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ONE HUNDRED SIXTEENTH CONGRESS

## U.S. House of Representatives

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December 11, 2019

#### MEMORANDUM FOR ALL MEMBERS, OFFICERS, AND EMPLOYEES

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

**SUBJECT:** Outside Position Regulations

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House Resolution 6 (H. Res. 6), created a new clause in the Code of Official Conduct effective January 1, 2020. H. Res. 6 also requires that, “Not later than December 31, 2019, the Committee on Ethics shall develop regulations addressing other types of prohibited service or positions that could lead to conflicts of interest.” To assist the Committee on Ethics (Committee) in fulfilling this mandate, the Committee established a working group, consisting of Representative Susan Wild and Representative Van Taylor. After extensive research, a public session, and solicitation of input from Members<sup>1</sup> of the House of Representatives, the Committee voted to adopt the Outside Position Regulations (OPR) issued today by unanimous vote.

Sections VIII and X of the OPR restate existing restrictions from the Ethics in Government Act, 5 U.S.C. app. §§ 102 and 502(a); House Rule 25, clauses 1 and 2; and House Rule 26. **As such, those prohibitions and reporting requirements have been and remain in effect pursuant to the underlying authorities and previous Committee guidance. However, the remainder of the OPR will be effective on January 1, 2020.** Forms related to the OPR will be issued prior to the effective date. The Committee will incorporate the OPR standards into its annual training starting in 2020 and is available to provide guidance concerning compliance through the Office of Advice and Education, at (202) 225-7103.

While the OPR are extensive, they are not exclusive. Members, officers, and employees of the House are reminded that Constitutional provisions and federal statutes may place additional restrictions on outside employment, positions, and activities.<sup>2</sup> Members, officers, and employees of the House are further reminded that House Rule 23, clause 1 requires that they “shall behave at all times in a manner that shall reflect creditably on the House;” and House Rule 23, clause 2 requires that they “shall adhere to the spirit and the letter of the Rules of the House.”

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<sup>1</sup> For all purposes in this memorandum, “Member” is defined to include any current Member, Delegate, or Resident Commissioner of the House of Representatives.

<sup>2</sup> Some of these additional restrictions on outside activities and positions include the Emoluments Clause and Incompatibility Clause of the Constitution, the Dual Compensation statute, the statute prohibiting Members from contracting with the federal government, and federal criminal conflict of interest statutes. Members and staff with questions about any of these additional restrictions are encouraged to contact the Committee and/or the Office of General Counsel for guidance.

**U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON ETHICS**

**OUTSIDE POSITION REGULATIONS**

December 2019

Effective January 1, 2020

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**I. Authority**

The Committee on Ethics is authorized to issue regulations on this subject pursuant to H. Res. 6, 116<sup>th</sup> Congress.

**II. Effective Date**

These regulations are effective January 1, 2020. To the extent that these regulations restate an existing standard, for example, Sections VIII and X, those standards have been and remain in effect pursuant to the underlying authorities and related Committee guidance.

**III. Construction**

In construing these regulations, Members, Delegates, Resident Commissioners, officers, and employees of the U.S. House of Representatives are instructed to take into consideration their obligations under House Rule XXIII, clause 1, that they “shall behave at all times in a manner that shall reflect creditably on the House,” and House Rule XXIII, clause 2, that they “shall adhere to the spirit and the letter of the Rules of the House.”

**IV. General Rules:**

- a. A Member, Delegate, Resident Commissioner, officer, or employee of the U.S. House of Representatives may not serve as an officer or director of an entity in circumstances described in section VII of these regulations.
- b. A Member, Delegate, Resident Commissioner, officer, or employee paid at or above the senior staff rate of the U.S. House of Representatives is subject to additional restrictions, described in section VIII of these regulations.
- c. A Member, Delegate, or Resident Commissioner of the U.S. House of Representatives may not serve as an officer or director of an entity in circumstances described in section IX of these regulations.

**V. Scope**

- a. Nothing in these regulations should be interpreted to supersede statutory restrictions pursuant to 5 U.S.C. app. § 502(a).
- b. These regulations do not address positions with political organizations.
- c. These regulations do not address positions that are advisory or honorary in nature.

