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ONE HUNDRED FIFTEENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

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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.

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