed information on the provisions of the gift rule regarding attendance at events is available in chapter 2 of the Committee's *House Ethics Manual*, copies of which are available from the Committee's office, and the text of which is on the Committee's website, <https://ethics.house.gov>.

* * *

Please note that the Committee's guidance is subject to change if the 116th Congress adopts changes to the ethics rules. Members and staff with questions on the matters addressed above should contact the Committee after the 116th Congress has convened to seek further guidance about any such rule changes. Any questions on these subjects should be directed to the Committee's Office of Advice and Education at (202) 225-7103.

Susan W. Brooks, Indiana
Chairwoman
Theodore E. Deutch, Florida
Ranking Member

Kenny Marchant, Texas
Leonard Lance, New Jersey
Mimi Walters, California
John Ratcliffe, Texas

Yvette D. Clarke, New York
Jared Polis, Colorado
Anthony Brown, Maryland
Steve Cohen, Tennessee



ONE HUNDRED FIFTEENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

December 20, 2018

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MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

FROM: Committee on Ethics
Susan W. Brooks, Chairwoman
Theodore E. Deutch, Ranking Member

SUBJECT: Reminder about Annual Ethics Training Requirements for 2018

This memorandum is a reminder to all offices about ethics training requirements. The Committee on Ethics is required to provide annual ethics training to each Member, Delegate, Resident Commissioner, officer, and employee of the House.¹ The Committee offers ethics training both through online video courses and in-person training sessions. For the 115th Congress to date, the Committee has held 95 in-person ethics training sessions and provided in-person ethics training to more than 2,100 Members, officers, and employees. The dates of additional in-person ethics training sessions for 2018 are included later in this memorandum.

Existing Members are not required to take ethics training, but are encouraged to do so. New House Members must complete a training session specifically designated for new Members within 60 days of joining the House. Existing House officers and employees are required to take one hour of general ethics training each calendar year. New House employees must complete a training session specifically designated for new employees within 60 days of commencing House employment.² In addition, the Committee requires all senior staff³ – whether new or existing employees – to take an additional hour of specialized training at least once per Congress.⁴

¹ House Rule 11, clause 3(a)(6)(A). The Committee defines an “officer or employee” as an individual appointed to a position of employment in the U.S. House of Representatives by an authorized employing authority who is receiving a salary disbursed by the Chief Administrative Officer or is on a leave without pay or furlough status.

² House Rule 11, clause 3(a)(6)(B)(i).

³ “Senior staff” for training purposes are employees who are paid at the “senior staff annual salary rate” for at least 60 days in either (or both) calendar years of a Congress. For 2018, the senior staff annual salary rate is \$126,148, or a monthly pay rate at or above \$10,512. Please note that the senior staff annual salary rate is subject to change in 2019.

⁴ The 115th Congress ends on January 3, 2019.

By January 31 of each year, all House employees must certify to the Ethics Committee that they have completed ethics training during the preceding calendar year.⁵ Employees who pre-register for and sign the attendance sheet at a live training *or* fully complete one of the online training options available through HouseConnect will have made their necessary certification to the Committee. The following are the ethics training requirements for 2018 for Members and staff, as well as the details of how to complete the registration and/or certification process for both live and online ethics training programs.

2018 ETHICS TRAINING REQUIREMENTS

Members

Existing Members are not required to take ethics training, but are encouraged to do so, either by attending an ethics training session or requesting a briefing for their office. New House Members must complete a training session specifically designated for new Members within 60 days of joining the House. Before each Congress, the Committee on Ethics provides ethics training for incoming new Members at the New Member Orientation organized by the Committee on House Administration. The Committee also provides training to Members throughout the year.

“New” House Employees

All new Members and new employees must complete ethics training within 60 days of beginning House employment. A “new” Member for the purposes of the 2018 training requirement is an individual who was *first* sworn in on after January 3, 2018. A “new” House employee for purposes of the 2018 training requirement is an individual who first began employment with the House on or after January 3, 2018. Any former House employee who returns to House employment after a gap of more than 90 consecutive calendar days is considered to be a “new” employee. Interns paid by the House for more than 60 days also must comply with this requirement.⁶ New employees, depending on their work location, may satisfy their training requirement in the following manner:

- New employees who work in Capitol Hill offices are required to attend a *live* training session. The schedule of upcoming new employee live ethics training sessions is available on the Committee website, <https://ethics.house.gov>.
- New employees who do not work in Capitol Hill offices may either attend a live training session *or* watch the “2018 New District Staff” training video online through the HouseConnect website. No other video satisfies the training requirement for new employees.

⁵ House Rule 11, clause 3(a)(6)(B)(ii).

⁶ Detailees, fellows, unpaid interns, and any individuals who are employed by the House and paid for fewer than 60 days are not required to attend ethics training in 2018. The Ethics Committee nonetheless encourages these individuals to complete ethics training so they become familiar with the House ethics rules while working in a House office or for a House committee.