**VI. Definitions**

- a. **Advisory or honorary position.** The term ‘advisory or honorary position’ means a position in name only, with no decision-making responsibilities, no fiduciary responsibilities, and no requirement to fulfill prerequisites to be bestowed the advisory or honorary title.

- b. **Charitable trust.** The term ‘charitable trust’ means a trust pursuant to 26 U.S.C. § 4947(a), and includes split-interest trusts.
- c. **Committee.** The term ‘Committee’ means the Committee on Ethics of the U.S. House of Representatives.
- d. **Company traded on a foreign market.** The term ‘company traded on a foreign market’ means a security that *only* trades on a foreign publicly traded exchange; e.g. the Tokyo Stock Exchange or Paris Stock Exchange.
- e. **Entity that receives funding from a federal agency.** The term ‘entity that receives funding from a federal agency’ means an entity that seeks, spends, or administers appropriated funds provided by a federal agency, jurisdiction of which falls within the committee on which a Member, Delegate, or Resident Commissioner sits.
- f. **Entity that is regulated by a federal agency.** The term ‘entity that is regulated by a federal agency’ means an entity that is subject to regulations promulgated by a federal agency, which falls within the jurisdiction of the committee on which a Member, Delegate, or Resident Commissioner sits.
- g. **Family business.** The term ‘family business’ means a partnership, corporation, limited liability company; or other similar commercial organization, in which members of the family, as defined by 26 U.S.C. § 2704(c)(2), exercise control, as defined by 26 U.S.C. § 2701(b)(2), over the business entity. ‘Family business’ does not include sole proprietorships.
- h. **Family trust.** The term ‘family trust’ means a trust established for the benefit of persons in the same family, as defined by state law.
- i. **Political organization.** The term ‘political organization’ means an organization qualified under § 527(e) of the Internal Revenue Code.
- j. **Public company.** The term ‘public company’ means an issuer as defined in section 3 of the Securities and Exchange Act of 1934 (15 U.S.C. § 78c)—(1) the securities of which are required to be registered under section 12 of such Act (15 U.S.C. § 78l); or (2) that is required to file reports under section 15(d) of such Act (15 U.S.C. § 78o(d)).
- k. **Senior staff rate.** The term ‘senior staff rate’ means a basic rate of pay equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule. Employees who receive the senior staff rate for 60 days in a calendar year must file financial disclosure statements and periodic transaction reports pursuant to 5 U.S.C. app. § 101 *et seq.* Employees who receive the senior staff rate for 90 days in a calendar year are subject to additional restrictions, pursuant to 5 U.S.C. app. § 502(a).

**VII. Prohibitions for Members, Delegates, the Resident Commissioner, Officers, and Employees**

- a. A Member, Delegate, Resident Commissioner, officer, or employee of the House may not serve as an officer or director of any:
  - i. Public company; or
  - ii. Company traded on a foreign market.

**VIII. Prohibitions for Members, Delegates, the Resident Commissioner, Officers and Employees Who Receive the Senior Staff Rate for 90 Days or More in A Calendar Year**

- a. A Member, Delegate, Resident Commissioner, officer or employee paid at or above the senior staff rate for 90 days or more in a calendar year may not:
  - i. Receive compensation for affiliating with or being employed by a firm, partnership, association, corporation, or other entity that provides professional services including a fiduciary relationship, except for the practice of medicine;
  - ii. Permit his name to be used by such a firm, partnership, association, corporation or other entity;
  - iii. Receive compensation for practicing a profession that involves a fiduciary relationship, except for the practice of medicine;
  - iv. Serve for compensation as an officer or member of the board of an association, corporation, or other entity; or
  - v. Receive compensation for teaching without the prior approval of the Committee.

**IX. Prohibitions for Members, Delegates, and the Resident Commissioner only**

- a. A Member, Delegate, or Resident Commissioner may not serve as an officer or director of any
  - i. Entity that receives funding from a federal agency, jurisdiction of which falls within a committee on which the Member, Delegate, or Resident Commissioner sits, or
  - ii. Entity that is regulated by a federal agency, jurisdiction of which falls within a committee on which the Member, Delegate, or Resident Commissioner sits.
- b. Exceptions:
  - i. Section IX(a) shall not apply if:
    - 1. The Member, Delegate, or Resident Commissioner had served continuously as an officer or director for at least two years prior to their initial election to the House of Representatives, and the amount of time required to perform such service is minimal;
    - 2. The entity is a family business, family trust, or charitable trust;
    - 3. The entity is qualified under § 170(c) of the Internal Revenue Code;
    - 4. The entity maintains an active registration; however, it is for all purposes dormant, and does not engage in any trade or business;
    - 5. The position is conferred solely by virtue of an ownership interest in the entity, and involves no active participation in the entity's operations; e.g., to become an investor in an LLC that owns restaurant franchises, the Member must become a member of the LLC;
    - 6. Service as an officer or director is specifically authorized by statute; or
    - 7. The entity is primarily available to Members, Delegates, the Resident Commissioner, officers, and employees of the House of Representatives, or their families; e.g., the House Childcare Center or Congressional Federal Credit Union.

- c. Waiver or Suspension: *Available only for prohibitions in this section*
  - i. The Committee may issue a waiver or a suspension for a period of time (not to exceed 120 days) of the prohibitions contained in this section upon written request, in exceptional circumstances only.
  - ii. The presumption when reviewing requests is that exceptional circumstances rarely exist. When reviewing requests, the Committee may consider the following as evidence of an exceptional circumstance:
    - 1. The entity faces demonstrable and specific imminent, emergent, or dire consequences if the requester steps down from the position;
    - 2. (suspension only) The entity has made a diligent search, but has been unable to appoint a successor before the Member, Delegate, or Resident Commissioner is scheduled to take a position with a committee; or
    - 3. The articles of incorporation or similar document establishing the entity specify that the requester is the only party who is legally able to serve in the position, and the organizing document cannot be modified by law.
  - iii. Waivers granted by the Committee shall be made available to the public in the same manner as waivers of financial disclosure statement reporting requirements.

#### **X. Reporting Requirements**

- a. A Member, Delegate, Resident Commissioner; or officer or employee who receives the senior staff rate for 60 days or more in a calendar year, must file financial disclosure statements and periodic transaction reports pursuant to 5 U.S.C. app. § 101 *et seq.* Among the items that must be disclosed are:
  - i. Outside earned income on Schedule C, “Earned Income”, and
  - ii. Certain positions on Schedule E, “Positions”.

## EXAMPLES

**Example 1.** A Member serves as an uncompensated Board Member for a bank that is traded on the New York Stock Exchange. Prior to his election, his position had been compensated, but he moved to an uncompensated position upon swearing in pursuant to the Ethics in Government Act (EIGA), restated in section VIII(a)(iv) of the OPR. Pursuant to House Resolution 6 and Section VII(a)(i) of the OPR, the Member *must* cease to serve as a Board Member for the bank, effective January 1, 2020.

**Example 2.** A staff person commences working for the House of Representatives on February 10, 2020. The staff person serves as President of a corporation that is publicly traded on the Bombay Stock Exchange; the corporation's stock is not publicly traded on any other country's stock exchange. As President, the staff person has a fiduciary duty to the corporation and has voting rights concerning the company's operations. Pursuant to Section VII(a)(ii) of the OPR, the staff person *must* step down from his position as President of the corporation upon commencing work with the House of Representatives.

**Example 3.** A senior staff person began working as an administrative assistant for a small candle-making business owned by a family friend in January of 2019. He received \$25,000 in compensation in 2019. The senior staff person may continue to work for the small business as its administrative assistant for compensation because (1) his compensation is below the outside earned income limit for 2019 of \$28,440, and (2) he does not serve as a fiduciary for the candle-making business.

**Example 4.** A senior staff person who is an attorney began working for the House of Representatives in 2011. In 2018, she was asked to re-join her former law firm as an ex officio Board Member. In that role, she would be compensated at \$18,000 per year. Although the amount proposed is less than the outside earned income limit for 2018 of \$28,050, the senior staff person may not accept any compensation for her service as an ex officio Board Member due to the restrictions on her affiliating with a firm that provides professional services including a fiduciary relationship, pursuant to the EIGA, and restated in section VIII(a)(i) of the OPR. The law firm also may not use her name on its website or on firm letterhead.

**Example 5.** A Member who was sworn into the House of Representatives in a special election in 2019 is a medical doctor. She would like to continue to practice medicine now that she is a sitting Member of Congress. The Member may receive compensation for practicing medicine only up to the amount necessary to cover the costs of her licensure fees, continuing education units, medical office expenses, and medical malpractice insurance premiums. The Member must file the [appropriate form](#) for practicing medical doctors with the Committee on Ethics, no later than May 15 of each calendar year, detailing her costs and compensation for the prior calendar year. She may not accept compensation in excess of her actual costs.