New employees will *not* receive credit for attending or watching any training sessions other than those specifically designated “New Employee” or “New District Staff.” New employees in Capitol Hill offices will not receive credit for completing online, rather than live, training. Note that new employees who are senior staff have an additional hour of training to complete, as explained more fully below under “Senior Staff Training.”

Existing House Employees

“Existing” (*i.e.*, not new) House employees must complete one hour of training before the end of the calendar year. For 2018, this means all existing House employees must complete one hour of training by **December 31, 2018**. **There are no extensions to this deadline, for any reason.** In addition, employees who are senior staff may have an additional hour of training to complete, as explained more fully in the next section. Employees are responsible for knowing whether they are considered senior staff.

As a general matter, existing employees will fulfill their general ethics training requirement by completing an online session designated for general ethics training through the HouseConnect website. The Ethics Committee will also offer some live training sessions that fulfill the general ethics training requirement. Note that attending a live training session for *new* employees does not satisfy the annual ethics requirement for *existing* House employees.

Senior Staff Training

All employees who are “senior staff”⁷ are required to take an additional hour of training at least once per Congress on issues primarily of concern to senior staff or supervisors. For the 115th Congress, this means all senior staff must complete one hour of training by **January 3, 2019**. This “senior staff” hour is required *in addition to* the one hour of general ethics training all officers and staff are required to complete annually. Senior staff employees may fulfill the requirement for an additional hour by attending a live senior staff training session or completing an online senior staff training session through the HouseConnect website.

Briefings that satisfy the senior staff training requirement include general sessions on issues of concern to senior staff, sessions on completing financial disclosure (FD) statements or Periodic Transaction Reports (PTRs), or sessions on the post-employment restrictions. However, employees may *not* complete more than one hour of senior staff training in lieu of completing their annual general ethics training requirement.

ONLINE REGISTRATION & CERTIFICATION PROCESS

For live ethics training

Employees who plan to attend any live training session **must** preregister at <https://registerme.house.gov> **and** sign in on the attendance form prior to the start of the training. Even if employees preregister, they must sign in and attend the full hour to fulfill their ethics training requirement. Attendees must arrive within five minutes of the start of the training to be

⁷ See *supra* note 3.

able to sign the attendance sheet. **Any late arrivals who miss the sign-in period will not receive credit.** After their attendance, employees who have signed the attendance sheet and attended the full hour of training will receive email certificates, which they should preserve for their own records. The email certificates are confirmation for employees that they have satisfied the annual training and certification requirement. Any employee who has received this email confirmation statement has made the necessary certification to the Committee that they have completed their ethics training requirement.

The list of upcoming live training sessions for the remainder of 2018 is listed below and also available on the Ethics Committee website: <https://ethics.house.gov>. All scheduled training sessions – whether for new, existing, or senior staff – will be listed on the Committee calendar on an ongoing basis.

Senior Ethics Training	Longworth 1629	December 20, 2018, 2:00pm–3:00pm
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For online ethics training

Employees who want to complete ethics training online can access the training through the HouseConnect website: <https://houseconnect.house.gov>. Employees must complete the entire online training program to receive credit. You must use a House computer to access the HouseConnect website. Employees who do not have access to a House computer or do not have a House email account should contact the Ethics Committee to make alternate arrangements for completing their training.

After completing an online training program, the system will automatically log the employee as “complete.” This information is automatically transmitted to the Ethics Committee. Thus, once the system labels an employee as “complete,” the employee has satisfied the annual training and certification requirement. Employees will be able to check HouseConnect at any time to verify completion of their own annual ethics training requirement.

Each individual House employee is responsible for completing their ethics training requirement and certifying completion. To access your own record in HouseConnect, you should log in to your own account page in the HouseConnect website: <https://houseconnect.house.gov>. On your account page, the entry in the “Complete” column next to the particular training session read “True” if the session has been completed. (If the session has not been completed, the column will read “False.”) An employee can check whether they have completed an online training session and view and print their own screen for verification. Their name appears in the upper right corner of the screen.

A chief of staff (or staff director or other supervisor) who would like to confirm that everyone in their office has completed their ethics training can ask each staffer to provide either the email they received after attending an in-person training or a print out or screen shot of the HouseConnect dashboard showing that they have completed online training.

FAILURE TO COMPLY WITH THE TRAINING REQUIREMENTS

Failure to satisfy the annual training requirement is a violation of House rules⁸ and may result in any of the specified disciplinary sanctions for House employees, informing employees' supervisors of their noncompliance, publication of noncompliant employees' names and employing offices, additional ethics training, or other actions the Committee deems appropriate. If you have any questions regarding this guidance, please feel free to contact the Committee's Office of Advice and Education at (202) 225-7103.

* * * * *

⁸ See House Rule 11, clause 3(a)(6)(B)(ii).