**Example 6.** A Member who was first sworn into office in 2011 sits on the Committee on Natural Resources in the 116<sup>th</sup> Congress. Since 2015, he has been serving as an uncompensated Secretary for a private oil and gas corporation in his state. The Committee on Natural Resources has jurisdiction over federal agencies that regulate the oil and gas industry. As a result, effective January 1, 2020, the Member *must* step down as Secretary for the private oil and gas corporation.

**Example 7.** A Member who sits on the Committee on Energy and Commerce began an uncompensated position as Director for a private medical research corporation after she became a Member of Congress. The private medical research corporation receives grant funding from a federal agency, jurisdiction of which falls within the Committee on Energy and Commerce. The Member *must* cease to serve as Director for the private medical research corporation, effective January 1, 2020.

**Example 8.** A Member was President of a private tool and dye S-Corporation before he was elected. He currently serves on the Committee on Small Business, which has jurisdiction over, among other industries, manufacturing companies, generally. Upon his election, he ceased the company's operations to focus on his constituents. The Member maintains the company's registration as a business entity with the state, but it does not engage in any business or trade and instead remains dormant. Although the company was previously regulated by a federal agency that falls within the jurisdiction of the Committee on which the Member sits, he may continue to serve as the company's President, because the company is not engaged in business.

**Example 9.** A Member who serves on the Committee on Foreign Affairs has been actively serving as an uncompensated Board Member for the International Relations Council since one year before he was sworn into the House of Representatives. The International Relations Council is qualified as 501(c)(3) nonprofit under § 170(c) of the Internal Revenue Code, is engaged in international relations, and receives federal funding from USAID, over which the Committee on Foreign Affairs has jurisdiction. Although the nonprofit receives federal funding from a federal agency over which the Committee on Foreign Affairs has jurisdiction, the Member may continue to serve as an uncompensated Board Member, since the entity is a 501(c)(3) nonprofit organization.

**Example 10.** A Member was first sworn into the Congress in 2015, and she currently serves on the Committee on Financial Services. Since 2001, she has been an uncompensated Vice President for a private micro-lending corporation, which is regulated by a federal agency, jurisdiction of which falls within the Committee on Financial Services. The amount of time required to perform services as Vice President of the micro-lending corporation is minimal; the Member spends at most two calendar days per year performing work for the corporation, does it on her own time, without using House resources, and performs all work for the corporation off House grounds. Because the position is uncompensated, the Member held the position at least two years prior to her first election to the House, and the time to perform the duties of Vice President are minimal, she may continue to serve as the private micro-lending corporation's uncompensated Vice President.

**Example 11.** A Member was recently selected to serve on the Committee on Agriculture. He is the uncompensated President of two family farms that produce hops and wheat, respectively. The Committee on Agriculture has jurisdiction over a federal agency that regulates the farms' operations, and the wheat farm receives federal subsidies administered by a federal agency within the Committee on Agriculture's jurisdiction. The Member may continue to serve as President of the two family farms, since they are family businesses.

**Example 12.** A Member has been an uncompensated Chief Executive Officer (CEO) of a private charter aircraft company since 2016, one year after being sworn into the House of Representatives. She also serves on a subcommittee of the Committee on Transportation and Infrastructure. The aircraft company is regulated by a federal agency, jurisdiction of which falls within the Committee on Transportation and Infrastructure. Despite a diligent search for a replacement CEO, the company has been unable to find a successor prior to January 1, 2020. Although her service as

CEO is prohibited by the OPR, the Member may seek a *suspension* of the prohibitions from the Committee on Ethics by submitting the appropriate form, available on the Committee's website. If approved, the suspension would be limited to no more than 120 days. This suspension will enable the company more time to replace the Member as CEO. As an alternative, if it is evident that the company would face demonstrable and dire consequences should the Member cease to perform the duties of the company's CEO, she may instead choose to request a *waiver* of the prohibitions from the Committee on Ethics by submitting the appropriate form. If approved, the waiver will be made publicly available, pursuant to Section IX(c)(iii) of the OPR.