Susan W. Brooks, Indiana
Chairwoman
Theodore E. Deutch, Florida
Ranking Member

Kenny Marchant, Texas
Leonard Lance, New Jersey
Mimi Walters, California
John Ratcliffe, Texas

Yvette D. Clarke, New York
Jared Polis, Colorado
Anthony Brown, Maryland
Steve Cohen, Tennessee



ONE HUNDRED FIFTEENTH CONGRESS

U.S. House of Representatives

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January 2, 2019

MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

FROM: **Committee on Ethics**
Susan W. Brooks, Chairwoman
Theodore E. Deutch, Ranking Member

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

The purpose of this memorandum is to remind you about issues of concern to House Members¹ and officers² 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.

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

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).

trigger the rule, and “[p]reliminary or exploratory talks,” which do not.¹⁰ The term “negotiations” connotes “a communication between two parties with a view toward reaching an agreement” and in which there is “active interest on both sides.”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

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

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.

application of rules governing their involvement in matters in which 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.

Finally, as a reminder, Members should not be actively involved in personally selling or endorsing goods or services in which they or their family have a financial interest. Thus, as Members prepare to terminate their House service, they should refrain from allowing their name to be used in the selling or endorsing of a company, product, or service. The Committee strongly recommends that any Member with a question about how they may discuss work they may engage in after they leave the House contact the Committee for additional guidance about their specific situation.

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,

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 website 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.

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 website (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.

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

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

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 . . .").

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 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

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*).

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.

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 \$390 from any one source must be disclosed on Schedule H (“Travel Payments and Reimbursements”) of the termination financial disclosure 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.

³¹ House Rule 25, cl. 5(a)(3)(G)(ii).

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).

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 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

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 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 website 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 website 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 website at [https://www.oge.gov/web/oge.nsf/All%20Documents/3741DC247191C8B88525803B0052BD7E/\\$FILE/LA-16-08.pdf?open](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 website at [ww.justice.gov/sites/default/files/olc/opinions/2004/06/31/op-olc-v028-p0097_0.pdf](https://www.justice.gov/sites/default/files/olc/opinions/2004/06/31/op-olc-v028-p0097_0.pdf)).

- × **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 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.

⁴³ 18 U.S.C. § 207(f)(1)(B).

⁴⁴ *Id.* § 207(b).

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 website 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).

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

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

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 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

- ✓ **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
- ✓ **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

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 website, www.fara.gov).

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).

- 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 person or entity who represents, aids, or advises only such persons or entities, the communications would be 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

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).

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).

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.

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.

⁶⁵ See *id.* § 207.

⁶⁶ See *id.*

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.

Susan W. Brooks, Indiana
Chairwoman
Theodore E. Deutch, Florida
Ranking Member

Kenny Marchant, Texas
Leonard Lance, New Jersey
Mimi Walters, California
John Ratcliffe, Texas

Yvette D. Clarke, New York
Jared Polis, Colorado
Anthony Brown, Maryland
Steve Cohen, Tennessee



ONE HUNDRED FIFTEENTH CONGRESS

U.S. House of Representatives

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January 2, 2019

MEMORANDUM TO ALL HOUSE MEMBERS, OFFICERS, AND EMPLOYEES

FROM: **Committee on Ethics**
Susan W. Brooks, Chairwoman
Theodore E. Deutch, Ranking Member

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

The purpose of this memorandum is to remind you about issues of concern to staff members¹ 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

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

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.

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 website 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 \$126,148 (\$10,512 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 2019, 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 might

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 2018, 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 website at <https://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 (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

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 website (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 \$390 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

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 2018 is \$174,000, and thus the post-employment threshold for individuals who terminate their employment with a Member, committee, or leadership office in 2018 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 2018 is **\$164,200**.³² Please note that this rate of pay is subject to change in 2019.

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

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:

- × **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

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 leadership⁴³ 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
- ✗ **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
 - ✗ **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
 - ✗ **Use confidential information obtained by means of personal and substantial participation in ongoing trade or treaty negotiations** within one year preceding the

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; assistant minority leader; chairman of the Democratic Steering and Policy 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 website 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 website at [https://www.oge.gov/web/oge.nsf/All%20Documents/3741DC247191C8B88525803B0052BD7E/\\$FILE/LA-16-08.pdf?open](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 website 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

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 website 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.

one citizen to engage in private diplomacy, has never been the basis of a prosecution, and this Committee has publicly questioned its constitutionality. House Comm. on Standards of Official Conduct, *Manual of Offenses and Procedures, Korean Influence Investigation*, 95th Cong., 1st Sess. 18-19 (Comm. Print 1977). Members should be aware, however, that the law remains part of the criminal code.

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 one foreign government on behalf of another** foreign government.⁵⁸
- ✓ **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.

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 website, 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).

- ✓ **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.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

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.*

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.

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.